

BOARD of SUPERVISORS



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MEMORANDUM

LAND USE AND TRANSPORTATION COMMITTEE

SAN FRANCISCO BOARD OF SUPERVISORS

TO: Supervisor Aaron Peskin, Chair, Land Use and Transportation Committee

FROM: Erica Major, Assistant Clerk, Land Use and Transportation Committee

DATE: January 14, 2020

SUBJECT: **COMMITTEE REPORT, BOARD MEETING**
Tuesday, January 14, 2020

The following file should be presented as a **COMMITTEE REPORT** at the Board meeting, Tuesday, January 14, 2020. This item was acted upon at the Committee Meeting on Monday, January 13, 2020, at 1:30 p.m., by the votes indicated.

Item No. 39 File No. 191179

Resolution declaring the intention of the Board of Supervisors to order the vacation of the Vallejo Street right-of-way generally bounded by Assessor's Parcel Block No. 0138, Lot No. 001, and Assessor's Parcel Block No. 0139, Lot No. 002, between Davis Street and The Embarcadero and a portion of the Davis Street right-of-way generally located between Broadway Street and The Embarcadero, as part of the improvements for the Teatro ZinZanni hotel, theater, and public park development project on Seawall Lots 323 and 324; and setting a hearing date for the Board of Supervisors to sit as a Committee of the Whole on February 11, 2020, for all persons interested in the proposed vacation of said public right-of-way.

AMENDED, AMENDMENT OF THE WHOLE BEARING NEW TITLE

Vote: Supervisor Aaron Peskin - Aye
Supervisor Ahsha Safai - Aye
Supervisor Dean Preston - Aye

RECOMMENDED AS AMENDED A COMMITTEE REPORT

Vote: Supervisor Aaron Peskin - Aye
Supervisor Ahsha Safai - Aye
Supervisor Dean Preston - Aye

c: Board of Supervisors
Angela Calvillo, Clerk of the Board
Alisa Somera, Legislative Deputy
Anne Pearson, Deputy City Attorney

File No. 191179 Committee Item No. 5
Board Item No. 39

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Land Use and Transportation Committee Date January 13, 2020

Board of Supervisors Meeting

Date January 12, 2020

Cmte Board

<input type="checkbox"/>	<input type="checkbox"/>	Motion
<input type="checkbox"/>	<input type="checkbox"/>	Resolution
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Ordinance
<input checked="" type="checkbox"/>	<input checked="" 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 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 checked="" type="checkbox"/>	Public Correspondence (See companion File No. 191181)

OTHER (Use back side if additional space is needed)

<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	FMND 122118
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	DRAFT Lease Disposition and Dev Agrmt
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Lease Disposition and Dev Agrmt Ex A-1
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Lease Disposition Ex A-2
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	HPC Motion No. 0370 030619
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	PC Reso No. 20443 050219
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	PC Motion No. 20444 050219
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Port Memo 090619
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Port Comm Reso No. 19-36 091019
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	PW Order No. 202202
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	PW Sur Map 2019-005 100119
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Committee Rpt Memo 011420

Completed by: Erica Major Date January 9, 2020
Completed by: Erica Major Date January 14, 2020

1 [Resolution of Intent to Vacate Streets - A Portion of Vallejo Street Right-of-Way and a Portion
2 of Davis Street Right-of-Way - Teatro ZinZanni Project]

3 **Resolution declaring the intention of the Board of Supervisors to order the vacation of**
4 **the Vallejo Street right-of-way generally bounded by Assessor's Parcel Block No. 0138,**
5 **Lot No. 001, and Assessor's Parcel Block No. 0139, Lot No. 002, between Davis Street**
6 **and The Embarcadero and a portion of the Davis Street right-of-way generally located**
7 **between Broadway Street and The Embarcadero, as part of the improvements for the**
8 **Teatro ZinZanni hotel, theater, and public park development project on Seawall**
9 **Lots 323 and 324; and setting a hearing date for the Board of Supervisors to sit as a**
10 **Committee of the Whole on February 11, 2020, for all persons interested in the**
11 **proposed vacation of said public right-of-way.**

12
13 WHEREAS, The vacation proceeding for a portion of the Vallejo Street right-of-way,
14 generally bounded by Assessor's Parcel Block No. 0138, Lot No. 001 and Assessor's Parcel
15 Block No. 0139, Lot No. 002 between Davis Street and The Embarcadero and a portion of the
16 Davis Street right-of-way generally located between Broadway Street and The Embarcadero
17 (the "Vacation Area"), is conducted under the general vacation procedures of the Public
18 Streets, Highways and Service Easements Vacation Law (California Streets and Highways
19 Code, Sections 8300 et seq.); and

20 WHEREAS, Section 787(a) of the San Francisco Public Works Code provides that the
21 street vacation procedures for the City and County of San Francisco (the "City") shall be in
22 accordance with the applicable provisions of California Streets and Highways Code and such
23 rules and conditions as adopted by the Board of Supervisors; and

24 WHEREAS, The location and extent of the Vacation Area, all of which Vacation Area is
25 within the jurisdiction of the San Francisco Port Commission ("Port"), is more particularly

1 described on the Public Works ("PW") SUR Map No. 2019-005, dated October 1, 2019, a
2 copy of which is on file with the Clerk of the Board of Supervisors in File No. 191179 and
3 incorporated herein by reference; and

4 WHEREAS, The vacation of the Vacation Area is necessary for the hotel, theater and
5 public park project (the "Project") proposed by TZK Broadway, LLC (the "Developer") at
6 Seawall Lots 323 and 324 and the Vacation Area (collectively, the "Project Site") pursuant to a
7 Lease Disposition and Development Agreement ("LDDA") and Lease ("Lease"), both between
8 Developer and the Port; and

9 WHEREAS, The City Planning Commission at its May 2, 2019, meeting, in Resolution
10 No. 20443, determined that the proposed vacation of the Vacation Area is consistent with the
11 General Plan, and with the eight priority policies of Planning Code, Section 101.1; a copy of
12 Resolution No. 20443 is on file with the Clerk of the Board of Supervisors in File No. 191179;
13 and

14 WHEREAS, The Port Commission at its September 10, 2019, meeting, in Resolution
15 No. 19-36, consented to the vacation of the Vacation Area; and

16 WHEREAS, In PW Order No. 202202 dated November 8, 2019, a copy of which is on
17 file with the Clerk of the Board of Supervisors in File No. 191179 and incorporated herein by
18 reference, the Director of Public Works determined that: (a) the Vacation Area is unnecessary
19 for the City's present or prospective public street, sidewalk, and service easement purposes;
20 (b) in accordance with Streets and Highways Code, Sections 892 and 8314, the portions of
21 the Vallejo Street right-of-way and the Davis Street right-of-way within the Vacation Area are
22 no longer useful as a non-motorized transportation facility; and (c) the vacation of the
23 Vacation Area will not be effective unless all conditions to executing the lease between the
24 Port and the Developer for the Project Site (the "Lease") are satisfied or waived by the
25

1 respective parties and the Lease is executed by the Port and the Developer and becomes
2 effective; and

3 WHEREAS, The street vacation was evaluated as part of the Project pursuant to the
4 environmental evaluation for the Project, that resulted in a final mitigated negative declaration
5 issued on December 21, 2018, Case No.2015-016326ENV ("TZK MND") pursuant to the
6 California Environmental Quality Act ("CEQA," California Public Resources Code, Sections
7 21000 et seq.), and the Planning Commission adopted the TZK MND on May 2, 2019, and a
8 Mitigation Monitoring and Reporting Program ("MMRP"), in its Motion No. 20444; a copy of the
9 TZK MND is on file with the Clerk of the Board of Supervisors in File No. 191179; and

10 WHEREAS, The Board of Supervisors finds that the TZK MND is adequate for its use
11 for this street vacation, that there is no substantial evidence that the Project could have a
12 significant effect on the environment with the adoption of the mitigation measures contained in
13 the MMRP to avoid potentially significant environmental effects associated with the Project,
14 and that no substantial changes are proposed by the Project or the circumstances under
15 which the Project is undertaken that would cause new significant environmental effects or any
16 increase in the severity of previously identified significant effects, and there is no new
17 information of substantial importance showing that the Project would have any significant
18 effects not discussed in the TZK MND, or that significant effects would be substantially more
19 severe, or that new or different mitigation measures or alternatives would substantially reduce
20 one or more significant effects of the Project, and that the mitigation measures included in the
21 MMRP will be implemented as part of the Project; now, therefore be it

22 RESOLVED, That under Sections 8300 et seq. of the California Streets and Highway
23 Code, the Board of Supervisors hereby declares that it intends to order the vacation of
24 portions of the Vallejo Street right-of-way and Davis Street right-of-way as shown on PW SUR
25

1 Map No. 2019-005, subject to the conditions described above, and as provided in the Lease;
2 and, be it

3 FURTHER RESOLVED, That notice is hereby given that on February 11, 2020, at
4 approximately 3:00 P.M. in the Legislative Chambers of the Board of Supervisors, all persons
5 interested in or objecting to the proposed vacation will be heard; and, be it

6 FURTHER RESOLVED, That the San Francisco Board of Supervisors directs the Clerk
7 of the Board to transmit to PW a certified copy of this Resolution, and the Board of
8 Supervisors urges the Director of Public Works and the Clerk of the Board to publish and post
9 this Resolution and to give notice of the hearing of such contemplated action in the manner
10 required by law.

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SAN FRANCISCO PLANNING DEPARTMENT

Mitigated Negative Declaration

PMND Date: October 17, 2018; amended on December 21, 2018 (amendments to the PMND include deletions shown as ~~striketrough~~ and additions shown as double underline).

Case No.: 2015-016326ENV

Project Title: Seawall Lots 323 and 324 – Hotel and Theater Project

Zoning: C-2 (Community Business) Use District
Waterfront 3, Special Use District
40-x Height and Bulk District

Block/Lot: 0138/001
0139/002

Lot Size: 59,750 square feet

Project Sponsor: Jay Wallace
TZK Broadway, LLC
(415) 955-1100 ext. 4007

Lead Agency: San Francisco Planning Department

Staff Contact: Laura Lynch (415) 575-9045
Laura.Lynch@sfgov.org

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

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

PROJECT DESCRIPTION:

The project site includes two Port of San Francisco (Port) assessor's parcels, Assessor's Block 0138, Lot 001 and Assessor's Block 0139, Lot 002, and two Port right-of-way parcels. These parcels compose approximately 59,750 square feet (1.37-acre) of Port property, with primary frontages along The Embarcadero, Broadway, and Davis Street. The Port currently leases the project site to a parking operator.

The project sponsor, TZK Broadway LLC, proposes to demolish the existing 250 space parking lot and construct a mixed-use development consisting of three components: an approximately 29,570-gross-square-foot (gsf) entertainment venue that would house Teatro ZinZanni's historic *spiegel tent*¹ and 285-seat dinner-theater-entertainment venue and program; an approximately 118,000-square-foot, four-story hotel with 192 rooms; and an approximately 14,000 gsf, privately financed and maintained public park, all built to conform with the 40-X height and bulk district.

No off-street parking is proposed at the project site. Parking would occur through valet services and offsite parking at existing nearby facilities. Approximately 20 class I bicycle parking spaces and 28 class II bicycle

¹ The Zinzanni spiegel tent, the Palais Nostalgie, is a 100+ year old European cabaret tent constructed of wood, stained glass, red velvet and gold fabric. The spiegel tent was constructed by renowned craftsman Willem Klessens. The tent is 29 feet tall with a circumference of 211 feet. It has historically been used to host a variety of entertainment uses such as dances, wine tastings, cabarets, and celebrations.

Mitigated Negative Declaration
December 21, 2018

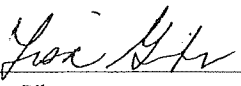
CASE NO. 2015.016326ENV
Seawall Lots 323 and 324

parking spaces are proposed. Construction on the project site is estimated to take up to approximately 22 months.

FINDING:

This project could not have a significant effect on the environment. This finding is based upon the criteria of the Guidelines of the State Secretary for Resources, Sections 15064 (Determining Significant Effect), 15065 (Mandatory Findings of Significance), and 15070 (Decision to prepare a Negative Declaration), and the following reasons as documented in the Initial Evaluation (Initial Study) for the project, which is attached. Mitigation measures are included in this project to avoid potentially significant effects. See section F, Mitigation Measures and Improvement Measures on page ~~469~~181.

In the independent judgment of the Planning Department, there is no substantial evidence that the project could have a significant effect on the environment.



Lisa Gibson
Environmental Review Officer

12/21/18

Date of Issuance of Final Mitigated
Negative Declaration

cc: Jay Wallace, TZK Broadway, LLC; Ricky Tijani, Port of San Francisco; M.D.F



SAN FRANCISCO
PLANNING DEPARTMENT

Initial Study

Seawall Lots 323 and 324 – Hotel and Theater Project

(Planning Department Case No. 2015.016326ENV)

December 2018

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List of Acronyms

2015 UWMP	2015 Urban Water Management Plan
2017 Clean Air Plan	<i>Spare the Air, Cool the Climate: A Blueprint for Clean Air and Climate Protection in the Bay Area, Final 2017 Clean Air Plan</i>
µg/m ³	micrograms per cubic meter
AB	Assembly Bill
ABAG	Association of Bay Area Governments
ARB	California Air Resources Board
ADRP	archeological data recovery plan
ARDTP	archeological research design and treatment plan
BAAQMD	Bay Area Air Quality Management District
BART	Bay Area Rapid Transit
bgs	below ground surface
bhp	boiler horsepower
“Blue Book”	<i>Regulations for Working in San Francisco Streets</i>
BMP	best management practice
C-2	Community Business zoning district
CALGreen Code	California Green Building Standards Code
<i>CBIA v. BAAQMD</i>	<i>California Building Industry Association v. Bay Area Air Quality Management District</i>
CCR	California Code of Regulations
CEQA	California Environmental Quality Act
CGS	California Geological Survey
CO	carbon monoxide
CRHR	California Register of Historical Resources
dB	decibel(s)
dBA	A-weighted decibel(s)
DBI	San Francisco Department of Building Inspection
DNL	day-night noise level
ERO	environmental review officer
ESA	environmental site assessment
FTA	Federal Transit Administration
GHG	greenhouse gas
gsf	gross square feet
hp	horsepower
HVAC	heating, ventilation, and air conditioning
lb/day	pounds per day
L _{dn}	day-night sound level
L _{eq}	equivalent noise level
LEED	Leadership in Energy and Environmental Design
MLD	Most Likely Descendant
MRZ	Mineral Resource Zone
MTCO _{2e}	metric tons of carbon dioxide equivalents
Muni	San Francisco Municipal Railway
Northeast Embarcadero Study	<i>Northeast Embarcadero Study: An Urban Design Analysis for the Northeast Embarcadero Area</i>
NO _x	oxides of nitrogen
NPDES	National Pollutant Discharge Elimination System
NRHP	National Register of Historic Places
OPR	Governor’s Office of Planning and Research
PM	particulate matter
PM _{2.5}	particulate matter equal to or less than 2.5 microns in diameter
PM ₁₀	particulate matter equal to or less than 10 microns in diameter
Port	Port of San Francisco
PRC	California Public Resources Code
Rec Park	Recreation and Park Commission
ROG	reactive organic gas
ROW	right-of-way
RWQCB	Regional Water Quality Control Board

SB	Senate Bill
SFBAAB	San Francisco Bay Area Air Basin
SFFD	San Francisco Fire Department
<i>SF Guidelines</i>	<i>Transportation Impact Analysis Guidelines for Environmental Review</i>
SFMTA	San Francisco Municipal Transportation Agency
SFPUC	San Francisco Public Utilities Commission
SFPW	San Francisco Public Works
SFRPD	San Francisco Recreation and Park Department
SO ₂	sulfur dioxide
TAC	toxic air contaminant
TAZ	transportation analysis zone
TDM	transportation demand management
U.S. EPA	U.S. Environmental Protection Agency
VdB	vibration decibel(s)
VMT	vehicle miles traveled
VOC	volatile organic compound
ZinZanni	Teatro ZinZanni

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A. PROJECT DESCRIPTION

A.1. PROJECT SUMMARY

The project site includes two Port of San Francisco (Port) assessor's parcels, Assessor's Block 0138, Lot 001 and Assessor's Block 0139, Lot 002, and two Port right-of-way (ROW) parcels. These parcels compose approximately 59,750 square feet of Port property, with primary frontages along The Embarcadero, Broadway, and Davis Street. The Port currently leases the project site to a parking operator. The project sponsor, TZK Broadway LLC, proposes to demolish the existing parking lot and construct a mixed-use development consisting of three components: an approximately 29,570-gross-square-foot (gsf) entertainment venue that would house Teatro ZinZanni's (ZinZanni's) historic *spiegelten*² and dinner-theater-entertainment venue and program; an approximately 118,000-square-foot hotel with 192 rooms; and an approximately 14,000-gsf, privately financed and maintained public park.

A.2. EXISTING CONDITIONS

Project Location and Site Characteristics

The approximately 59,750-square-foot, triangle-shaped project site is on the western side of The Embarcadero, the northern side of Broadway, the eastern side of Davis Street, and the southern side of Green Street in the North Beach neighborhood (Figure 1). The project site is generally flat, with elevations ranging between approximately 6 and 10 feet above mean sea level. At its northeastern corner, the site slopes toward San Francisco Bay. The site's elevation is highest along Davis Street, at approximately 10 feet above mean sea level, and lowest along The Embarcadero, at approximately 6 feet above mean sea level.

The project site consists of the two Port parcels, Assessor's Block 0138, Lot 001, and Assessor's Block 0139, Lot 002. These parcels (referred to collectively in this document as the "Port parcels") are commonly referred to as Seawall Lots 323 and 324. The project site abuts two unused ROW parcels between The Embarcadero and Davis Street at the Vallejo Street junction. The proposed project would include an adjustment to the Davis Street property line at the corner of Davis and Vallejo streets (referred to in this document as the "Davis Street lot/street adjustment"). The Port parcels, ROW parcels, and Davis Street lot/street adjustment contribute to a total project site area of approximately 59,750 square feet (1.37 acres). The Port is the trustee of the site under the terms of the *Burton Act*.³

The project site is currently used as a surface parking lot, with approximately 250 striped self-parking stalls and two temporary wooden pay booths. The Port leases the site to a parking operator under a short-term lease. Some of the existing parking spaces are used by Port employees, and by the adjacent KGO-TV and KRON 4 news station for parking for their news vans.

² The Zinzanni spiegelten, the Palais Nostalgique, is a 100+ year old European cabaret tent constructed of wood, stained glass, red velvet and gold fabric. The spiegelten was constructed by renowned craftsman Willem Klessens. The tent is 29 feet tall with a circumference of 211 feet. It has historically been used to host a variety of entertainment uses such as dances, wine tastings, cabarets, and celebrations.

³ In 1968, the State of California transferred its responsibilities for the San Francisco waterfront to the City and County of San Francisco (City) through the Burton Act. As a condition of the transfer, the State required the City to create a Port Commission that has the authority to manage the San Francisco waterfront for the citizens of California. Although the Port is a department of the City and County of San Francisco, the Port receives no financial support from the City, and relies almost solely on the leasing of Port property for its revenues. For more information about Port history, see https://web.archive.org/web/20070903162440/http://www.sfgov.org/site/port_page.asp?id=31784 (accessed May 1, 2018).

Three existing curb cuts along the project frontage provide access to the existing surface parking lot: one curb cut on Broadway (28 feet long) and two curb cuts on Davis Street (28 feet and 20 feet long). The existing sidewalk is 15 feet wide along The Embarcadero and 10 feet wide along Broadway and 11 feet wide along Vallejo Street. Davis Street only has a short 10-foot-wide sidewalk along the southwest a portion of the proposed project site. The proposed project would remove six existing parallel on-street parking spaces and three existing on-street motorcycle parking spaces along the project frontage on the north side of Broadway, three existing parallel on-street parking spaces along the project frontage on the east side of Davis Street, 20 existing perpendicular on-street Port parking spaces along the project frontage on the east side of Davis Street, and six existing perpendicular on-street Port parking spaces along the project frontage on the north side of Vallejo Street. There are 28 street trees along the perimeter of the site; 22 trees are along The Embarcadero, four on Broadway, and two on Davis Street. Figure 2 shows an aerial view of the project location.

Land Use and Zoning

The project site is within the C-2 (Community Business) *zoning district* and the 40-X *height and bulk district* (40-foot maximum height, no bulk limit). The San Francisco General Plan (General Plan) land use designation for the project site is General Commercial. As shown on the Generalized Land Use Map for this subarea, the types of General Plan land use designations in the project area include a mixture of General Commercial, Light Industrial/Public Trust, and High Density Residential. The site is also within the Northeastern Waterfront Special Sign District,⁴ Northeast Waterfront Historic District,⁵ Waterfront Special Use District No. 3,⁶ and Northeast Waterfront Area Plan,⁷ and is governed by the Port's Waterfront Land Use Plan.⁸

A.3. PROJECT CHARACTERISTICS

Proposed Project

The proposed project would involve the demolition of the existing surface parking lot and construction of a new mixed-use development with three components:

- an entertainment venue, featuring the historic 40-foot-tall spiegel tent hosting its maximum 285-seat theater and entertainment venue and a kitchen, bar, bathrooms, and back-of-house area;
- a four-story hotel, consisting of a maximum of 192 guest rooms plus a lobby, guest services, restaurant, and bar areas at ground level and a rooftop bar for hotel guests and patrons⁹ only; and
- an approximately 14,000-gsf, privately owned, publicly accessible park.

⁴ San Francisco Planning Code section 608.15.

⁵ San Francisco Planning Code article 10, appendix D.

⁶ San Francisco Planning Code section 240.3.

⁷ San Francisco Planning Department, *Northeastern Waterfront Area Plan*, 1998 and Amendments by Resolution 16626 on July 31, 2003, http://www.sf-planning.org/sfp/General_Plan/NE_Waterfront.htm. This document (and all other documents cited in this report, unless otherwise noted) is available for review at the San Francisco Planning Department, 1650 Mission Street, Suite 400, as part of Case File No. 2015.016326ENV.

⁸ Port of San Francisco, *Waterfront Land Use Plan*, June 2004; Revised October 2009, <http://sfport.com/waterfront-land-use-plan-0>, accessed online August 2016.

⁹ Patrons are defined as visitors of the theater, restaurant or other amenities of the hotel that are not guests of the hotel

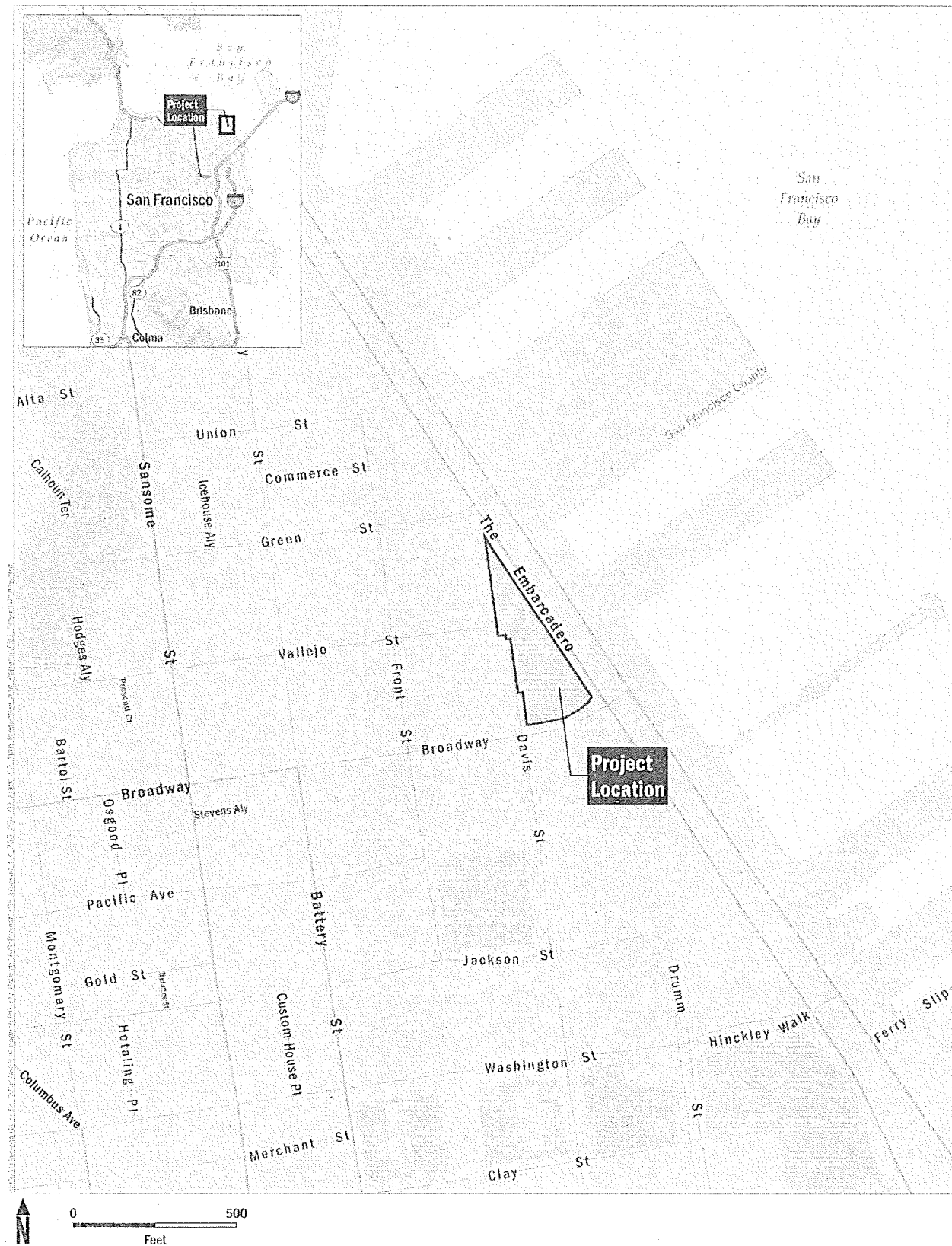


FIGURE 1 PROJECT LOCATION

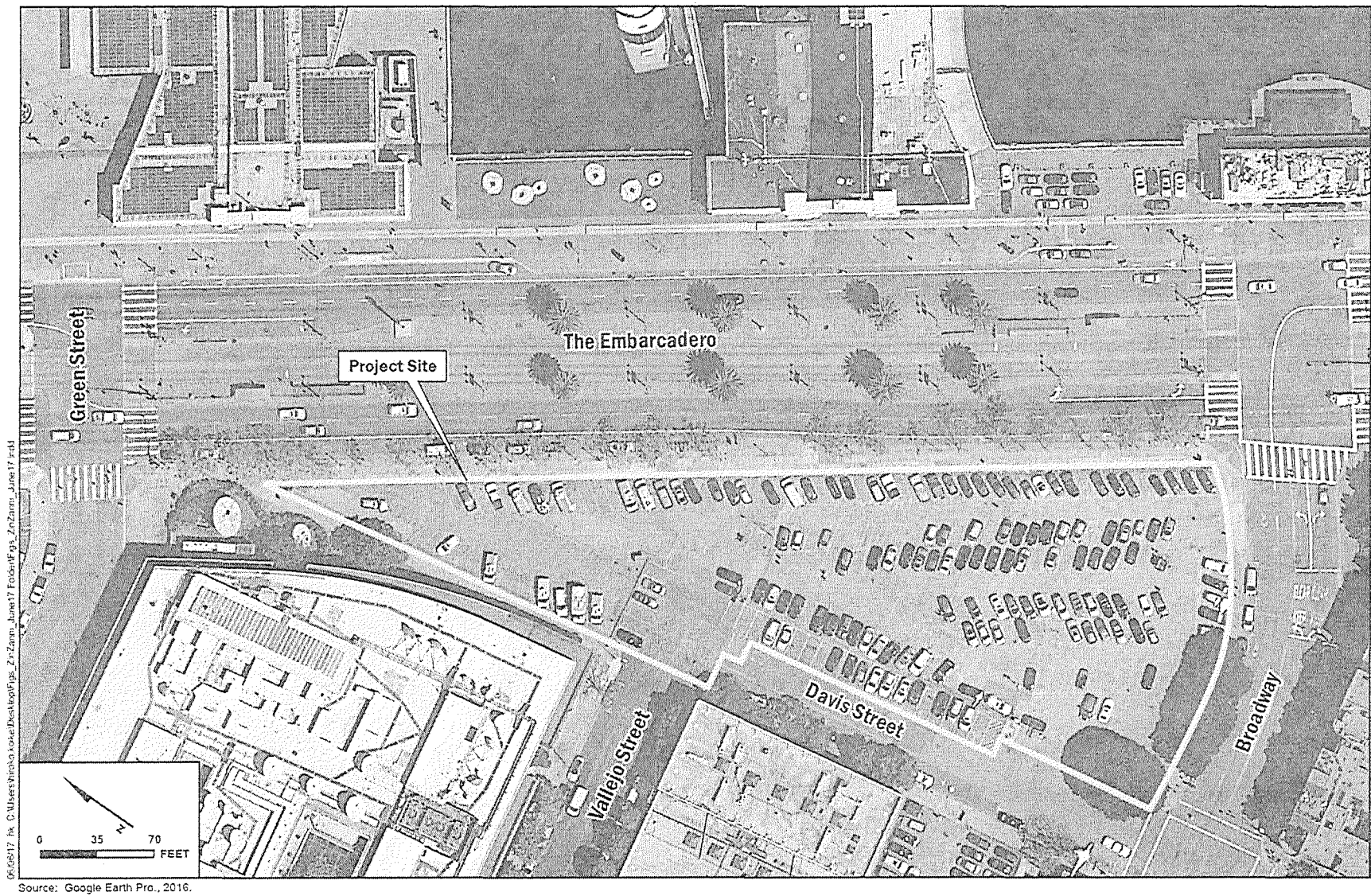


FIGURE 2 AERIAL VIEW OF PROJECT LOCATION

The proposed project would include a total of approximately 147,880 gsf, and would be 40 feet tall (up to 55 feet with mechanical equipment and elevator penthouses, as permitted by San Francisco Planning Code section 260[b][1]). Table 1 provides an overview of project characteristics. Figure 3 provides the proposed site plan, and Figures 4 through 7 shows the floor plans. Figure 8 portrays the proposed roof plan and Figure 9 provides details of the proposed public park plan. Figures 10 and 11 depicts renderings of the proposed project looking to the north and south, respectively.

TABLE 1 PROJECT CHARACTERISTICS

Lot		Dimensions
Size		59,750 square feet
Length		600 feet (Embarcadero)/210 feet (Broadway)/ 290 feet (Davis Street)
Proposed Building		Area (gsf)
Height		40 feet (4 stories) (55 feet with elevator penthouse)
Ground Floor (Hotel and Theater)	Hotel Lobby and Elevator Lobby Area	1,470
	ZinZanni Pre-function: ZinZanni Lobby and Lounge	3,040
	Restaurant Food and Beverage and Bar	4,420
	ZinZanni Retail and Retail Storage	1,950
	Spiegeltent	4,630
	Hotel Meeting Space ¹⁰	2,360
	Mechanical/Circulation/Back of House	26,270
Total		44,140
Level 2 ¹		31,490
Level 3 ¹		32,030
Level 4 ¹		32,030
Roof	Open Roof Terrace	3,970
	Elevator/Mechanical Penthouses	4,220
Total		147,880
Uses		Area (gsf)
Entertainment Venue, Including Venue Back of House and Circulation		21,570
Hotel, Including Hotel Back of House and Circulation		121,890
Restaurant Food and Beverage		4,420
Open Space		Publicly Accessible ² 14,000
		Common ³ 3,970
		Private ⁴ 0
Vehicle Parking Spaces		Number
		0
Bicycle Parking Spaces		Class I 20 (on ground floor)
		Class II 28 (in three locations along project frontage); 15 existing (along The Embarcadero)
Loading Spaces		2

Notes:

¹ Proposed room numbers: Level 2, 59 rooms; level 3, 67 rooms; and level 4, 66 rooms.

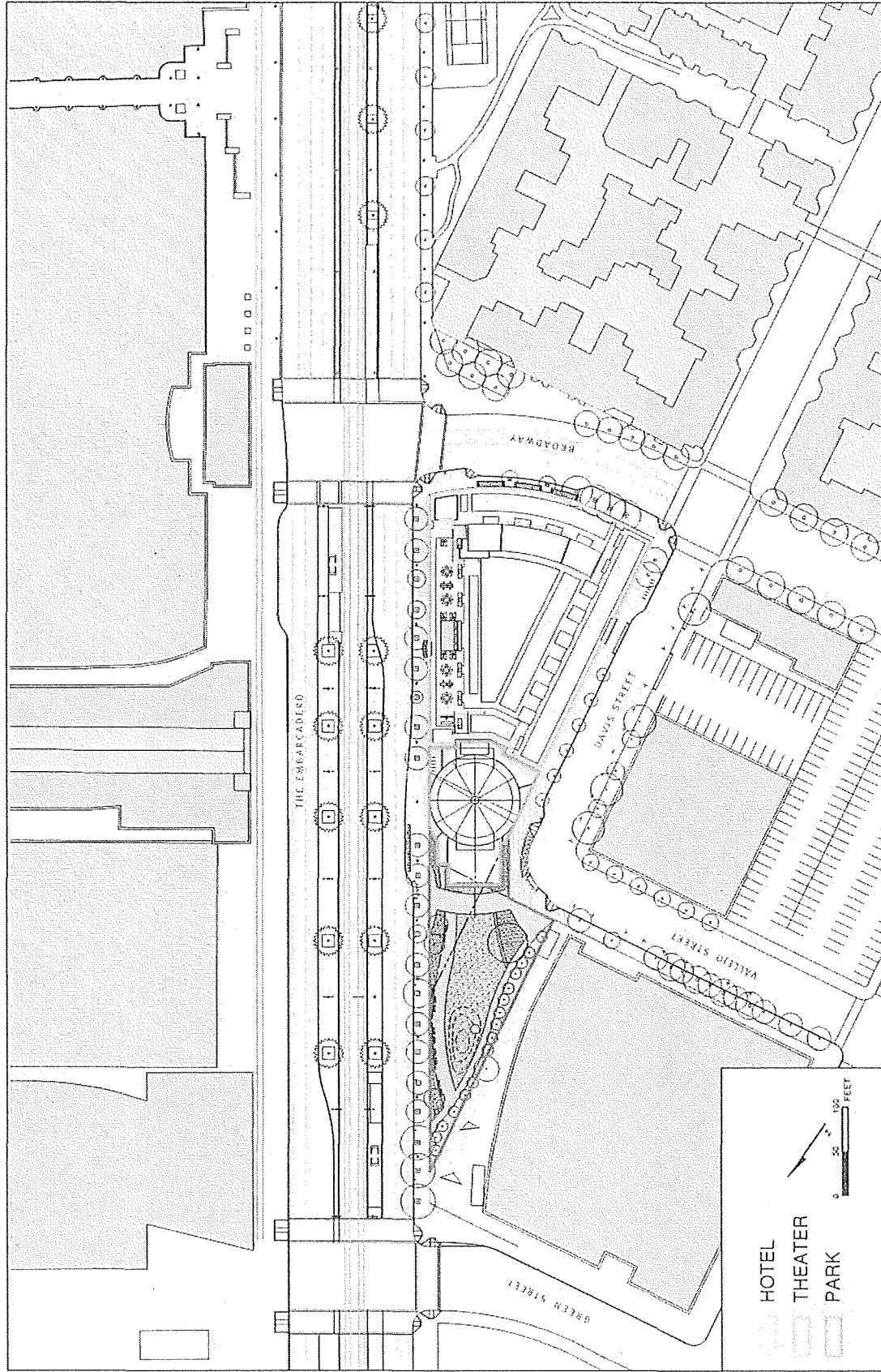
² Publicly accessible open space provided as a park in the northern corner of the site.

³ Common open space provided as an open roof terrace that would be accessible to hotel guests and patrons only.

⁴ No private open space (including patios/decks off of hotel rooms) would be provided.

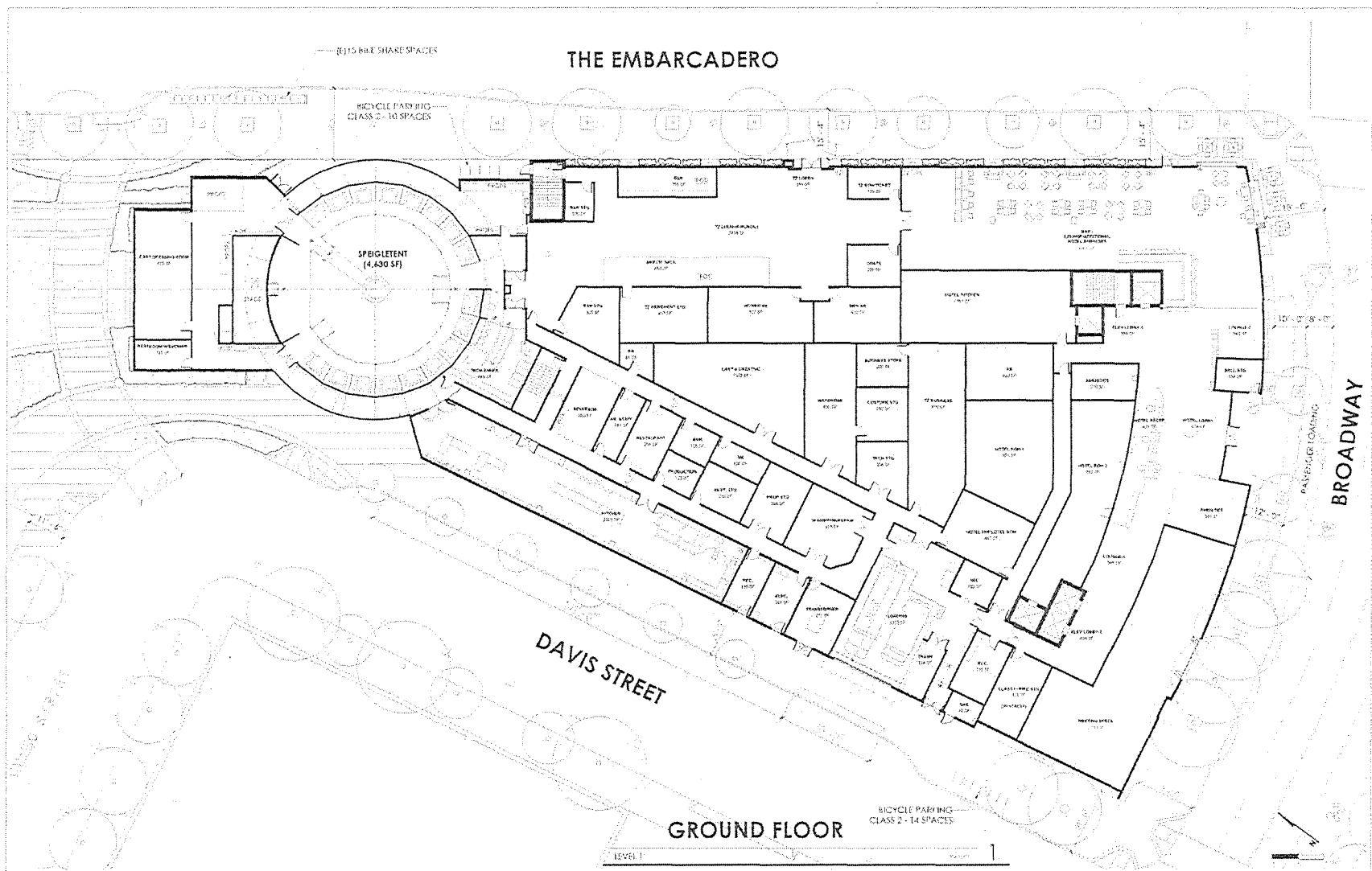
Source: Hornberger + Worstell Architects and HRGA Architects, 2018

¹⁰ Meeting space may be rented by hotel guests or patrons of the hotel that are not staying at the hotel.



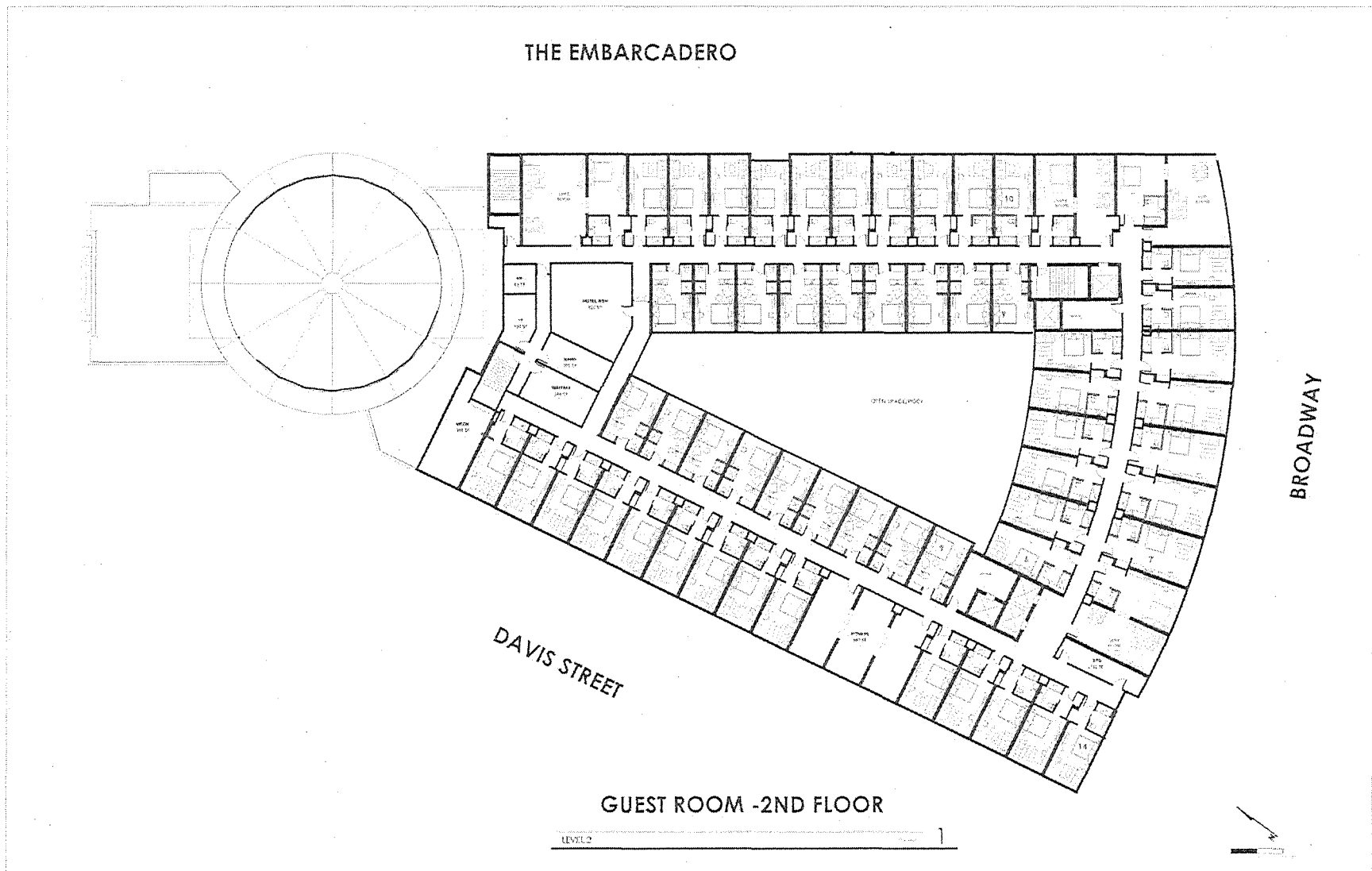
Source: Hornberger + Worstell Architects 2018

FIGURE 3 PROPOSED SITE PLAN



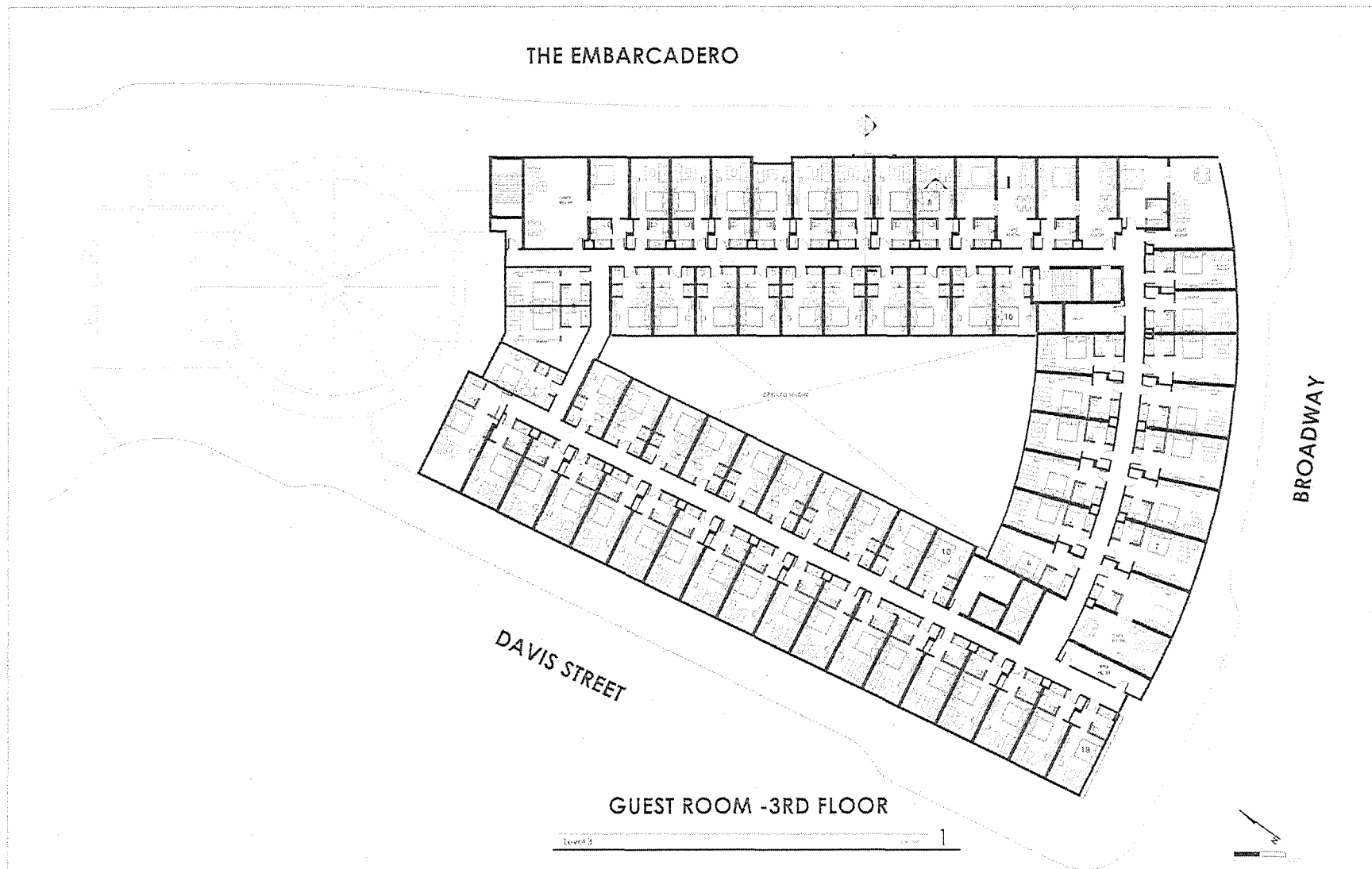
Source: Hornberger + Worstell Architects and HRGA Architecture, 2018

FIGURE 4 PROPOSED GROUND-FLOOR PLAN



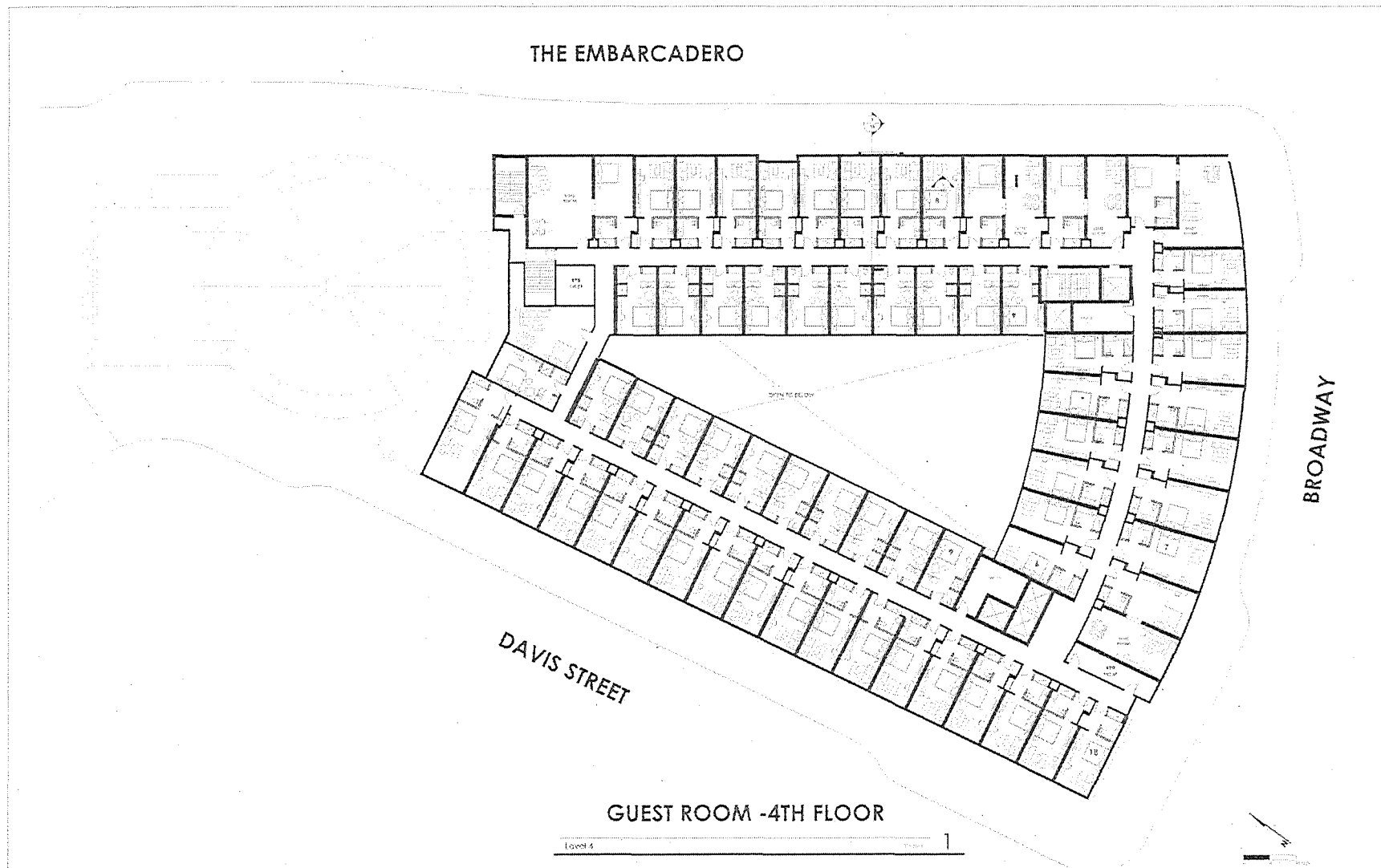
Source: Hornberger + Worstell Architects and HRGA Architecture, 2018

FIGURE 5 PROPOSED SECOND-FLOOR PLAN



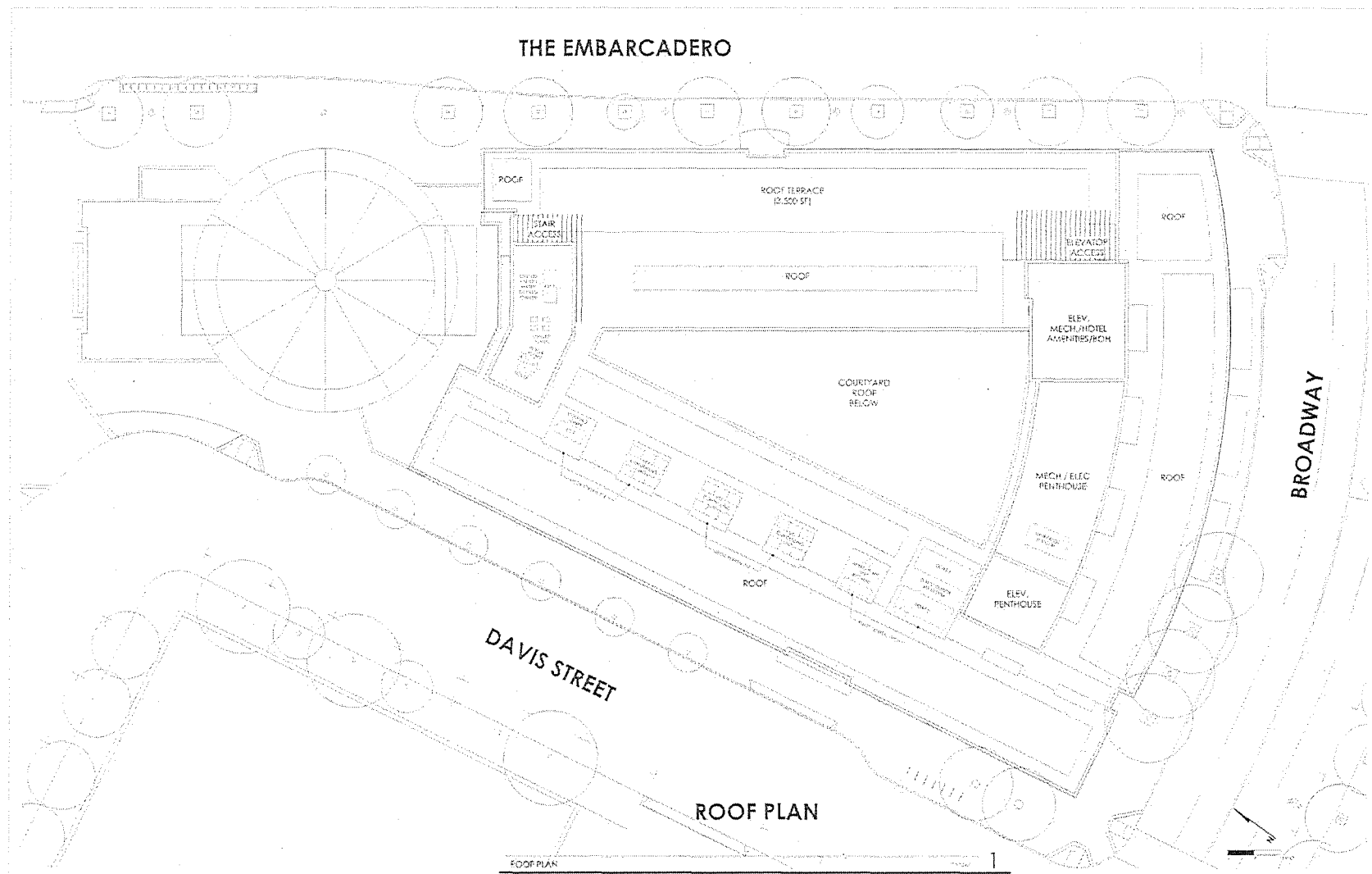
Source: Hornberger + Worstell Architects and HRGA Architecture, 2018

FIGURE 6 **PROPOSED THIRD-FLOOR PLAN**



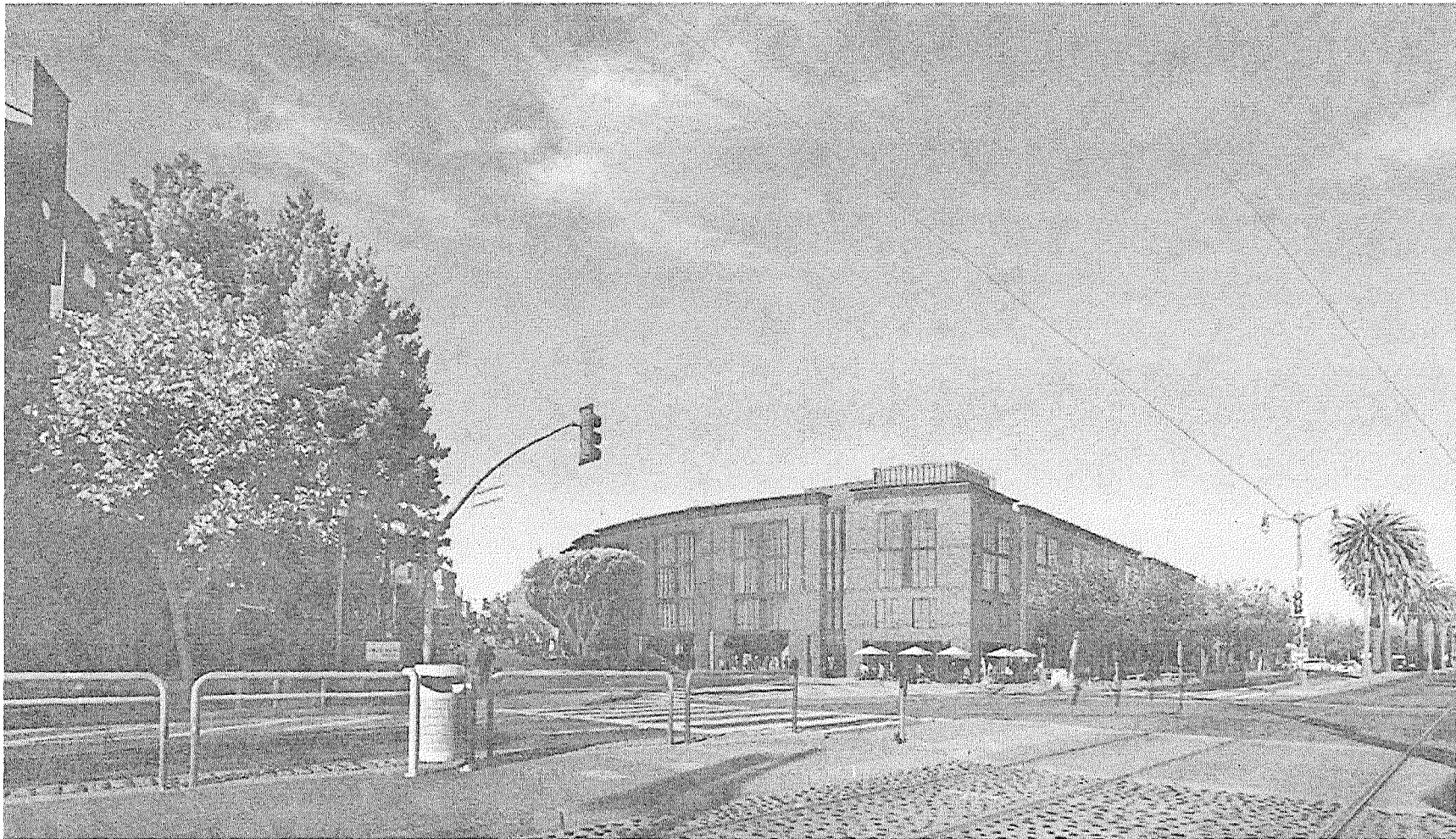
Source: Hornberger + Worstell Architects and HRGA Architecture, 2018

FIGURE 7 PROPOSED FOURTH-FLOOR PLAN



Source: Hornberger+Worstell Architects, 2018

FIGURE 8 PROPOSED ROOF PLAN



Source: Hornberger+Worstell Architects and HRGA Architecture, 2018

FIGURE 10 NORTHWEST VIEW OF PROPOSED PROJECT



Source: Hornberger+Worstell Architects and HRGA Architecture, 2018

FIGURE 11 SOUTH VIEW OF PROPOSED PROJECT

Project Building Characteristics

Entertainment Venue

The entertainment venue would include approximately 26,100 gsf to house the historic spiegel tent and seating for the entertainment venue, kitchen, bar, bathrooms, welcoming areas, ticket booth, merchandise area, lobby and circulation space, and back-of-house activities. The entertainment venue would be located inside a clear gazebo-like structure, constructed of glass and metal with steel or metal supports, at the northern end of the site adjacent to the public park. The glass gazebo-like structure would be clear to allow pedestrians walking past the structure to view the historic spiegel tent and see through the backstage area during daylight hours. The structure's roofline would be glass with metal.

The entertainment venue is expected to accommodate up to a maximum of 285 patrons and would operate from 8 a.m. to 2 a.m. Monday through Sunday. Entertainment venue patrons would be encouraged to arrive at the venue approximately 30 minutes to 1 hour before shows begin. Event times would follow the following approximate schedule:

- Monday–Saturday, 6:30 p.m. to midnight
- Sunday midday, 11:30 a.m. to 3 p.m., and/or Sunday evening, 5:30 to 10 p.m.

The proposed project's entertainment venue would include a small outdoor raised stage area located at the south end of the public park, attached to the back-of-house portion of the entertainment venue. Operable doors on the northern side of the entertainment venue structure would open up onto the outdoor stage area. The operable doors would remain closed during regularly scheduled performances at the entertainment venue. The outdoor raised stage that would be located in the public park could be used for small-scale community and neighborhood events; small-scale theater performances by local schools and community groups; and other neighborhood events, such as weekly exercise classes or a children's dance or singing performance. The public park would be approximately 14,000 square feet and would have limited capacity because of its size, which would restrict the size of events that could take place. Activities that would occur in the public park would allow for passage of pedestrian traffic through the site.

Hotel

The hotel component would include a total of approximately 118,00 gsf, of which 14,560 gsf would be at ground level for entry and drop-off areas for guests, the front desk, a concierge, gathering space, retail, restaurant and café uses, back-of-house uses, and elevator and stairwell access. The hotel would also include a restaurant and bar. Operating hours for the restaurant would be approximately 6 a.m. to midnight, 7 days a week. The bar portion of the hotel would be permitted to remain open until 2 a.m., although it is anticipated to close earlier on weekdays. The restaurant and bar would include an outdoor patio along the eastern side of the building, along The Embarcadero. Above the ground-level floor, the proposed project would include approximately three floors of hotel uses totaling 95,560 gsf and 192 hotel guest rooms. The hotel would also include an approximately 3,970-gsf rooftop deck, serving food and beverages from the hotel's bar and restaurant services, for use by hotel guests and patrons only.

The roof would include wind-protected outdoor spaces for hotel guests and patrons. Vertical metal screening walls would be integrated with the other exterior building materials designed to allow for plants to grow vertically and create a green screen effect that would shield the rooftop mechanical devices from view. The roof would likely be designed with a small array of solar panels as well as low-impact-design stormwater facility. Figure 8 shows the proposed roof plan.

Mechanical Equipment

The mechanical and elevator penthouses would take up 4,220 square feet on the roof of the proposed building. The elevator penthouses are combined with staircases in two locations. The mechanical room would have equipment to serve theater and hotel operations to maintain the temperature. The theater's main mechanical system would be a chilled water system consisting of one 120-ton, 5,300-pound water-cooled chiller and two 100-pound primary and secondary chiller pumps that

would be located inside the mechanical room. For heating, a hot water system would consist of two condensing-type heating hot water boilers in the roof mechanical room, each rated at 1,000 thousand British thermal units per hour. Some mechanical equipment on the roof would also be located outside of the mechanical room on the roof, where outside air is required to operate. This equipment would include the heat pumps, a 4,500-cubic-foot-per-minute air scrubber/pollution unit for the main kitchen exhaust, and the make-up air unit consisting of an evaporative cooling module and hot water heating. This mechanical equipment would be screened by green vegetation on the roof. The building's air handler would be located in the second-floor mechanical room and supply ducting would be routed to below grade to serve the theater. The air handler would provide approximately 8,500 cubic feet per minute. In addition, an 800-kilowatt, diesel-powered emergency generator would be located in the mechanical penthouse.

Public Park

The proposed project would construct an approximately 14,000-gsf public park in the northern portion of the site parallel to The Embarcadero, as depicted in Figure 9. The park would consist of both landscaping and hardscape, with benches and lighting in and around the park. The park would include pathways for pedestrian access from The Embarcadero through to Vallejo and Davis streets.

The public park would provide space for a variety of informal activities, such as family and community picnics, and gatherings, neighborhood yoga and tai chi classes, programming for toddlers and young children, educational events for elementary school students, and pedestrian strolling, and sitting. The park would also include view mounds to allow visitors to "get up to see the bay," as well as moveable and permanent seating and tables, wayfaring, lighting, historic signage, and public art features. Additionally, the park would include iconic statuary art at the intersection of Davis and Vallejo streets, marking the park as an important destination across from the waterfront.

The public park would be used for informal passive activities on weekdays and weekends during normal business hours, subject to Port requirements. The park may also include temporary events, approximately one time per week, under the management of the project sponsor, in accordance with the terms and lease with the Port¹¹ and the City's event policies. Activities could involve hosting a food truck gathering, lunchtime music or lecture session, or activities related to local festivals or events in the vicinity or other parts of San Francisco, such as Sunday Streets. A portion of the public park may also be used for a pre-show activities related to the theater or hotel. For example, if a wedding were held at the hotel, guests could enjoy drinks outside before going inside for the celebration. Sound may be amplified up to approximately one time per week and the appropriate approvals would be obtained from the Port in advance.

The project sponsor would maintain the public park. Maintenance activities would include but would not be limited to providing sufficient trash containers and other recycling systems, and providing security to keep the park clean and safe. The public park would be open 24 hours a day and would be supervised by private security hired by the project sponsor, unless actual usage or public safety concerns require less frequent late-night use.

The public park area would include an easement for the San Francisco Fire Department (SFFD) to access the site from The Embarcadero or Davis Street through Vallejo Street right-of-way. Currently, SFFD has an easement on the site that runs north and south along the terminus of Davis Street to Green Street. An additional easement is recorded against the site for use by AT&T for its telephone conduit that runs through the ROW portion of the proposed park. The two existing easements would need to be terminated and replaced with new easements, with SFFD's easement serving as an emergency-vehicle access point between The Embarcadero and Vallejo Street. This access point would be protected by new movable bollards where none exist today.

¹¹ The Guidelines & Application for Special Events, <https://sfport.com/special-events-port>, set forth the applicable regulations governing special events at Port property.

Parking and Loading

Valet Services

The proposed project would not include off-street vehicle parking on the project site. Instead, parking for the proposed project would occur through offsite parking and valet services. The proposed valet service would park hotel guests' and patrons' vehicles at nearby off-street parking facilities to manage storage of vehicles brought to the site. Numerous existing parking lots and parking structures are located in the immediate vicinity of the site. The project sponsor proposes to use up to 50 parking spaces for the hotel use by a covenant agreement with Impark at one of its nearby locations.¹² The agreement states that the Four Embarcadero Center parking garage, which contains more than 2,000 parking stalls within a 10-minute walk from the project site, would be available. The proposed project valet service would primarily use the Impark lot at 847 Front Street for vehicle storage, and would therefore only travel one block to drop-off and retrieve hotel patron vehicles. The agreement also includes parking garages at Three Embarcadero Center (200 spaces) and 847 Front Street (60 spaces) that would also be available.

Parking for the entertainment venue would also occur at an off-site, self-parking location or locations close to the project site. An e-mail or text message sent to patrons would encourage taking public transit, cabs, or ridesharing services to the project site and would inform them of the many off-site, self-parking locations close to the theater, such as parking at 847 Front Street, Pier 19, 1000 Front Street, and One Maritime Plaza. Entertainment venue patrons would be directed to off-site, self-parking locations by the hotel's valet parking attendant, or would be allowed to access the hotel's valet services for a separate fee.

Loading

The proposed project would install a new 80-foot-long curbside passenger loading space ("white curb") along the northern side of Broadway to provide ingress and egress into the site for hotel guests, theater guests, and other patrons.¹³ The passenger loading space would be located adjacent to the hotel lobby entrance into the building and would be used in a curbside valet operation for hotel guests, theater patrons, and other patrons.

A proposed 142½-foot-long commercial loading zone would be established along the project frontage on the eastern side of Davis Street. The loading dock includes two spaces and a service area that would be used exclusively for deliveries, service providers including waste collection, and recycling. The proposed project would add a new loading dock along Davis Street, measuring 23 feet, 8 inches wide by 33 feet, 3 inches deep by 12 feet high. This loading dock would be designed to incorporate a roll-up door into the façade and an audible and visual signal would be included to alert pedestrians to truck movement at the dock.

Daily and quarterly deliveries for the entertainment venue would be accommodated at the proposed Davis Street loading dock. Daily deliveries for the entertainment venue would include food, supplies, and other products for the theater; quarterly deliveries for the entertainment venue may include equipment or materials needed to modify the theater when the theme of the show changes.

¹² The project sponsor has executed a letter of intent with Impark and a letter report from Impark dated January 19, 2017, describing its valet options in the immediate vicinity of the project site and Impark's conclusion, based on its valet services provided at other hotels in San Francisco that substantially less than a maximum of 50 spaces are needed. The letter of intent and the letter report are included in the transportation impact study as Appendix K. (CHS Consulting Group, *Seawall Lot 323 and 324 [Teatro Zinzanni] Project Final Transportation Impact Study*, May 2018.)

¹³ The proposed project is within the jurisdiction of the Port of San Francisco, which is outside the jurisdiction of the San Francisco Municipal Transportation Agency's Color Curb Program.

Trash and delivery services would occur on Davis Street in a 1,660-gsf enclosed loading dock area, which would have a roll-up door. The loading dock would provide two truck parking zones within the building to allow for both an *SU-30*¹⁴ vehicle and a delivery van. A dedicated recycling area and a separate trash room would also be directly adjacent to the loading zone. A security office, located within the loading dock area, would provide visual oversight for both the loading dock and the employee entrance.

Bicycle and Pedestrian Access

Bicycle Parking

The proposed project would include a total of 59 bicycle parking spaces, which would consist of 20 *class I* bicycle parking spaces and 43 *class II*¹⁵ bicycle parking spaces (28 new). Access to the class I bicycle parking spaces would be via a secured door into the building along Davis Street. The class I bicycle parking spaces would be provided for use by hotel and other employees only. The 43 class II bicycle parking spaces would be located on the sidewalk in front of the project site (14 new spaces along Davis Street and 10 new spaces along The Embarcadero, in addition to 15 existing spaces along The Embarcadero). The location of bicycle parking spaces within the public ROW would be subject to review and approval by the San Francisco Municipal Transportation Agency (SFMTA), the San Francisco Port Commission, and San Francisco Public Works (SFPW).

Pedestrian Access

The proposed project would provide several pedestrian entrances for hotel, entertainment venue, and restaurant and bar uses. The building's primary entrance would be through the hotel lobby area, located along the northern side of Broadway at the new white curb. The entertainment venue's primary access would be along The Embarcadero, although guests would be permitted to access the entertainment venue from the hotel's main Broadway entrance. The hotel's restaurant and bar would be accessible from street-level openings at the intersection of The Embarcadero and Broadway and along The Embarcadero, and from inside the hotel itself.

The proposed public park would include pathways for pedestrian access from The Embarcadero to Vallejo and Davis streets and around the perimeter of the proposed project. The pedestrian connection to The Embarcadero would also be wide enough to allow an emergency-vehicle to gain access when necessary for use by the San Francisco Fire or Police departments or for a maintenance truck, protected by movable bollards.

Transportation Demand Management Plan

As required by the City's Transportation Demand Management Program Ordinance (Ordinance 34-17, approved February 2017), the project sponsor would develop a transportation demand management (TDM) plan that would be subject to review and approval by the San Francisco Planning Commission as part of its deliberations on the proposed project. Ordinance 34-17 added section 169, Transportation Demand Management Program, to the San Francisco Planning Code. Under section 169.3, projects with 10 or more dwelling units, 10 or more group housing units, or 10,000 square feet or more of nonresidential space, or certain changes of use involving 25,000 square feet or more must develop a TDM plan. Compliance with the approved TDM plan would be adopted as a condition of approval for the proposed project (section 169.4[c]).

¹⁴ SU-30 is a single-unit truck design vehicle consisting of a two-axle truck with an overall length of 30 feet and a turning radius of 42 feet.

¹⁵ Section 155.1(a) of the Planning Code defines class I bicycle spaces as "spaces in secure, weather-protected facilities intended for use as long-term, overnight, and work-day bicycle storage by dwelling unit residents, nonresidential occupants, and employees" and defines class II bicycle spaces as "spaces located in a publicly-accessible, highly visible location intended for transient or short-term use by visitors, guests, and patrons to the building or use."

The TDM Program Ordinance states that before a certificate of occupancy can be issued, a property owner must facilitate a site inspection by the San Francisco Planning Department and document implementation of applicable aspects of the TDM plan. The property owner must also maintain a TDM coordinator, allow for planning department inspections, and submit periodic compliance reports throughout the life of the project.

For the proposed project, the project sponsor has agreed to implement the following TDM measures:

- **PKG-4: Parking Supply Options (Option E).** Provide less than or equal to 60 percent and greater than 50 percent of the neighborhood nonresidential parking rate.
- **ACTIVE-1: Improve Walking Conditions (Option A).** Complete streetscape improvements consistent with the Better Streets Plan and any local streetscape plan so that the public right-of-way is safe, accessible, convenient, and attractive to persons walking by providing bulb-outs along the Davis Street and Broadway sidewalks to shorten crosswalk distances and reduce vehicle speed.
- **ACTIVE-2: Bicycle Parking (Option A).** Provide class I and class II bicycle parking spaces for hotel, retail, and theater uses as required by the planning code.
- **ACTIVE-5A: Bicycle Repair Station.** Provide onsite tools and space for bicycle repair.
- **DELIVERY-1: Delivery Supportive Amenities.** Facilitate delivery services by providing a staffed reception area for receipt of deliveries, and offering one of the following: clothes lockers for delivery services, or temporary storage for package deliveries, laundry deliveries, and other deliveries.
- **INFO-2: Real-Time Transportation Information Displays.** Provide real-time transportation information on displays in prominent locations on the project site to highlight sustainable transportation options and support informed trip-making.

Architecture and Design

The project's architectural elements have been selected to comply with the character of the Northeast Waterfront Historic District. The building's exterior would be covered with a red brick veneer and the window fenestration would include multi-paned industrial sash patterns similar to buildings in the area. The mostly glass gazebo enclosing the historic spiegel tent would be circular in form, composed of nonreflective material, and would comply with the 40-foot height limit. Figures 12 through 15 show elevations for the proposed project and Figure 16 shows proposed building sections.

The proposed project would be developed to achieve *Leadership in Energy and Environmental Design (LEED)*¹⁶ Gold certification.

¹⁶ LEED is an internationally recognized green building certification system developed by the U.S. Green Building Council, which provides third-party verification that a building or community was designed and built using strategies aimed at improving performance across metrics that include energy savings, water efficiency, reduction of carbon dioxide emissions, improved indoor environmental quality, stewardship of resources, and sensitivity to impacts on resources.

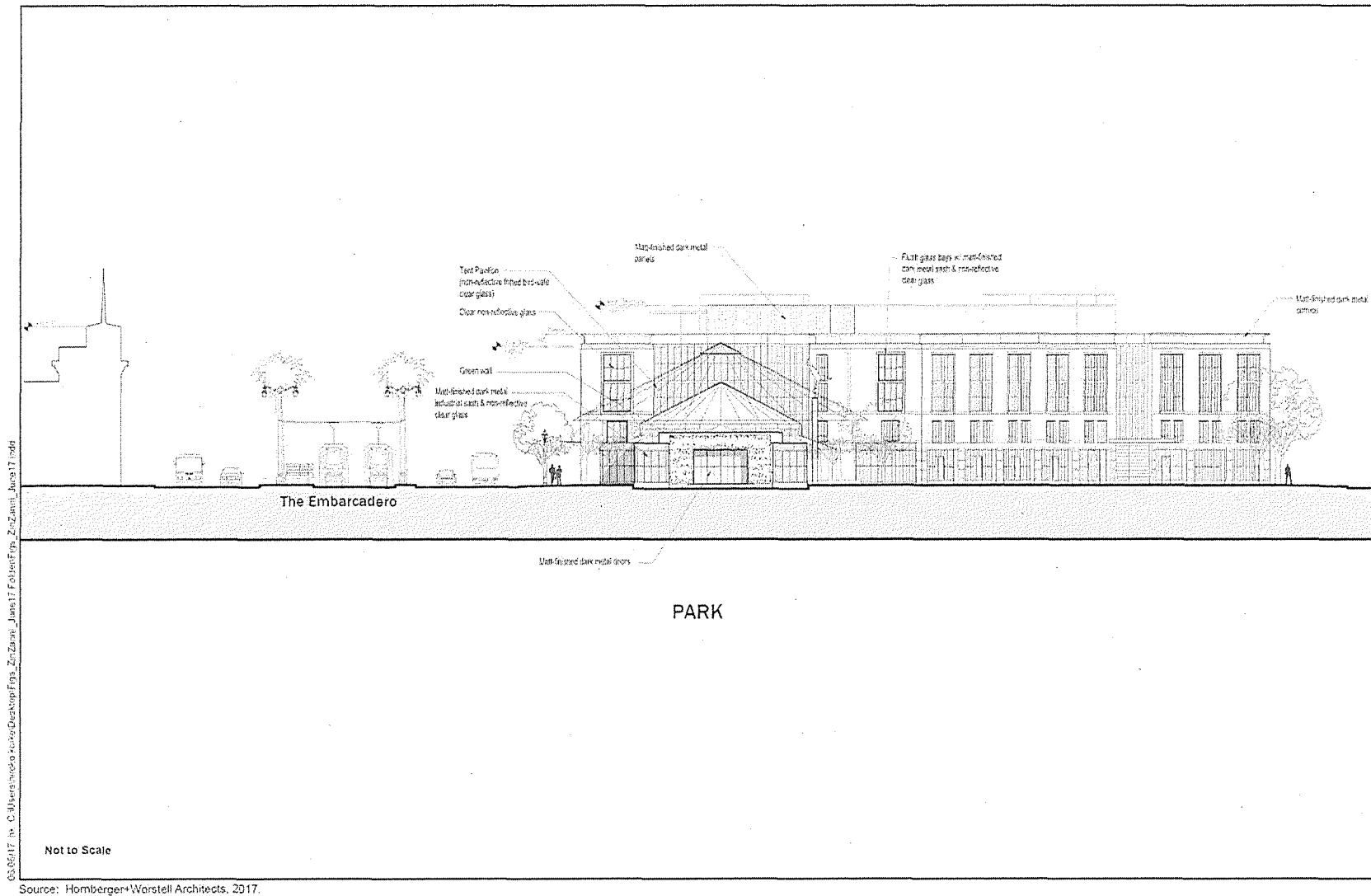
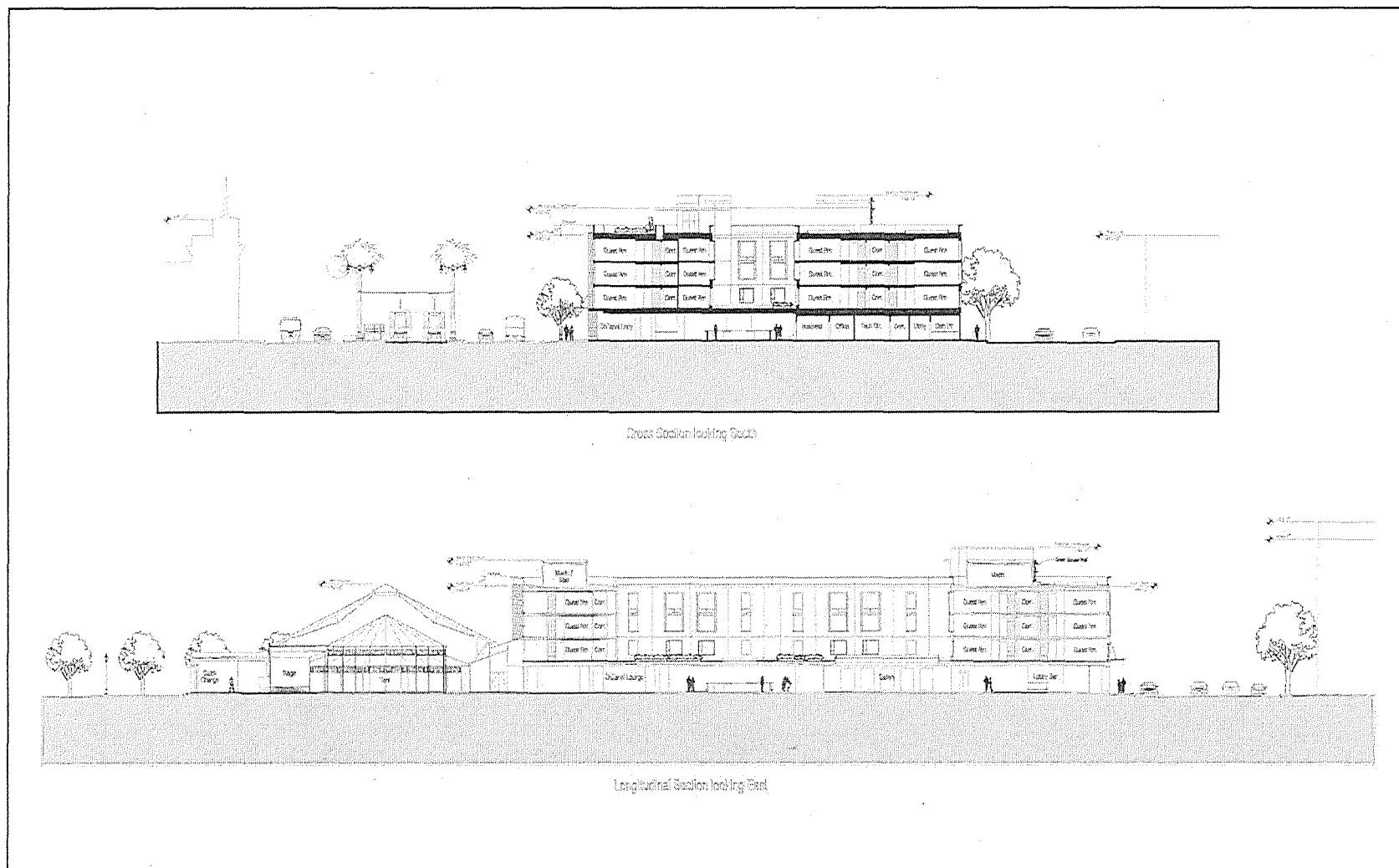


FIGURE 14 PROPOSED ELEVATION – SOUTH, PROPOSED PUBLIC PARK



Source: Hornberger+Worstell Architects, 2018

FIGURE 16 **PROPOSED BUILDING SECTIONS**

Landscaping

There are 28 street trees along The Embarcadero, Broadway, and Davis Street; however, none are *protected trees* as defined by the City's Urban Forestry Ordinance, Public Works Code section 801 et seq. The proposed project would retain all 28 existing trees and would comply with Planning Code section 138.1(c)(1) by retaining or replacing any trees that would be disturbed during construction. A total of 28 new trees would be planted on the sidewalks along all street frontages of the proposed project in accordance with Public Works Code section 806(d)(2), which requires planting one street tree for every 20 linear feet of project site frontage. All new street trees would be placed in continuous soil-filled trenches. For pedestrian safety, no new trees would be within 25 feet of an intersection. With implementation of the proposed project, there would be a total of 56 street trees.

Landscaping would also be provided on the roof of the building for hotel guests and patrons, in the form of raised planters and a green wall to screen mechanical features. In addition, the proposed public park would include an open grass lawn, shrubs, and trees.

Streetscape and Infrastructure Improvements

Broadway

The proposed project would widen the existing sidewalk from 10 feet to 18 feet along the entire project length of Broadway. This would eliminate an existing 30-foot-wide curb cut on Broadway near The Embarcadero. The proposed project would also remove six existing parallel on-street parking spaces and three existing on-street motorcycle parking spaces along the project frontage on the north side of Broadway. The project would add two new *bulb-outs*¹⁷ along Broadway: one new 18-foot-long by 15-foot-wide bulb-out at the corner of Broadway and The Embarcadero, and one new 18-foot-long by 21-foot-wide bulb-out at the corner of Broadway and Davis Street. The bulb-out at Broadway and The Embarcadero would project 18 feet from the property line. This bulb-out would improve pedestrian access while allowing sidewalk activation with outdoor bar and café seating, and would create an approximately 80-foot-long drop-off area in front of the project site for hotel entry. Additionally, a new 8-foot-deep by 80-foot-long passenger loading zone would be constructed on Broadway.

Davis and Vallejo Streets

Currently, there is only a short 10-foot-wide sidewalk along a portion of the proposed project site along Davis Street. The proposed project would add several new elements on Davis Street: a new 15-foot-wide sidewalk; a new 142½-foot-long loading zone; a new 21-foot-long by 18-foot-wide bulb-out at the corner of Davis Street and Broadway; a new 21-foot-long by 18-foot-wide bulb-out at the corner of Davis and Vallejo streets; and a new 30-foot-wide loading dock curb cut within the new loading zone. Trash and recycling pickup would occur at the Davis Street loading dock. At the intersection of Davis and Vallejo streets, the proposed project would adjust the Davis Street ROW to align parallel to The Embarcadero property line at Vallejo Street. In addition, the proposed project would also remove three existing parallel on-street parking space along the project frontage on the east side of Davis Street, 20 existing perpendicular on-street Port parking spaces along the project frontage on the east side of Davis Street, and six existing perpendicular on-street Port parking spaces along the project frontage on the north side of Vallejo Street. As shown on Figure 8 Public Park Plan, a 15-foot-wide curb cut is provided on The Embarcadero and Davis Street with moveable bollards that would allow emergency and maintenance vehicle access through the site on the paved pedestrian path.

¹⁷ A bulb-out is a *traffic calming* measure that reduces the crossing distance for pedestrians by extending the sidewalk.

The Embarcadero

The proposed project would not include sidewalk improvements along the project length of The Embarcadero, except for a new 15-foot-wide curb cut for fire truck and maintenance access at the east site of the proposed public park, to maintain access through to Davis Street along the paved pedestrian path.

Right-of-Way

This adjustment would add a triangular area of approximately 610 square feet to the project site to allow for a fully integrated site. A portion of Vallejo Street within the proposed project footprint would be vacated and/or abandoned. The ROW is not a functioning street and is not currently used by vehicles. A 10-inch auxiliary water supply system line, an 8-inch water main owned by the San Francisco Public Utilities Commission (SFPUC), and an AT&T fiber optic conduit are present in the ROW. The 10-inch auxiliary water supply system is not needed to supply emergency fire suppression and has been abandoned in place by the San Francisco Fire Department as confirmed by the SFPUC, CDD division. The 8-inch water main owned by the SFPUC is not needed to supply current distribution. The AT&T fiber optic conduit currently located in the ROW would be relocated approximately 15 feet to the north of its current location re-routing the fiber optic cable a distance of approximately 218 lineal feet, and these changes have been discussed and approved by AT&T.

Infrastructure Improvements

The project sponsor has preliminarily coordinated with SFPUC's City Distribution Division and determined that the existing SFPUC auxiliary water supply system line would be abandoned in place during building construction. A high-pressure water line that is in place at the intersection of Davis and Vallejo streets would continue to provide necessary services as required by SFPUC. This existing high-pressure water line would not be modified, interfered with, or otherwise negatively affected. Therefore, abandoning the auxiliary water supply system line in the ROW would not affect the balance of SFPUC's water facility system. This approach has also been preliminarily reviewed by the Port's fire marshal. The project sponsor would pay the costs and apply for associated permits necessary for the abandonment of SFPUC water facilities.¹⁸

The project sponsor has proposed to relocate the AT&T fiber optic conduit from its current location in the ROW approximately 20 feet north into the proposed public park. The project sponsor has met with AT&T to discuss the conduit relocation plan, and AT&T has initially reviewed the project sponsor's approach to the relocation. AT&T is drafting the contractual documents for the project sponsor's proposed relocation of the fiber optic conduit. The project sponsor would pay the costs of relocating the AT&T fiber optic conduit.

A.4. CONSTRUCTION ACTIVITIES AND SCHEDULE

The proposed project would be supported on shallow foundation systems bearing upon ground-improved soil involving lightweight cellular concrete and ground-improved soil, as described by ENGEO Incorporated.¹⁹ The shallow foundation would consist of stiff reinforced structural mat, shallow continuous footings, with interconnecting grade beams, or a combination of both systems. The shallow foundation system selected would depend on the actual structural loads of the building, which would be determined through the detailed design process.

Directly below the shallow foundation, ground improvement measures would be required to improve the strength of the underlying existing artificial fill that extends to 45 feet beneath the project site. These measures would provide uniform support and would reduce liquefaction, seismic settlement, and lateral spreading risks for the site and the new building's

¹⁸ Peter Bekey, KCA Engineers, email correspondence with SFPUC, including drawing, April 20, 2016.

¹⁹ ENGEO Incorporated, *Summary of Geotechnical and Environmental Studies and Summary of Project Construction Methodologies*, April 6, 2018.

foundations. The ground improvement measures are anticipated to consist of dry soil mixing, a technique that improves weak soils by mechanically mixing them with dry cementitious binder to create rows of overlapping soilcrete columns. The column grid array would cover the building footprint and stabilize the underlying soil mass. Dry soil mixing is a low-vibration construction method and is used in high-groundwater conditions because it creates minimal spoils for disposal.

Considering the maximum allowable average building load, the uppermost 6 feet of the building pad area would be excavated, and the foundation subgrade level would be restored using lightweight cellular concrete to reduce loads and potential settlement of the underlying Young Bay Mud.

Table 2 provides the estimated quantities of excavation material, import material, and ground improvement.

TABLE 2 ESTIMATED QUANTITIES OF FILL MATERIALS

Description	Estimated Quantity	Considerations
Export for lightweight cellular concrete excavation	11,100 cubic yards	<ul style="list-style-type: none"> • Building footprint of approximately 43,400 square feet • 6-foot excavation to accommodate foundation and lightweight cellular concrete • Average mat load of 500 pounds per square foot or less
Import of lightweight cellular concrete	9,300 cubic yards	<ul style="list-style-type: none"> • Building footprint of approximately 43,400 square feet • 6-foot excavation to accommodate foundation and lightweight cellular concrete • Average mat load of 500 pounds per square foot or less
Ground improvement through dry soil mixing	20,000 square feet	<ul style="list-style-type: none"> • 40 percent of the overall building footprint replacement ratio

Source: ENGEO Incorporated, 2018

Note: Includes 15% contingency

Demolition of the existing surface parking lot and construction of the proposed project is anticipated to take approximately 16–22 months, beginning in 2019, with completion in 2020. The proposed project would be constructed in multiple phases. Construction phases would include preparation/demolition (1 month), excavation/foundation work (2.5 months), structure (4–7 months), exterior buildout (3–4 months), and interior buildout (7–8 months).

A.5. REQUIRED APPROVALS

The proposed project would require the approvals from the City and County of San Francisco that are listed below.

Board of Supervisors

- Approval of lease disposition and development agreement
- General Plan referral for partial *street vacation* of a public right-of way
- Approval of the streetscape improvements application
- Approval of applications for the lot merger and re-subdivision

Planning Department

- General Plan referral for partial *street vacation* of a public right-of way
- *Conditional use* authorization for the hotel use pursuant to San Francisco Planning Code section 240.3(e)
- Approval of applications for the lot merger and re-subdivision

- Approval of the streetscape improvements application
- Approval of a building permit

Historic Preservation Commission

- Approval of a Certificate of Appropriateness from the Historic Preservation Commission for new construction within the Northeast Waterfront Landmark District (a historic district under San Francisco Planning Code article 10)

San Francisco Port Commission

- Approval of applications for demolition, excavation and grading, shoring, and building permits
- Approval of a request for curb cut, color curb, and on-street parking changes, and approval of location of bicycle parking spaces within the public ROW
- Approval of lease disposition and development agreement
- Approval of application for partial street vacation of a public ROW
- Approval of the streetscape improvements application
- Urban design recommendations following the waterfront design review process (San Francisco Port Commission Design Advisory Committee)

Actions by Other City Departments (Approving Bodies Noted in Parentheses)

- Approval of a *site mitigation plan*, soil mitigation plan, and dust control plan before the start of excavation work pursuant to San Francisco Health Code article 22A; receipt of notification of compliance letter pursuant to the City's *Maier Ordinance*, Administrative Code section 22A (San Francisco Department of Public Health)
- Approval of applications for the lot merger and re-subdivision (San Francisco Public Works)
- Approval of application for partial *street vacation* of a public right-of way (San Francisco Public Works)
- Approval of the streetscape improvements application (San Francisco Public Works)
- Approval of sidewalk widening and modifications related to infrastructure within the public ROW (San Francisco Public Works)
- Approval of and use of *dewatering wells* (should such wells be used) per article 12B of the San Francisco Health Code (San Francisco Public Works)
- Approval of sidewalk widening and modifications related to infrastructure within the public ROW (San Francisco Fire Department)
- Approval of a building permit (San Francisco Department of Building Inspection)
- Approval of project compliance with the stormwater management requirements and design guidelines, a stormwater control plan, a landscape plan per the Water Efficient Irrigation Ordinance, a water budget application, and nonpotable implementation plan per the Non-potable Water Ordinance (San Francisco Public Utility Commission)

- Approval of and use of *dewatering wells* (should such wells be used during construction) per article 12B of the San Francisco Health Code (San Francisco Public Utility Commission and San Francisco Department of Public Health)
- Approval of sidewalk widening and modifications to related infrastructure within the public ROW (San Francisco Municipal Transportation Agency)
- Approval of travel lane, sidewalk, and parking closures during construction (San Francisco Municipal Transportation Agency) - Transportation Advisory Staff Committee)

Actions by Other Government Agencies

- Approval of permit for installation, operation, and testing of diesel backup generators (Bay Area Air Quality Management District)
- Issuance of State Lands Commission consistency letter by the Port (State Lands Commission)

Approval Action

The conditional use authorization is the approval action for purposes of CEQA that would establish the start of the 30-day appeal period for appeal of the final mitigated negative declaration to the Board of Supervisors pursuant to section 31.04(h) of the San Francisco Administrative Code.

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B. PROJECT SETTING

B.1. PROJECT SITE AND SURROUNDING LAND USES

The project site is located in the North Beach neighborhood with frontages at The Embarcadero, Broadway, Davis Street, and Green Street within the Northeast Waterfront Historic District, in the northeast quadrant of San Francisco. The site is approximately 0.3 mile north of San Francisco's Financial District, 0.35 mile southwest of the Port's James R. Herman Cruise Terminal, and 0.8 mile southwest of Pier 39. The site is along the western side of The Embarcadero, opposite San Francisco Bay. The site is occupied by a surface parking lot consisting of 250 surface parking spaces and two temporary wooden pay booths. Some of the existing parking spaces are used by the Port for employee parking and by the adjacent KGO-TV and KRON 4 news station for parking for its news vans.

Access to the site is available only from Davis Street and Broadway (not The Embarcadero or Green Street). The 59,750-gsf site consists of two Port assessor's parcels, Assessor's Block 0138, Lot 001, and Assessor's Block 0139, Lot 002, also commonly referred to as Seawall Lots 323 and 324. These two abutting, unused right-of-way parcels are located between The Embarcadero and Davis Street at the Vallejo Street junction.

Land uses in the surrounding area are mixed-use including retail, restaurants, commercial offices, and residential. The average height of buildings in the immediate area ranges from one to five stories and from 25 to 55 feet (except the Gateway Apartments, which are up to 65 feet tall). Surrounding occupants include the KGO-TV news station, the Gateway Apartments, the Waterfront Restaurant, and the Exploratorium. The northern portion of the site abuts a three-story office building occupied by the KGO-TV news station under lease from the Port. The Gateway Apartments, an approximately 58- to 65-foot-tall, five-story apartment building, is across Broadway south of the site. Two- to three-story office buildings are across Davis Street to the west, and a new 178-unit senior and affordable housing project is proposed on Davis Street across from the site, consisting of senior and family affordable units.²⁰

The site is a noncontributing property within the Northeast Waterfront Landmark District, which is designated as a historic district under article 10 of the San Francisco Planning Code. The site has a 40-X height and bulk district designation. The hotel use is a conditionally permitted use in the C-2 zoning district and would require approval by the San Francisco Planning Commission of a conditional use authorization pursuant to planning code section 240.3(e). The entertainment venue and public park are principally permitted uses in the C-2 zoning district.²¹ The proposed uses at the project site are principally permitted uses under the Port's Waterfront Land Use Plan.

The nearest parks or public open spaces are the Levi's Plaza and Seawall Lot approximately 0.3 mile north of the project site, Sydney G. Walton Square 0.1 mile to the south on Jackson Street, Sue Bierman Park 0.3 mile to the south along The Embarcadero, and the Filbert Steps 0.5 mile west of the project site. The public space along The Embarcadero to the east is used for recreation and entertainment uses and connects to the Ferry Building, 0.3 mile away.

B.2. SITE ACCESS AND TRANSIT

The roadway network surrounding the project site is generally an east-west and north-south grid. The project site is generally bounded by four surrounding two-way streets: The Embarcadero to the east and Davis Street to the west, Broadway to the south, and Green Street at the northern tip. Both Davis and Vallejo streets terminate at the project site. Local access is

²⁰ San Francisco Planning Department, *88 Broadway and 735 Davis Street Project Final Mitigated Negative Declaration*, Case No. 2016-007850ENV, October 25, 2017, amended February 27, 2018. http://sfmea.sfplanning.org/2016-007850ENV_FMND.pdf.

²¹ Planning Code Table 210.1.

provided by arterial and local roadways near the project site. Access to the project site by transit, foot, or bicycle is available through existing transit service (bus and light rail), sidewalks, streets, and crosswalks near the project site.

The closest Muni Metro station to the site is The Embarcadero Station approximately 0.5 mile south, which is shared with the regional rail service operated by Bay Area Rapid Transit (BART). The closest BART station entrance to the project site is the Market Street entrance at The Embarcadero Station. The project site is located within 0.25 mile of four local Muni bus lines (1 California, 10 Townsend, 12 Folsom/Pacific, and 39 Coit); two express Muni bus lines (30X Marina Express and 82X Levi Plaza Express); three Muni cable car/trolley lines (E Embarcadero, F Market & Wharves, and C California Cable Car); and two regional bus lines (Golden Gate Transit and San Mateo County Transit District). The San Francisco Ferry Terminal is located approximately 0.3 mile south of the site and a Caltrain station is located approximately 2 miles to the south.

B.3. CUMULATIVE PROJECTS

Cumulative impacts refer to two or more individual impacts that, when considered together, are considerable, or that compound or increase other environmental impacts (CEQA Guidelines section 15355). Cumulative impacts can result from individually minor but collectively significant impacts taking place over time (Code of Federal Regulations Title 40, Section 1508.7). If the analysis determines that the potential exists for the proposed project, taken together with other past, present, and reasonably foreseeable future projects, to result in a significant or adverse cumulative impact, the analysis then determines whether the project's incremental contribution to any significant cumulative impact is itself significant (i.e., cumulatively considerable). The cumulative impact analysis for each individual resource topic is discussed in each resource section.

The proposed project is located in the vicinity of a number of past, present, and reasonably foreseeable cumulative development projects. The projects listed in Table 3 and mapped in Figure 17 (p. 32) are either under construction or the subject of an environmental evaluation application currently on file with the San Francisco Planning Department and are within approximately one-quarter mile of the project site. The variety of uses proposed includes residential, commercial, retail, office, museum, and hotel, including open space accessible to the public.

TABLE 3 CUMULATIVE PROJECTS

#	Address	Planning Department Case File No.	Dwelling Units	Open Space	Retail	Office	Museum	Hotel	Childcare
1	300 Clay Street	2015- 006980ENV				16,230			
2	940 Battery Street	2015- 001033ENV			625	11,470	28,670		
3	439 Washington Street	2015- 015553ENV			4,500			101,000 (189 rooms)	
4	447 Battery Street	447 Battery Street	9		2,470			85,510 (188 rooms)	
5	220 Battery Street	2015-009783ENV	2						
6	100 California Street	2013.1857E				9,400			
7	Downtown SF Ferry Terminal Expansion ²²	N/A							
8	88 Broadway and 735 Davis Street	2016-007850ENV	178	8,850	6,400				4,300
Totals			189	8,850	13,995	37,100	28,670	186,510	4,300

²² Water Emergency Transportation Authority (WETA) is the agency responsible for the project which includes additional improvements to the ferry terminal facilities including the gates and piers to accommodate expanded service in the future. Pier construction in the Bay is currently underway.

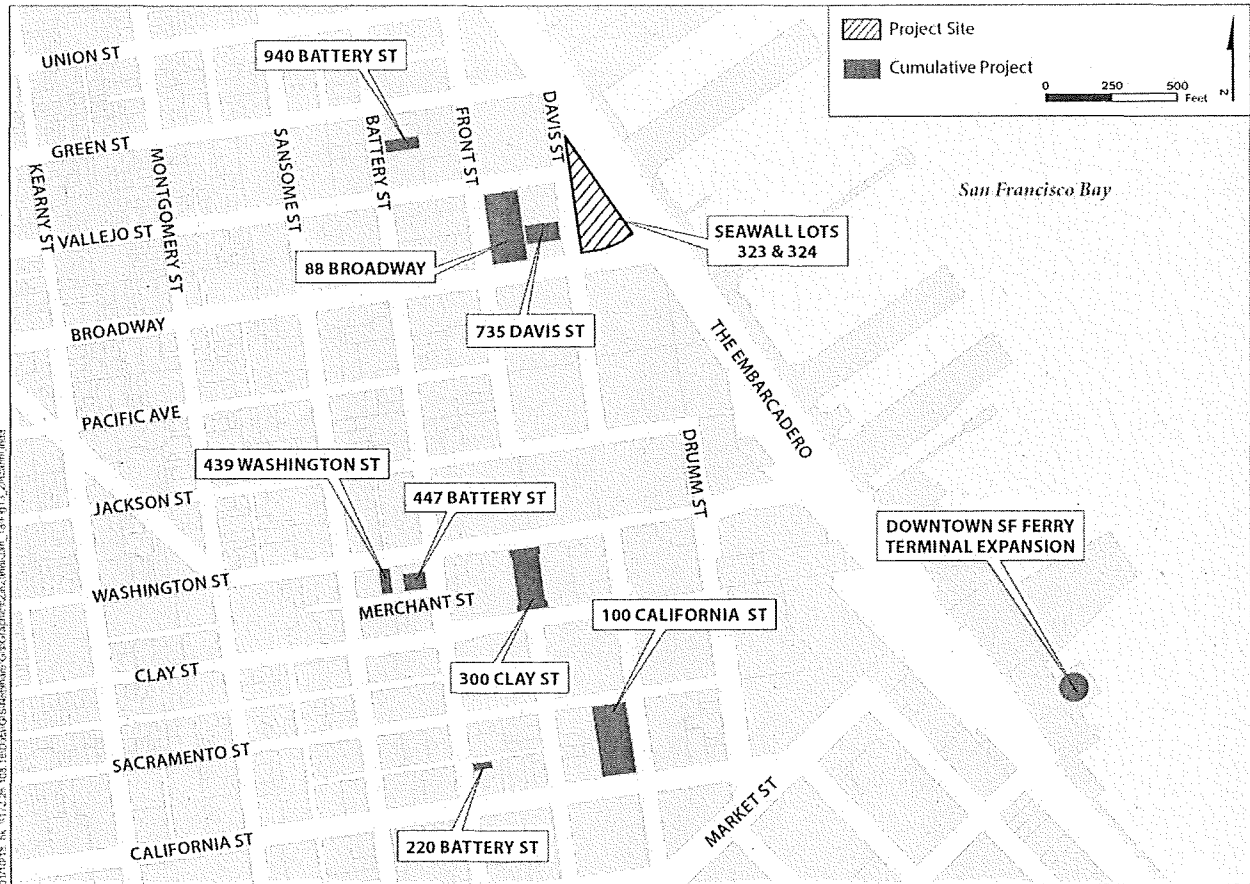


FIGURE 17 CUMULATIVE PROJECTS NEARBY

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C. COMPATIBILITY WITH EXISTING ZONING AND PLANS

	<i>Applicable</i>	<i>Not Applicable</i>
Discuss any variances, special authorizations, or changes proposed to the Planning Code or Zoning Map, if applicable.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Discuss any conflicts with any adopted plans and goals of the City or Region, if applicable.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Discuss any approvals and/or permits from City departments other than the Planning Department or the Department of Building Inspection, or from Regional, State, or Federal Agencies.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

CEQA Guidelines section 15125(d) requires discussion of inconsistencies between the proposed project and applicable general plans, specific plans, and regional plans, focusing on those inconsistencies that may result in physical environmental impacts. Decision-makers will consider the consistency of the project with plans that do not directly relate to physical environmental issues when they determine whether to approve or disapprove the project.

Therefore, the analysis in this section is intended to provide decision-makers with a discussion of planning considerations that are pertinent to the proposed project. This section also provides a preliminary conclusion as to whether the proposed project would result in any inconsistencies with relevant plans and policies that relate to physical environmental impacts.

Conflicts and inconsistencies with a policy do not constitute, on their own, significant environmental impacts, unless such conflicts or inconsistencies result in direct physical environmental impacts. The physical impacts of the proposed project are discussed in Section E, below.

Plans and policies addressed in this section include:

- San Francisco Planning Code
- San Francisco General Plan
- Waterfront Land Use Plan
- Accountable Planning Initiative
- The Public Trust
- San Francisco Bicycle Plan
- San Francisco Better Streets Plan
- San Francisco Sustainability Plan
- *Climate Action Strategy for San Francisco*
- *Plan Bay Area*
- San Francisco Bay Area Basin Plan
- Clean Air Plan
- San Francisco Transit First Policy

C.1. SAN FRANCISCO PLANNING CODE AND ZONING MAPS

The San Francisco Planning Code incorporates by reference the City's zoning maps, governs permitted uses, densities, and the configuration of buildings in San Francisco. Permits to construct new buildings (or to alter or demolish existing ones) may not be issued unless the proposed project complies with the planning code, an exception or variance is granted pursuant to the planning code's provisions, or legislative amendments to the planning code are included and adopted as part of the

proposed project. Overall, the proposed project would be generally consistent with the planning code as listed below, and the physical environmental impacts of the proposed project are analyzed in this initial study:

- **Zoning District.** The project site is zoned Community Business (C-2). Under section 210.1 of the San Francisco Planning Code, C-2 zones are intended to provide convenience goods and services to residential areas. In addition, some C-2 districts provide comparison shopping goods and services on a general or specialized basis to a citywide or regional market area. The character and intensity of the commercial development in C-2 zones are intended to be consistent with the character of other uses in the adjacent areas. Per Planning Code section 210.1, the proposed project would require a conditional use permit for the hotel use, but the entertainment venue and public park are principally permitted uses in the C-2 zoning district.
- **Height and Bulk Districts.** The project site is located in a 40-X height and bulk district, which has a 40-foot maximum height and no bulk limit. Mechanical equipment and appurtenances and elevator and stair penthouses are permitted to extend an additional 15 feet beyond the height limit, pursuant to Planning Code section 260(b). The proposed four-story building would be 40 feet tall, and with rooftop appurtenances, would extend to a maximum of 55 feet tall. Accordingly, the proposed project would meet the City's height restrictions for the project site.
- **Open Space.** According to Planning Code section 210.1, no construction of open space is required for the proposed project. The proposed project, however, would construct an approximately 14,000-gsf public park in the northern portion of the site. The public park would consist of both landscaping and hardscape and would include pathways for pedestrian access from The Embarcadero through to Vallejo and Davis streets.
- **Streetscape Improvements.** Public Works Code section 806(d)(2) requires that one 24-inch box tree be planted for every 20 feet of property frontage along each street, with any remaining fraction of 10 feet or more of frontage requiring an additional tree. Additionally, the proposed project must make pedestrian and streetscape improvements to the public ROW as set forth in the Better Streets Plan (Planning Code section 138.1) for projects involving more than 250 feet of linear street frontage and an entire block face. There are 28 existing street trees adjacent to the project site. The proposed project would add 28 trees along the frontages on The Embarcadero, Davis Street, and Broadway. Accordingly, the proposed project would meet the City's streetscape improvement requirements.

Additionally, the City's Urban Forestry Ordinance (Public Works Code section 801 et seq.) requires the project sponsor to obtain a permit from SFPW to remove any *protected trees*, which include *landmark trees*, *significant trees*, or street trees located on private or public property anywhere within the territorial limits of the City and County of San Francisco. The proposed project would not remove existing street trees. Additionally, the project site does not include any landmark or significant onsite or street trees under existing conditions, and therefore, would not violate the City's Urban Forestry Ordinance (section 801 et seq. of the Public Works Code).

- **Vehicle Parking and Loading.** Pursuant to Planning Code sections 151 and 161, vehicle parking is not required for the commercial or hotel uses onsite. The proposed project does not include vehicle parking. Therefore, the proposed project would comply with the parking requirements. As shown in Figure 4, a 142½-foot commercial loading zone would be provided on Davis Street for freight and deliveries and an 80-foot passenger loading zone would be provided on Broadway for the hotel facility. Per Planning Code section 152, the proposed project is required to provide at least one off-street freight loading space. The proposed project would provide two off-street freight loading spaces in a loading dock along Davis Street, and would be in compliance with the requirements of Planning Code section 152.
- **Bicycle Parking.** Planning Code sections 155.1 and 155.2 require that the project provide class I and class II bicycle parking for commercial (hotel, theater, and retail) uses. The project proposes bicycle parking on the ground floor

and in three locations along the project frontage (see Figure 4). The proposed building would include 20 class I and 43 class II bicycle parking spaces (28 new class II spaces are proposed). The class I bicycle parking spaces would be provided for use by hotel employees and commercial tenant employees only, and would be located on the ground floor along Davis Street and accessed via a locked door at that location. The 43 class II bicycle parking spaces would be located on sidewalks in front of the project site (14 new spaces along Davis Street, 10 new spaces along The Embarcadero, and four new spaces in the park, in addition to 15 existing spaces located on The Embarcadero). The location of bicycle parking spaces within the public ROW would be subject to review and approval by the Port.

- **Article 10 Historic District/Special Use District.** The project site is a noncontributing property within the Northeast Waterfront Landmark District, a designated historic district per Planning Code article 10. As described in Appendix D of article 10, this historic district is maintained as an architecturally historic and aesthetically historic significant area. Appendix D establishes the location and boundaries of the historic district, outlines the character-defining features of the district and criteria for reviewing alterations and new construction within the district. Because of the location of the project site, the proposed project is subject to the review and approval of a Certificate of Appropriateness application by the Historic Preservation Commission for compatibility with the Northeast Waterfront Landmark District, pursuant to article 10 and Appendix D.

The project is also within Waterfront Special Use District No. 3, and is subject to the requirements outlined in Planning Code section 240.3. Section 240 sets forth regulations to preserve the unique characteristics of waterfront *special use districts*, requiring developments to undergo a waterfront design review process. Section 240.3 discusses the specific design, land use, scale, and other factors for development within Waterfront Special Use District No. 3.

The proposed project would generally be consistent with provisions of the San Francisco Planning Code. As stated above, potential inconsistencies of the proposed project with applicable plans, policies, and regulations do not, by themselves, indicate a significant environmental effect. To the extent that physical environmental impacts may result from such conflicts, these impacts are discussed in Section E, Evaluation of Environmental Effects. Any inconsistencies between the proposed project plans, policies, and planning code land use controls that do not relate to physical environmental issues or result in physical environmental effects will be considered by City decision-makers as part of their determination on whether to approve, modify, or disapprove the proposed project.

C.2. LOCAL PLANS AND POLICIES

San Francisco General Plan

In addition to the San Francisco Planning Code, the proposed project is subject to the San Francisco General Plan. The general plan provides general policies and objectives to guide land use decisions. The general plan provides the City's vision for the future of San Francisco. The general plan is divided into 10 elements that apply citywide policies and objectives into the following topical areas: Air Quality, Arts, Commerce and Industry, Community Facilities, Community Safety, Environmental Protection, Housing, Recreation and Open Space, Transportation, and Urban Design. In addition, the proposed project is governed by the Northeastern Waterfront Area Plan, a specific area plan of the City's General Plan, which is discussed more below. Development in San Francisco is subject to the general plan, which provides objectives and policies to guide land use decisions, and contains some policies that relate to physical environmental issues, some of which may conflict with each other. Achieving complete consistency with the general plan is not always possible for a proposed project. CEQA does not require an analysis of a proposed project in relation to all general plan policies; it asks whether a proposed project would conflict with any plans or policies adopted to protect the environment. The General Plan's Northeastern Waterfront Area Plan recognizes that the proposed project is also subject to the Port of San Francisco's Waterfront Land Use Plan and its Design and Access Element, as well as the requirements of the Burton Act governing Port properties.

Achieving complete consistency with the general plan is not always possible for a proposed project. CEQA does not require an analysis of a proposed project in relation to all general plan policies; it asks whether a proposed project would conflict with any plans or policies adopted to protect the environment. Elements of the San Francisco General Plan that are particularly applicable to planning considerations associated with the proposed project are the Urban Design, Arts, Recreation and Open Space, and Transportation elements, in addition to the Northeastern Waterfront Area Plan.

The Urban Design Element is concerned both with development and with preservation, recognizing that enhancement and conservation of the positive attributes of the city are necessary to meet human needs. Of these positive attributes, the city's characteristic city pattern is integral to maintaining "an image, a sense of purpose, and a means of orientation." Views, topography, streets, building form and major landscaping are of particular importance to the city's pattern. The Urban Design Element indicates that preservation of landmark buildings and districts contributes to the sense of permanence and continuity in the urban fabric of the city. The proposed project is within a designated landmark district under article 10 of the San Francisco Planning Code. As such, the proposed project is subject to the approval of a Certificate of Appropriateness from the Historic Preservation Commission for new construction in the Northeast Waterfront Landmark District, which would review the project for compatibility with the surrounding development.

In addition, the following Urban Design Element policies under Objective 2, Conservation of Resources, include policies that provide for a sense of nature, continuity with the past, and freedom from overcrowding. Specifically, policies 2.8, 2.9 and 2.10 are relevant to the project as they relate to use of street areas. Policy 2.9 states that there is a rebuttable presumption that street space should be retained as valuable public open space in the tight-knit fabric of the city.

The proposed project meets Policy 2.8: Maintain a strong presumption against the giving up of street areas for private ownership or use, or for construction of public buildings. No active or planned street areas are being given up for private ownership or use, or for the construction of public buildings. The proposed project includes the vacation of a ROW parcel that is between Seawall Lots 323 and 324 and which currently crosses through the existing parking plot from Davis Street to The Embarcadero. The ROW parcel is an unmapped, undeveloped, paper street, under the Port's jurisdiction which is not currently used as a street. The Port would remain the owner of the ROW with implementation of the proposed project. The proposed project would build on top of the existing ROW, but the development would be offset by the construction of a new public park that would allow public access through the site and would also provide a dedicated easement for San Francisco Fire Department access through the site. The public park would include passive recreational areas, pathways and benches, which would enhance the pedestrian experience, while maintaining a new easement for access by emergency vehicles. A curb cut on Davis Street would allow circulation through to The Embarcadero on a paved pathway, secured by movable bollards. The proposed project meets Policy 2.9: Review proposals for the giving up of street areas in terms of all the public values those streets afford. The proposed project would repurpose the ROW parcel that is currently occupied by a surface parking lot and is not used as a street area. The proposed project would develop the site to include a new hotel, entertainment venue, restaurant and a public park, uses which are consistent with the General Plan, Waterfront Land Use Plan and the Burton Act. Currently the ROW parcel is an unmapped, undeveloped, paper street, not used or planned for use as a street. The proposed project would not cause any detriment to vehicular or pedestrian circulation but would allow for designated pedestrian circulation through the site along with emergency vehicular access with two curb cuts connecting from Davis Street to The Embarcadero and the new public park that would allow emergency vehicles to pass through the site. The proposed project would not interfere with utility lines or services. The proposed project does not contain any natural features nor does it cause any detriment to the scale and character of the surrounding area because it is being designed to conform to the existing character, height and bulk limits for the area and in accordance with the City's Planning Code Article 10, the Northeastern Waterfront Area Plan and the Waterfront Land Use Plan and Access and Design Element. The proposed project would not

obstruct, diminish or eliminate a significant view.²³ The public walkways and open space around and through the project site would provide new view corridors that would link Vallejo Street to the Embarcadero and would provide new public open space amenities in the neighborhood. Policy 2.9 outlines 12 conditions that would discourage approval of a proposed street vacation and none of these conditions are present under the proposed project. The proposed project would facilitate a public serving, Public Trust consistent project (hotel and entertainment venue) and would create a public space that would allow public access use of the site including a new privately owned public open space (POPO) in the form of a new public park.

The proposed project meets Policy 2.10: Permit release of street areas, where such release is warranted, only in the least extensive and least permanent manner appropriate to each case. The proposed project would be constructed pursuant to a Port ground lease, and the Port would always retain the interest in the site which permits the Port to recapture the proposed project site's occupied ROW parcel should that be warranted following lease termination, thereby ensuring that the release is not permanent. The proposed project would release the unused ROW parcel in a manner that the public values and purpose of streets as expressed in the Urban Design Element and elsewhere in the General Plan would be consistent with the preferred uses for the project site as set forth in the Port's Waterfront Land Use Plan. The effects of the proposed street vacation or use of the ROW parcel is minimized because the public access through the site by people and emergency vehicles is still maintained. The vacation of the ROW would enhance the pedestrian experience and public life and would create a new POPO and would involve Trust consistent uses (hotel and entertainment venue).

The Arts Element is intended to "validate and increase the role of the arts as a major economic force in the region." The importance of the arts to the cultural identity and economic prosperity of San Francisco is underscored in a number of policies seeking to support local artists and artwork. Objective I-2 seeks to increase the contribution of the arts to the economy of San Francisco, including the continued support and increased promotion of arts and arts activities throughout the city for the benefit of visitors, tourists, and residents (policy I-2.2). Policy VI-1.9 supports the creation of opportunities for private developers to include arts spaces in private developments citywide. The proposed project would comply with the Arts Element by providing permanent arts and entertainment space at the proposed entertainment venue, which would host the 100-year-old spiegel tent. The proposed building would provide support space for performers and producers. The design of the proposed building would allow passersby along The Embarcadero to see "behind the scenes" during performances. The proposed project would also include a public park and outdoor stage that could potentially host community performances and public gatherings such as neighborhood exercise classes, a children's dance or singing performance, or lunchtime music or lecture session.

The Recreation and Open Space Element is intended to improve the quality of life in San Francisco communities by providing places for "recreation, activity and engagement, for peace and enjoyment, and for freedom and relief from the built world." Among its objectives is increasing recreation and open space to meet the long-term needs of the city and bay region. Objective 2, policy 2.12 of the Recreation and Open Space Element encourages the expansion of the *privately owned public open spaces* requirement to new mixed-use development areas, ensuring that spaces are truly accessible, functional, and activated. Objective 3 promotes improved access and connectivity to open space within the city. The proposed project would comply with the Recreation and Open Space Element by providing the POPO as an additional public recreational area in the vicinity of other popular recreational facilities, such as The Embarcadero Promenade.

²³ The Design and Access Element provides that Vallejo is not designated as: (1) a street that has "planned public access and open space" (Public Access and Open Space Map, Exhibit B); (2) a street with Major Views of the Bay and Across Water or a street that involves "hilltop views of the waterfront" (Page 44); (3) a street that is designated for "new views of the Bay and across water" (Page 45) or an existing or proposed street that connects to the Bay, historic structures or architecture" (Page 46); (4) a street that has a view to the Bay or a view to a historic building (Page 80) or a street where it is deemed necessary to preserve or create views of historic buildings or architecture (Page 83); or (5) a street that needs to maintain Bay views (Page 87) or a street with a "street corridor with an unobstructed view of the Bay", a street with a "proposed view to the Bay", a street with a "view to historic structures", "a street with views of historic structures" or "a street with a proposed view to architecture with a waterfront identity" (Pages 126-127, Appendix A).

The Transportation Element includes discussions about pedestrian issues and provides direction and policies to encourage safe, convenient and pleasant pedestrian movement as part of the transportation system. Objective 24 is focused on the design of every street for safe and convenient walking with corresponding policies. Objective 25, Improve the ambience of the pedestrian environment, contains a relevant policy to the proposed project, Policy 25.5: Where consistent with transportation needs, transform streets and alleys into neighborhood-serving open spaces or “living streets” by adding pocket parks in sidewalks or medians, especially in neighborhoods deficient in open space. This policy encourages excess paved areas to be converted to pocket parks on widened sidewalks, curb extensions or new medians in appropriate circumstances. This policy defines pocket parks as small, active public spaces created in the existing public right-of-way. In addition to landscaping, pocket parks may include features such as seating areas, play areas, community garden space, or other elements to encourage active use of the public open space. The proposed public park for the proposed project replaces the parking lot currently located on the ROW parcel with similar park features as suggested in Policy 25.5. The compatibility of the proposed project with General Plan goals, policies, and objectives that do not relate to physical environmental issues would be considered by decision-makers as part of their decision whether to approve or disapprove the proposed project.

The General Plan also requires compliance with the Port of San Francisco’s Waterfront Land Use Plan and its Waterfront Design and Access Plan, and the State of California’s Public Trust doctrine. The proposed project also satisfies all of the key provisions of those governing documents. The Waterfront Land Use Plan provides that Seawall Lots 323 and 324 are principally permitted for hotel, entertainment and open space uses. The proposed project proposes to construct a new hotel, entertainment venue and POPO, consistent with the Waterfront Land Use Plan.

The Design and Access Plan provides that Seawall Lots 323 and 324 are prime sites for infill development and that new uses should take advantage of the major public access amenities of Pier 7 and provide a focal point for the area where Broadway meets The Embarcadero. The proposed project would use the Seawall Lots in a manner that meets those primary policies for the project site. The Design and Access Plan also provides that development on Seawall Lots should:

- Respect City form by stepping new buildings down toward The Embarcadero
- Use strong and bold building forms and detailing on new buildings to reinforce the large scale of The Embarcadero
- New buildings should respect the scale and architectural character of adjacent neighborhoods
- Maintain City street corridor views shown on the City Street View map in chapter 3.

The proposed project meets all of the aforementioned policies in that it: (1) would be constructed to comply with the areas 40-foot height limit, (2) the building has continuous massing along The Embarcadero that reinforces the street wall and large scale of The Embarcadero, (3) uses strong and bold building forms and detailing to reinforce the large scale of The Embarcadero by construction to the property line, (4) uses materials that are consistent with the area, and incorporates many other design details that are consistent with the district (5) respects the scale and architectural character of the adjacent Northeast Waterfront Historic District insofar as it has been designed to comply with Article 10, Appendix D Guidelines for building form, massing fenestration and materiality in the historic district and conforming with Secretary of the Interior Standards-Standard 9, Additions to Historic Districts (6) maintains the designated street corridor views as described in the Design and Access Plan (Chapter 3, Map B, Open Spaces and Access), insofar as the project does not have any impact on Broadway or Davis Street, and Vallejo Street is not mentioned as an existing open space and public access area, or a planned open space and public access area or a view corridor

The General Plan also requires compliance with the Burton Act and the California Public Trust doctrine. The proposed project fully complies with the Burton Act Public Trust doctrine insofar as it involves three trust consistent, public assembly and Port commercial uses—hotel, entertainment venue and public park—and supports the other requirements of the Burton Act such as promoting access to and along the waterfront and will pay fair market rent and contribute to the general fund for public trust uses.

*Northeastern Waterfront Area Plan*²⁴

The Northeast Waterfront Area Plan, part of the San Francisco General Plan, includes goals, policies, and objectives to maintain, expand, and allow new shipping, commercial, and recreational maritime operations that provide improved and expanded commercial and recreational maritime facilities, open spaces, and public access along the waterfront. This *area plan*, last amended by the San Francisco Planning Commission in 2003, includes the area along San Francisco Bay from Fisherman's Wharf to China Basin. The area plan includes land under Port jurisdiction and the areas of the city adjacent to the Port area. Although the area's role in San Francisco's maritime shipping industry has declined over time, the Port remains responsible for ensuring the continuation of maritime commerce, navigation, and fisheries within the Northeastern Waterfront. The Northeastern Waterfront Area Plan envisions the addition of hotel, restaurant, and retail uses in this area to promote increased access and enjoyment of the waterfront.

The project site is within the area plan's Base of Telegraph Hill Subarea, which contains a mix of maritime, residential, and commercial uses. A variety of land uses are designated appropriate on inland sites, including hotel, residential, office, and other commercial activities. The open space policy for this subarea also encourages the provision of landscaping and publicly accessible open space in the development. The area plan indicates that new development on these parcels shall be designed to "preserve and enhance the rich historic character of the subarea, and, as appropriate, highlight access points to the nearby North Beach, Chinatown and Fisherman's Wharf districts."

The following areawide objectives and policies of the Northeastern Waterfront Area Plan relate to the proposed project:

- **Objective 1:** To develop and maintain activities that will contribute significantly to the City's economic vitality and provide additional activities which strengthen the predominant uses in each subarea of the northeastern waterfront, while limiting their concentration to preserve the environmental quality of the area.
- **Objective 2:** To diversify uses in the northeastern waterfront, to expand the period of use of each subarea and to promote maximum public use of the waterfront while enhancing its environmental quality.
- **Objective 7:** To strengthen and expand the recreation character of the northeastern waterfront and to develop a system of public open spaces and recreation facilities that recognizes its recreational potential, provides unity and identity to the urban area, and establishes an overall waterfront character of openness of views, water and sky and public accessibility to the water's edge.
- **Policy 8.2:** Limit additional parking facilities in the Northeastern Waterfront and minimize the impact of this parking. Discourage long-term parking for work trips which could be accommodated by transit. Restrict additional parking to: (a) Short-term (less than four hour) parking facilities to meet needs of additional business, retail, restaurant, marina, and entertainment activities; (b) Long-term parking facilities for maritime activities, hotel and residential uses. To the extent possible, locate parking away from areas of intense pedestrian activity. Encourage shared parking at adjacent or nearby facilities.
- **Policy 8.5:** Base the determination of the amount of parking allowed for permitted uses on the desirability of reducing automobiles along the waterfront and, to the maximum extent feasible, consider the use of existing public transit and inland parking, as well as public transit and inland parking which could reasonably be provided in the future.

²⁴ San Francisco Planning Department, *Northeastern Waterfront Area Plan*, 1998 and Amendments by Resolution 16626 on July 31, 2003, http://www.sf-planning.org/ftp/General_Plan/NE_Waterfront.htm.

- **Policy 8.6:** Remove or relocate inland those existing parking facilities on or near the water's edge or within areas of intense pedestrian activity.
- **Policy 10.5:** Permit nonmaritime development bayward of the sea wall only if the following qualifications are met:
 - a. Maximum feasible public access is provided to the water's edge.
 - b. Important Bay and waterfront views along The Embarcadero and level inland streets are preserved and improved. Minor encroachment into the view corridors from level inland streets may be permitted: (1) Where the encroaching element has a distinct maritime character and adds variety to the views along the waterfront; (2) Where minor structures (such as kiosks) are desirable to provide public amenities contributing to a continuity of interest and activity along the waterfront; (3) Where essential maritime facilities cannot reasonably be located and designed to avoid view blockage; and (4) Where the public enjoyment of the Bay will be enhanced by providing a place of public assembly and recreation which allows unique vistas and overviews that include portions that are publicly accessible during daytime and evenings consistent with ensuring public safety,
- **Policy 10.6:** Retain older buildings of architectural merit or historical significance to preserve the architectural and historical character of the waterfront and ensure the compatibility of new development.

The following policies and objective of the Northeastern Waterfront Area Plan specific to the Base of Telegraph Hill Subarea relate to the proposed project:

- **Policy 18.3:** Encourage moderate development of uses such as shops, restaurants, entertainment and hotels which activate the waterfront during evenings and weekends, but to a lesser overall intensity and concentration than present in the adjacent downtown and Fisherman's Wharf areas.
- **Policy 18.4:** Design new development on Seawall Lots 323 and 324 as an orientation point for the waterfront which also highlights the intersection of Broadway and The Embarcadero.
- **Policy 19.3:** Design transportation access to new developments on seawall lots to minimize congestion on Bay Street, Broadway, and The Embarcadero.
- **Objective 20:** To develop the area in such a way as to preserve and enhance the physical form of the waterfront and Telegraph Hill, and to preserve views from the hill.

The proposed project would convert an existing surface parking lot along The Embarcadero to a hotel, entertainment venue, and public park. The addition of the proposed project to the site would better define the intersection of The Embarcadero and Broadway for all roadway users, marking the importance of the intersection as a gateway point. Rather than creating new parking facilities in an area well served by existing transit, the proposed project would enhance the pedestrian experience on and around the site, promoting recreation along The Embarcadero. Although the proposed project would add new entertainment uses to the site, the intensity of use would be consistent with immediately surrounding uses along the waterfront, which generally are less intense in use than destinations located downtown or in Fisherman's Wharf. The Historic Preservation Commission and Architectural Review Committee must review the project design to ensure consistency with the historic district in which the project is located. The proposed project would not conflict with any goals, objectives, or policies of the Northeastern Waterfront Area Plan. The proposed project is compatible with the heights of the surrounding buildings and would provide appropriate streetscape for pedestrians, accommodate pedestrians and bicyclists, create open space connections, and make sure that the new development would fit into the context of historic properties in the area.

The project site is within the boundary of the *Northeast Embarcadero Study: An Urban Design Analysis for the Northeast Embarcadero Area* (Northeast Embarcadero Study), prepared by the San Francisco Planning Department. This study was conducted to assess empty surface parking lots, including the project site, along the western side of The Embarcadero for

future infill development. The study was adopted on July 8, 2010, and its guidelines were incorporated into the Northeast Waterfront Area Plan. The objectives of the Northeast Embarcadero Study are to create site guidelines that are beneficial to the pedestrian realm, establish east-west connections between the city and the Bay, establish an appropriate streetscape for pedestrians, create open space connections, and make sure that new development fits into context of historic properties. The proposed project is compatible with the heights of the surrounding buildings and provides accessible open space in the form of a new public park that would allow for passage of pedestrians from Davis Street through to The Embarcadero.

Waterfront Land Use Plan

Land use and development on properties within Port jurisdiction, including the project site, are guided by the Waterfront Land Use Plan.²⁵ The lands within the Port's jurisdiction are held in public trust and managed by the Port. The Port, as trustee of these public lands, is required to promote maritime commerce, navigation, and fisheries, and to protect natural resources and develop recreational facilities for public use. The Waterfront Land Use Plan is intended to designate lands to meet these objectives and to serve the intensified demand for residential and commercial development on appropriate inland parcels. Providing improved access to the waterfront is among the plan's primary objectives.

The Waterfront Land Use Plan designates the project site as a Mixed Use Opportunity Area anticipated to include a new open space component. The plan notes that the project site (encompassing Seawall Lots 323 and 324) is currently underused and recommends that it be developed with uses that activate the waterfront and are integrated with adjacent uses. Suggested uses include support space and ancillary parking for pier activities or mixed-use hotel, office, or residential developments with ground-floor retail uses. The plan indicates that these lots should provide a smooth transition from inland neighborhood uses to shoreline improvements, making the area inviting to local residents. The plan also notes that the project site is within the Northeast Waterfront Historic District and that the design of new development must respect and enhance the historic and architectural character of adjacent development.

In 2015, the Port completed the *Waterfront Land Use Plan 1997–2014 Review*.²⁶ The review documents land use changes at the Port over an 18-year period and identifies recommendations for a targeted update of the Waterfront Land Use Plan, which is currently underway. The review identified goals for the project area similar to those identified in the 2009 Waterfront Land Use Plan, including the development of a boutique hotel at the intersection of Broadway and Embarcadero (on Seawall Lot 324). The current review of the Waterfront Land Use Plan continues to make the same finding. Such a development would need to be designed to be compatible with existing land uses and to define the intersection's role as an area gateway. Seawall Lot 323 is identified as an opportunity to reconnect adjacent neighborhoods with the waterfront and improve the public realm.

The Accountable Planning Initiative

In November 1986, the voters of San Francisco approved Proposition M, the Accountable Planning Initiative, which added section 101.1 to the planning code and established the following priority policies, set forth in section 101.1(b):

- (1) That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in, and ownership of, such businesses be enhanced
- (2) That existing housing and neighborhood character be conserved and protected to preserve the cultural and economic diversity of our neighborhoods

²⁵ Port of San Francisco, *Waterfront Land Use Plan*, June 2004; Revised October 2009, <http://sfport.com/waterfront-land-use-plan-0>, accessed May 22, 2016.

²⁶ Port of San Francisco, *Waterfront Land Use Plan 1997–2014 Review*, 2015, http://sfport.com/sites/default/files/FileCenter/Documents/10303-WLUP_Review_Chapter1_July2015_reduced%20size.pdf, accessed May 22, 2016.

- (3) That the City's supply of affordable housing be preserved and enhanced
- (4) That commuter traffic not impede Muni transit service or overburden our streets or neighborhood parking
- (5) That a diverse economic base be maintained by protecting the City's industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced
- (6) That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake
- (7) That landmarks and historic buildings be preserved
- (8) That our parks and open space and their access to sunlight and vistas be protected from development

Policies 1, 2, and 5 are addressed in the initial study checklist in Section E.1, Land Use and Planning. Policy 3 is addressed in Section E.2, Population and Housing. Policy 4 is addressed in Section E.4, Transportation and Circulation. Policy 6 is addressed in Section E.13, Geology and Soils. Policy 7 is addressed in Section E.3, Cultural Resources. Policy 8 is addressed in Section E.8, Wind and Shadow.

The proposed project would not conflict with any of the eight priority policies of section 101.1(b). Because the project site is located within a designated landmark district under article 10 of the San Francisco Planning Code, the Historic Preservation Commission will review and issue a decision on a certificate of appropriateness provided for the project. The San Francisco Planning Commission and Board of Supervisors will review the proposed project for consistency with the priority policies during the public hearing on the proposed project before acting on the conditional approval for the hotel use. The case report and approval motions for the proposed project that are presented to the planning commission will contain the planning department's comprehensive project analysis and findings regarding the proposed project's consistency with the priority policies, plans, policies, and planning code provisions that do not relate to physical environmental issues. The planning commission and board of supervisors will also consider the information in this initial study when they determine whether to approve, modify, or disapprove the proposed project.

Other Local Plans and Policies

In addition to the San Francisco General Plan, the Northeast Waterfront Area Plan, the Waterfront Land Use Plan, the Northeast Embarcadero Study, the planning code and zoning maps, and the Accountable Planning Initiative, other local plans and policies that are relevant to the proposed project are discussed below.

- **San Francisco Transit First Policy** is a set of principles that emphasize the City's commitment that the use of public ROWs by pedestrians, bicyclists, and public transit be given priority over the private automobile. These principles are embodied in the policies and objectives of the Transportation Element of the San Francisco General Plan. All City boards, commissions, and departments are required by law to implement the City's Transit First Policy principles in conducting the City's affairs.
- **San Francisco Bicycle Plan** is a citywide bicycle transportation plan that identifies short-term, long-term, and other minor improvements to San Francisco's bicycle route network. The overall goal of the San Francisco Bicycle Plan is to make bicycling an integral part of daily life in San Francisco.
- **San Francisco Better Streets Plan** classifies the City's public streets and ROW, and creates a unified set of standards, guidelines, and implementation strategies that guide how the City designs, builds, and maintains its public streets and ROW to enhance the livability of the City's streets.

- **San Francisco Sustainability Plan** is a plan for San Francisco's long-term environmental sustainability. The goal of the San Francisco Sustainability Plan is to enable the City and its people to meet their current needs without sacrificing the ability of future generations to meet their own needs. Among the specific environmental issues included in this plan are air quality, climate change, energy, ozone depletion, and transportation.
- **Climate Action Strategy for San Francisco** is a local action plan that: examines the causes of global climate change and the human activities that contribute to global warming; provides projections of climate change impacts on California and San Francisco based on recent scientific reports; presents estimates of San Francisco's baseline greenhouse gas (GHG) emissions inventory and reduction targets; and describes recommended actions for reducing the city's GHG emissions.

C.3. REGIONAL PLANS AND POLICIES

In addition to local plans and policies, the environmental, land use, and transportation plans and policies prepared by several regional planning agencies consider the growth and development of the nine-county San Francisco Bay Area. Some of these plans and policies are advisory, and some include specific goals and provisions that must be adhered to when evaluating a project under CEQA. The regional plans and policies that are relevant to the proposed project are discussed below.

Plan Bay Area

This plan is the principal regional planning document that guides planning in the nine-county Bay Area. It includes the region's first sustainable communities strategy, developed in accordance with Senate Bill (SB) 375 and jointly adopted by the Association of Bay Area Governments (ABAG) and the Metropolitan Transportation Commission, first on July 18, 2013, then with the update, *Plan Bay Area 2040*, adopted on July 26, 2017. *Plan Bay Area 2040* is a long-range land use and transportation plan that covers the period from 2010 to 2040. The plan is scheduled to be updated every 4 years.

Plan Bay Area 2040 calls for concentrating housing and job growth around transit corridors, particularly in areas identified by local jurisdictions as priority development areas. In addition, the plan specifies strategies and investments for maintaining, managing, and improving the region's multimodal transportation network and proposes transportation projects and programs to be implemented with reasonably anticipated revenue. The project site is located in the Port of San Francisco Priority Development Area.²⁷

Plan Bay Area 2040 is a limited and focused update to the 2013 *Plan Bay Area*, with updated planning assumptions that incorporate key economic, demographic, and financial trends from the last several years. *Plan Bay Area 2040* is an advisory policy document used to assist in the development of local and regional plans and policy documents, and the Metropolitan Transportation Commission's 2040 *Regional Transportation Plan*, which is a policy document that outlines transportation projects for highway, transit, rail, and related uses through 2040 for the nine Bay Area counties.

San Francisco Bay Area Basin Plan

Water quality control plans (also known as basin plans) provide the basis for protecting water quality in California. Basin plans are mandated by both the federal Clean Water Act and the state Porter-Cologne Water Quality Control Act. The goal of the *Water Quality Control Plan (Basin Plan) for the San Francisco Bay Basin* is to provide a definitive program of actions designed to preserve and enhance water quality and to protect beneficial uses of water in San Francisco Bay. The stormwater discharge, wastewater management, drainage plan, and water quality control systems for the proposed project would comply

²⁷ Association of Bay Area Governments, *Plan Bay Area*, Priority Development Area Showcase, <http://gis.abag.ca.gov/website/PDAShowcase/>, accessed March 1, 2017.

with, and generally be consistent with, the basin plan's water quality regulations. The physical impacts of implementing these systems, and the permitting requirements of the San Francisco Bay Regional Water Quality Control Board (RWQCB), are discussed in Section E.14, Hydrology and Water Quality, of this initial study.

Bay Area 2017 Clean Air Plan

The Bay Area Air Quality Management District's (BAAQMD's) *Bay Area 2017 Clean Air Plan* requires implementation of "all feasible measures" to reduce ozone and to provide a control strategy to reduce emissions of ozone, particulate matter, toxic air contaminants, and GHGs. The clean air plan describes the status of local air quality and identifies emission control measures to be implemented. The proposed project would generally be consistent with the clean air plan. Physical impacts of the proposed project related to air quality and compliance with these plans are addressed in Section E.6, Air Quality, and Section E.7, Greenhouse Gas Emissions.

The Public Trust

Some of the properties under Port jurisdiction are subject to use limitations under the public trust and the Burton Act. The public trust imposes certain use restrictions on historical tidal and submerged lands along the waterfront, to protect the interests of the state in commerce, navigation, and fisheries, as well as other public benefits recognized to further the public trust purposes, such as recreation and environmental preservation.²⁸ The Port has been delegated authority by the State Lands Commission to negotiate terms of use for lands under public trust. The Port would provide a public trust consistency assurance letter to the State Lands Commission to confirm that the proposed project is consistent with public trust objectives.

Consistency with these plans are discussed in detail in sections E.2, Population and Housing, E.6, Air Quality, E.7, Greenhouse Gas Emissions, and E.14, Hydrology and Water Quality.

²⁸ Public Trust Policy, adopted by the State Lands Commission on August 29, 2001.

D. SUMMARY OF ENVIRONMENTAL EFFECTS

The proposed project could potentially affect the environmental factor(s) checked below, for which mitigation measure would be required to reduce potentially significant impacts to less-than-significant levels. The following pages present a more detailed checklist and discussion of each environmental factor.

- | | | |
|---|--|--|
| <input type="checkbox"/> Land Use/ Planning | <input type="checkbox"/> Greenhouse Gas Emissions | <input type="checkbox"/> Geology/Soils |
| <input type="checkbox"/> Population and Housing | <input type="checkbox"/> Wind and Shadow | <input type="checkbox"/> Hydrology/Water Quality |
| <input checked="" type="checkbox"/> Cultural Resources | <input type="checkbox"/> Recreation | <input type="checkbox"/> Hazards & Hazardous Materials |
| <input type="checkbox"/> Transportation and Circulation | <input type="checkbox"/> Utilities/Service Systems | <input type="checkbox"/> Mineral/Energy Resources |
| <input type="checkbox"/> Noise | <input type="checkbox"/> Public Services | <input type="checkbox"/> Agriculture and Forestry Resources |
| <input checked="" type="checkbox"/> Air Quality | <input type="checkbox"/> Biological Resources | <input checked="" type="checkbox"/> Mandatory Findings of Significance |

D.1. APPROACH TO ENVIRONMENTAL REVIEW

This initial study examines the proposed project to identify potential effects on the environment. For each checklist item, the evaluation has considered the impacts of the proposed project both individually and cumulatively, with the exception of GHG emissions, which are evaluated only in the cumulative context. All items on the initial study checklist that have been checked “Less than Significant with Mitigation Incorporated,” “Less than Significant Impact,” “No Impact” or “Not Applicable” indicate that, upon evaluation, staff has determined that the proposed project could not have a significant adverse environmental effect relating to that topic. A discussion is included for those issues checked “Less than Significant with Mitigation Incorporated” and “Less than Significant Impact” and for most items checked with “No Impact” or “Not Applicable.” For all of the items checked “No Impact” or “Not Applicable” without discussion, the conclusions regarding potential significant adverse environmental effects are based on field observation, staff experience, and expertise on similar projects, and/or standard reference material available at the San Francisco Planning Department, such as the City’s *Transportation Impact Analysis Guidelines for Environmental Review*, or the California Natural Diversity Database and maps published by the California Department of Fish and Wildlife.

Public Resources Code Section 21099

On September 27, 2013, Governor Brown signed SB 743, which became effective on January 1, 2014.²⁹ Among other provisions, SB 743 amended CEQA by adding California Public Resources Code section 21099 regarding the analysis of aesthetics and parking impacts for certain urban infill projects in *transit priority areas*.³⁰

Aesthetics and Parking Analysis

CEQA Guidelines section 21099(d), effective January 1, 2014, provides that “aesthetics and parking impacts of a residential, mixed-use residential, or employment center project on an infill site located within a transit priority area shall not be considered significant impacts on the environment.” Accordingly, aesthetics and parking are no longer to be considered in determining whether a project has the potential to result in significant environmental effects for projects that meet all of the following three criteria:

²⁹ SB 743 is available at http://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB743, accessed May 23, 2016.

³⁰ A “transit priority area” is defined as an area within one-half mile of an existing or planned major transit stop. As defined in CCR title 14, section 15191 and in PRC section 21064.3, a major transit stop is a rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.

1. The project is in a transit priority area.
2. The project is on an *infill site*.³¹
3. The project is residential, mixed-use residential, or an *employment center*.³²

The proposed project meets each of the above three criteria because it is (1) located within 0.5 mile of several rail and bus transit routes; (2) located on an infill site that is used as a surface parking lot; and (3) an employment center based on the C-2 zoning with a *floor area ratio*³³ of no less than 0.75 and located within a transit priority area.³⁴ Thus, this initial study does not consider aesthetics and the adequacy of parking in determining the significance of project impacts under CEQA.

CEQA Guidelines section 21099(d)(2)(A) states that a lead agency maintains the authority to consider aesthetic impacts pursuant to local design review ordinances or other discretionary powers. Furthermore, section 21099(d)(2)(B) states that aesthetics impacts do not include impacts on historical or cultural resources. As such, there will be no change in the San Francisco Planning Department's methodology related to design and historic review.

The planning department recognizes that the public and decision-makers nonetheless may be interested in information pertaining to the aesthetic effects of a proposed project and may desire that such information be provided as part of the environmental review process. Therefore, some information that otherwise would have been provided in the aesthetics section of an initial study (such as project renderings) are included in the project description. However, this information is provided solely for informational purposes and is not used to determine the significance of the environmental impacts of the project, pursuant to the CEQA Guidelines.

Similarly, the planning department acknowledges that parking conditions may be of interest to the public and the decision-makers. Therefore, the initial study presents a parking demand analysis for informational purposes and considers any secondary physical impacts associated with constrained supply (e.g., queuing by drivers dropping off or picking up passengers at the project site in such a way that could affect the public ROW) as applicable in the transportation analysis.

Automobile Delay and Vehicle Miles Traveled Analysis

CEQA section 21099(b)(1) requires that the Governor's Office of Planning and Research (OPR) develop revisions to the CEQA Guidelines establishing criteria for determining the significance of transportation impacts of projects that "promote the reduction of GHG emissions, the development of multimodal transportation networks, and a diversity of land uses." Section 21099(b)(2) states that upon certification of the revised guidelines for determining transportation impacts pursuant to section 21099(b)(1), automobile delay, as described solely by level of service or similar measures of vehicular capacity or traffic congestion, shall not be considered a significant impact on the environment under CEQA.

In January 2016, OPR published the *Revised Proposal on Updates to the CEQA Guidelines on Evaluating Transportation Impacts in CEQA* for public review and comment. The update recommended that transportation impacts for projects be measured using a metric of *vehicle miles traveled* (VMT). On March 3, 2016, in anticipation of the future certification of the revised CEQA Guidelines, the San Francisco Planning Commission adopted OPR's recommendation to use the VMT metric instead of automobile delay to evaluate the transportation impacts of projects (Resolution 19579). (Note: The VMT metric does not apply to the analysis of impacts on nonautomobile modes of travel such as riding transit, walking, and bicycling.)

³¹ As defined in PRC section 21099(a), an infill site is a lot located in an urban area that has been previously developed.

³² As defined in PRC section 21099(a), an employment center project is a project located on property zoned for commercial uses with a floor area ratio of no less than 0.75 that is located in a transit priority area.

³³ The floor area ratio is the gross floor area of a building or buildings on a zoning plot divided by the area of such zoning plot. The floor area ratio is calculated to determine whether the mass and scale of a structure is compatible with zoning district requirements.

³⁴ San Francisco Planning Department, *Transit-Oriented Infill Project Eligibility Checklist*, Case No. 2015-016326ENV, May 4, 2018.

Accordingly, this initial study does not contain a discussion of automobile delay impacts. Instead, an analysis of VMT and induced automobile travel impacts is provided in Section E.4, Transportation and Circulation. Nonetheless, the topic of automobile delay may be considered by decision-makers, independent of the environmental review process, as part of their decision to approve, modify, or disapprove the proposed project.

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E. EVALUATION OF ENVIRONMENTAL EFFECTS

E.1. LAND USE AND PLANNING

Topics:	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact	Not Applicable
1. LAND USE AND PLANNING.— Would the project:					
a) Physically divide an established community?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Impact LU-1: The proposed project would not physically divide an established community. (Less than Significant)

The division of an established community would typically involve the construction of a physical barrier to neighborhood access (such as a new freeway segment) or the removal of a means of access (such as a bridge or roadway). The proposed project would involve removal of an existing surface parking lot and adjustments to existing public ROWs for the construction of a new mixed-use development that includes hotel, entertainment uses, and a public park. The proposed project would not disrupt or divide the physical arrangement or impede the passage of persons or vehicles.

A portion of the Vallejo Street ROW that is entirely within the project site would be vacated and/or abandoned to allow for construction of the proposed project. The ROW is not a functioning street and is not in use by vehicles because Vallejo Street dead-ends at the project site when it reaches Davis Street (it does not extend to The Embarcadero). The removal of this ROW would not interrupt or affect vehicular or pedestrian access.

Currently, a 10-inch auxiliary water supply system line and an 8-inch water main owned by SFPUC and an AT&T fiber optic conduit are in place within the ROW. The AT&T fiber optic conduit would be left in place or relocated. SFPUC water facilities would be abandoned in place when the building is constructed, a result that has been reviewed by SFPUC's City Distribution Division.³⁵ Construction activities would be staged primarily at the northern portion of the project site, and would also require temporary sidewalk closures, primarily along the project frontage on Vallejo Street, Davis Street, occasionally Broadway, and possibly The Embarcadero. It is anticipated that no vehicle travel lanes would be closed during construction. Closures of travel and parking lanes and sidewalks are subject to review and approval by the Transportation Advisory Staff Committee, an interdepartmental committee that includes the San Francisco Police Department, SFPW, the San Francisco Planning Department, SFFD, and SFMTA. The construction management plan reviewed by the committee would address the temporary impacts from construction activities such as issues of circulation (for traffic, pedestrians, and bicycles), safety, parking, and other project construction in the area.

The established community surrounding the project site includes piers, bulkheads, and other Port development to the north and east, mixed-use commercial and residential development to the south, and commercial development to the west. The project site is used as a surface parking lot and is located across The Embarcadero from the Bay. The existing surface parking lot does not have an existing pathway between the surrounding neighborhood and The Embarcadero and the shoreline. The proposed project would improve neighborhood connectivity by providing a pedestrian pathway through the project site, from

³⁵ Peter Bekey, KCA Engineers, email correspondence with SFPUC, including drawing, April 20, 2016.

The Embarcadero to Davis Street, which would facilitate public access. Therefore, the impact of the construction of proposed project would be *less than significant* with respect to physically dividing an established community.

Impact LU-2: The proposed project would not conflict with applicable land use plans, policies, or regulations (including, but not limited to, the general plan, a specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect. (*Less than Significant*)

Land use plans and policies adopted for the purpose of avoiding or mitigating an environmental effect are those that directly address physical environmental issues and/or contain targets or standards that must be met to preserve or improve characteristics of San Francisco's physical environment. The proposed project would not obviously or substantially conflict with any such adopted environmental plan or policy. The proposed project would not result in conflicts with existing land use designations or plans, as described in detail in Section C, Compatibility with Existing Zoning and Plans.

Additionally, the proposed project is within the Northeast Waterfront Landmark District, a historic designated neighborhood per planning code article 10. Based on the historic resource evaluation³⁶ prepared for the proposed project, the proposed project would be compatible with the Northeast Waterfront Landmark District with respect to the height, scale, and proportion; the lack of ornamentation, fenestration, materials, colors, and visual complexity; and construction to the front lot lines on all four streets that characterize the district. Additionally, the proposed project would be reviewed by the Historic Preservation Commission for approval of a Certificate of Appropriateness indicating compliance with the Northeast Waterfront Landmark District's development requirements. Further discussion of the historic resource evaluation and the proposed project's potential impacts on the Northeast Waterfront Landmark District's historical significance is provided in Section E.3, Cultural Resources.

For the reasons discussed in Section C, Compatibility with Existing Zoning and Plans, the proposed project would not conflict with any other plans, policies, or regulations adopted for the purpose of avoiding or mitigating an environmental effect. This impact would be *less than significant*.

Impact-C-LU-1: The proposed project, in combination with past, present, and reasonably foreseeable future projects in the vicinity of the project site, would result in less-than-significant cumulative impacts related to land use and planning. (*Less than Significant*)

The cumulative projects listed in Table 3 and mapped in Figure 17 in Section B.3, Cumulative Projects, consist of infill development, transportation improvements, and recreation projects. Where infill development is proposed, the projects would renovate or demolish existing buildings in the Financial District, North Beach, and Northeast Waterfront neighborhoods and construct mixed-use, primarily commercial buildings, including new office, institutional, and hotel space. Residential uses are also proposed, including a new affordable housing development next to the project site. All of the cumulative development projects would result in the intensification of land uses in the project vicinity, similar to the proposed project. However, they are infill projects that would not physically divide an established community by constructing a physical barrier to neighborhood access, such as a new freeway, or remove a means of access, such as a bridge or roadway. The cumulative projects would be confined to individual parcels and would not collectively result in the construction of barriers or other physical modifications that would divide existing communities. Therefore, there would be no cumulative impact from the construction of physical barriers.

³⁶ San Francisco Planning Department, Historic Resource Evaluation Report – Preservation Team Review Form, Hotel and Theatre at Broadway for Kenwood Investments, LLC and Teatro Zinzanni, Seawall Lots 323 & 324, San Francisco, California, March 23, 2018. Eilish Tuffy, Senior Planner, San Francisco Planning Department.

The cumulative projects would also not result in conflicts with land use plans or policies adopted for the purpose of avoiding or mitigating environmental impacts, because they would generally support the City's objectives for siting new development in the vicinity of major transit stops, provision of housing, increased access to multiple transit modes, and increased access to the Bay shoreline. For example, these cumulative development projects would be required to comply with the same plans, policies, and regulations as the proposed project as discussed throughout this initial study, such as the 2017 Clean Air Plan; *Strategies to Address Greenhouse Gas Emissions*; the Noise Ordinance, section 2909 of the Police Code (article 29); CCR title 24, part 11 (the 2016 CALGreen Code), the San Francisco Green Building Ordinance; and San Francisco Ordinance 27-06 for recycling construction and demolition debris. Compliance with these plans and other mandatory regulations would help to make sure that development of cumulative development projects would not conflict with any applicable plans, policies, or regulations adopted to avoid or mitigate an environmental effect. Cumulative projects located in the Financial District and North Beach would be consistent with the existing high-density commercial uses in the area. Port projects would be consistent with the Port's objective to increase recreational opportunities and access along the waterfront. The proposed project, in combination with past, present, and reasonably foreseeable projects, would not combine with cumulative development projects to create or contribute to a cumulative land use impact. Therefore, the cumulative land use impact would be *less than significant*.

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E.2. POPULATION AND HOUSING

Topics:	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact	Not Applicable
2. POPULATION AND HOUSING.— Would the project:					
a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Displace substantial numbers of existing housing units necessitating the construction of replacement housing?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

The project would not displace substantial numbers of existing housing units, necessitating the construction of replacement housing because there is no development on the site. The project would not displace substantial numbers of people, necessitating the construction of replacement housing elsewhere because the site is currently a surface parking lot. Therefore, there would be *no impact* related to these topics, which is addressed in questions 2b and 2c.

Impact PH-1: The proposed project would not directly or indirectly induce substantial population growth in San Francisco. (*Less than Significant*)

In general, a project would be considered growth-inducing if its implementation would result in substantial population increases or would result in new development that might not occur if the project were not implemented. ABAG prepares population growth projections for the Bay Area, including San Francisco, and, based on this growth, adopts housing needs for each city and county in the Bay Area, known as the regional housing needs allocation.

The proposed project would not create new residential units, and as such, would not directly contribute to increases in San Francisco's population. Once completed, the hotel is anticipated to accommodate approximately 365 guests. The hotel use (including food and beverage uses) and the other entertainment uses of the proposed project would create employment opportunities. The entertainment use is anticipated to employ approximately 62 people³⁷ while the hotel use, including the food and beverage uses, would employ approximately 67 people, totaling 129 new jobs.³⁸ These jobs are expected to be filled by existing Bay Area residents. Even if new employees needed to relocate to San Francisco, the number of new employees would not be substantial relative to San Francisco's overall population and would not result in the need to construct new housing. Employment in San Francisco is projected to increase by 34 percent (191,740 jobs) between 2010 and 2040.³⁹ The proposed project's increase of 129 employees would be accommodated within the projected employment growth in San Francisco.

Overall, the increase in the number of employees on the project site would be noticeable near the project site. However, project-related employment increases would not be substantial relative to the existing number of employees in the city, nor

³⁷ Economic and Planning Systems, *Economic Impacts of the Proposed Teatro ZinZanni/Kenwood Hotel and Dinner Theatre*, May 2016.

³⁸ Employment multiplier based on San Francisco Planning Department, *Transportation Impact Analysis Guidelines for Environmental Review*, October 2002.

³⁹ Association of Bay Area Governments and Metropolitan Transportation Commission, *Jobs-Housing Connection Strategy*, revised May 16, 2012, p. 49, http://www.planbayarea.org/pdf/JHCS/May_2012_Jobs_Housing_Connection_Strategy_Main_Report.pdf, accessed August 8, 2016.

would the increase in employees exceed regional projections for growth and employment. Therefore, the impact of the proposed project related to direct and indirect population growth would be *less than significant*.

Impact-C-PH-1: The proposed project, in combination with past, present, and reasonably foreseeable future projects in the vicinity of the project site, would result in less-than-significant cumulative impacts related to population and housing. (*Less than Significant*)

The cumulative projects listed in Table 3 and mapped in Figure 17 in Section B.3, Cumulative Projects, consist of infill development, transportation improvements, and recreation projects. Although the Ferry Building projects and Pier 29 improvements could result in new employment opportunities, the jobs associated with these projects would likely be filled by existing San Francisco Bay Area residents. Employment generation would be relatively small in comparison to the existing number of jobs in the city.

Where infill development is proposed in the vicinity of the proposed project, those projects would either renovate existing buildings to add additional commercial, institutional, or residential uses or demolish existing buildings and construct new, mixed-use developments that would include residential, retail, and hotel uses. None of the projects would result in the loss of existing housing. Residential uses would add to the city's housing stock and assist in meeting the City's regional housing needs allocation goals for housing production, including the provision of housing affordable to low- and moderate-income families. Although the majority of the jobs associated with the cumulative projects are anticipated to employ existing Bay Area residents, it is possible that new jobs could result in indirect population growth. However, the cumulative projects would be generally consistent with adopted land use designations and would generate population growth already anticipated by the City's and ABAG's planning documents. The proposed project, in combination with past, present, and reasonably foreseeable projects, would result in a *less-than-significant* cumulative increase in population or demand for housing beyond what has been planned for at the regional and local level. The project would not contribute to a cumulative impact on population and housing, because it would not result in any population or housing displacement.

E.3. CULTURAL RESOURCES

Topics:	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact	Not Applicable
3. CULTURAL RESOURCES.—Would the project:					
a) Cause a substantial adverse change in the significance of a historical resource as defined in §15064.5, including those resources listed in Article 10 or Article 11 of the San Francisco Planning Code?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Cause a substantial adverse change in the significance of an archeological resource pursuant to §15064.5?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Disturb any human remains, including those interred outside of formal cemeteries?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Cause a substantial adverse change in the significance of a tribal cultural resource as defined in Public Resources Code §21074?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Impact CR-1: The proposed project would not cause a substantial adverse change in the significance of a historical resource as defined in section 15064.5, including those resources listed in article 10 or article 11 of the San Francisco Planning Code. (Less than Significant)

Under CEQA, a historical resource (these include historic built-environment and prehistoric and historic archeological resources) is considered significant if it meets the criteria for listing in the California Register of Historical Resources (CRHR). Resources that are listed in or formally determined to be eligible for listing in the National Register of Historic Places (NRHP) are automatically listed in the CRHR, and are thus considered historical resources for the purposes of CEQA compliance.

A property may be considered an historic resource if it meets any of the California Register criteria related to (1) events, (2) persons, (3) architecture, or (4) information potential that make it eligible for listing in the California Register, or if it is considered a contributor to an existing or potential historic district. The significance of a historic resource is materially impaired when a project “demolishes or materially alters in an adverse manner those physical characteristics of a historical resource that convey its historical significance.”

The project site is currently occupied by a surface parking lot. No historic architectural resources occur within the project site.⁴⁰ The project site is, however, located within the boundaries of the Northeast Waterfront Historic District. Designated in 1983 under article 10 of the San Francisco Planning Code, the district was found to be significant for its collection of commercial masonry warehouse structures, which date from the late 19th to early 20th centuries. These structures were found to reflect San Francisco’s history of waterfront storage and maritime activities. The warehouse facilities composing the Northeast Waterfront Historic District were in continuous industrial use from the Gold Rush to the mid-1960s. In addition to the structures, the district contains cobblestone paving and the standard and narrow-gauge belt railroad track that served the warehouses and other commercial ventures of the district and surrounding neighborhood. As stated in the historic resource evaluation report for the project⁴¹ and confirmed by the San Francisco Planning Department on March 23, 2018,⁴² the

⁴⁰ Carey & Company, *Historic Resource Evaluation, Part 2: Compatibility Analysis. Hotel and Theatre at Broadway for Kenwood Investments, LLC and Teatro Zinzanni, Seawall Lots 323 & 324, San Francisco, California*, February 26, 2018.

⁴¹ Carey & Company, *Historic Resource Evaluation, Revised, Hotel and Theatre at Broadway for Kenwood Investments, LLC and Teatro Zinzanni, Seawall Lots 323 & 324, San Francisco, California*, 2016, p. 7.

proposed entertainment venue and hotel project would not result in the destruction of historic materials, features, or spatial relationships that characterize the historic district. Therefore, the demolition of the existing surface parking and the proposed new construction on the site would not result in a significant impact as defined under CEQA.

The proposed four-story hotel would be compatible with the character-defining features of the district because of the buildings design:

- rectilinear massing that is large in bulk
- repetitive bays rhythmically spaced to be in concert with nearby warehouse buildings in the district.
- modulation of the façade achieved through repetitive glass and metal window elements to break down the mass of the building
- regularity of the overall form multi-paned industrial window sash with dark metal framing
- ground-floor fenestration set in large rectilinear openings
- rough-textured, rough-grained, full-dimensioned brick veneer in a red color scheme
- simple, abstract, dark-colored metal cornice
- contemporary design of compatible height and massing for the atypical round theater structure, to differentiate it as new construction while protecting the integrity of the surrounding environment

The design does not incorporate any false-historic features and the proposed building would be compatible with the surrounding historic structures. As the proposed project conforms to the Secretary Standards and is compatible with the specific characteristics of the District, the new construction would not materially impair the Northeast Waterfront Landmark District. Thus, the Northeast Waterfront Landmark District would remain eligible for listing in Article 10 of the San Francisco Planning Code. As a result, impacts on historic architectural resources would be *less than significant*.

Impact CR-2: The proposed project could cause a substantial adverse change in the significance of an archeological resource pursuant to section 15064.5. (*Less than Significant with Mitigation*)

This section discusses archeological resources, both as historical resources according to section 15064.5 as well as unique archeological resources as defined in section 21083.2(g). Baseline conditions for potential archeological resources in the project area are documented in the *Addendum to the Archeological Research Design and Treatment Plan for the Broadway Hotel Project, City and County of San Francisco, California*.⁴³

No archeological resources have been previously identified within the project site. The lack of previously identified resources should be expected because, according to the *archeological research design and treatment plan* (ARDTP), “no known previous archeological investigations involving fieldwork have occurred in the project area.” Although no archeological

⁴² San Francisco Planning Department, *Historic Resource Evaluation Report – Preservation Team Review Form, Hotel and Theatre at Broadway for Kenwood Investments, LLC and Teatro ZinZanni, Seawall Lots 323 & 324, San Francisco, California*, March 23, 2018. Eilish Tuffy, Senior Planner, San Francisco Planning Department

⁴³ Environmental Science Associates, *Seawall Lots 323 & 324 Project, City and County of San Francisco, Addendum to the Archeological Research Design and Treatment Plan for the Broadway Hotel Project, City and County of San Francisco, California*, 2017.

fieldwork has been conducted to date within the project area, statements of the general archeological sensitivity of the project site can be developed based on land form, geology, site history, and current conditions, all of which are presented in the ARDTP. The archeological sensitivity for both prehistoric and historic-era archeological resources as determined in the ARDTP is presented below.

Prehistoric Archeological Sensitivity

As revealed in archival sources and geotechnical data cited in the ARDTP,⁴⁴ before major reclamation efforts of the 19th century, the entire project site was submerged beneath the waters of San Francisco Bay. The fill introduced during reclamation efforts overlies a deep deposit of Bay Mud. These soils do not represent land surfaces that were available for prehistoric human inhabitation. As such, there is “no potential for surficial or near-surface prehistoric archeological deposits” on the project site.⁴⁵

Although surface and near-surface prehistoric resources are not anticipated, the ARDTP determined that the project site is considered to be of “moderate sensitivity for prehistoric archeological resources,”⁴⁶ largely due to the discovery of two prehistoric artifacts that were uncovered approximately 500 feet west of the project area during archeological monitoring of the 88 Broadway and 753 Davis Street Project. The two artifacts, a vitreous basalt core and an obsidian core, were found at 10–12 feet below ground surface (bgs) and 8–10 feet bgs, respectively, which is within the maximum depth of disturbance proposed for the project (i.e., 6 feet bgs of mass excavation with soil improvements to 39 feet below the project site). The origin of the specimens is evidently a subject of debate, as various hypotheses have been proposed for their presence/association, including “indigenous Californian occupation; historic-period indigenous Hawaiian Islander (kanaka) occupation; indigenous Californian or Aleutian Islander associated with Fort Ross; and imported fill material.”⁴⁷ Whatever their ultimate origin, their presence close to the current project area elevates the sensitivity for prehistoric archeological resources from low to moderate.⁴⁸

Historic Archeological Sensitivity

Before the reclamation efforts of the 19th century mentioned above, the project area was under water, but near the shoreline of San Francisco Bay. It is documented in the ARDTP⁴⁹ that the project area went through the following primary land transformation processes:

- *1850s–1860s:* Wharf construction the along the present-day alignments of Vallejo Street and Davis Street
- *1880s:* Land reclamation of the entire project area
- *1880s to early 20th century:* Grading for and general construction of industrial facilities (railyards and wood and coal storage facilities) throughout the project area
- *Late 1960s:* Construction of elevated freeway on-ramp in the southern half of the project area
- *Early 1990s:* Demolition and removal of the elevated freeway on-ramp in the southern half of the project area

⁴⁴ Environmental Science Associates, Seawall Lots 323 & 324 Project, City and County of San Francisco, Addendum to the Archeological Research Design and Treatment Plan for the Broadway Hotel Project, City and County of San Francisco, California, 2017.

⁴⁵ Ibid., p. 74.

⁴⁶ Ibid., p. 76.

⁴⁷ Ibid., p. 25.

⁴⁸ Ibid.

⁴⁹ Ibid.

The historic development, followed by these significant modern construction activities that likely affected intact historic-era archeological remains, has resulted in an assessment for the project site that ranges from low to moderate to high sensitivity for containing buried historical archeological remains.

Construction activities including vehicles and equipment could expose and have impacts on unknown archeological resources. It is possible that previously unrecorded and buried (or otherwise obscured) archeological deposits could be discovered during ground-disturbing activities associated with project implementation. Such ground-disturbing activities would include demolition of the existing surface parking lots, overall grading of the project site, and trenching for installation of utilities. Thus, the proposed project could have a potentially significant impact on previously unidentified unique archeological resources as defined in section 15064.5 and described above. With implementation of **Mitigation Measure M-CR-2, Archeological Testing**, impacts would be reduced to *less than significant with mitigation*. This mitigation measure requires that archeological resources be avoided and, if discovered, that they be treated appropriately. Based on a reasonable presumption that archeological resources may be present in the project area, the following measures would be undertaken to avoid any potentially significant adverse effect from the proposed project on buried or submerged historical resources.

Mitigation Measure M-CR-2: Archeological Testing

The project sponsor shall retain the services of an archeological consultant from the rotational Department Qualified Archaeological Consultants List maintained by the San Francisco Planning Department's archeologist. The project sponsor shall contact the department's archeologist to obtain the names and contact information for the next three archeological consultants on the list. The archeological consultant shall undertake an archeological testing program as specified herein. In addition, the consultant shall be available to conduct an archeological monitoring and/or data recovery program if required pursuant to this measure. The archeological consultant's work shall be conducted in accordance with this measure at the direction of the environmental review officer (ERO). All plans and reports prepared by the consultant as specified herein shall be submitted first and directly to the ERO for review and comment, and shall be considered draft reports subject to revision until final approval by the ERO. Archeological monitoring and/or data recovery programs required by this measure could suspend construction of the project for up to 4 weeks. At the direction of the ERO, the suspension of construction can be extended beyond 4 weeks only if such a suspension is the only feasible means to reduce to a less-than-significant level potential effects on a significant archeological resource as defined in CEQA Guidelines sections 15064.5(a) and 15064.5(c).

Consultation with Descendant Communities: On discovery of an archeological site⁵⁰ associated with descendant Native Americans, the Overseas Chinese, or other potentially interested descendant group, an appropriate representative⁵¹ of the descendant group and the ERO shall be contacted. The representative of the descendant group shall be given the opportunity to monitor archeological field investigations of the site and to offer recommendations to the ERO regarding appropriate archeological treatment of the site, of recovered data from the site, and if applicable, any interpretative treatment of the associated archeological site. A copy of the final archeological resources report shall be provided to the representative of the descendant group.

Archeological Testing Program. The archeological consultant shall prepare and submit to the ERO for review and approval an archeological testing plan. The archeological testing program shall be conducted in accordance with the

⁵⁰ The term "archeological site" is intended here to minimally include any archeological deposit, feature, burial, or evidence of burial.

⁵¹ An "appropriate representative" of the descendant group is here defined to mean, in the case of Native Americans, any individual listed in the current Native American Contact List for the City and County of San Francisco maintained by the California Native American Heritage Commission and in the case of the Overseas Chinese, the Chinese Historical Society of America. An appropriate representative of other descendant groups should be determined in consultation with the Department archeologist.

approved testing plan. The archeological testing plan shall identify the property types of the expected archeological resource(s) that potentially could be adversely affected by the proposed project, the testing method to be used, and the locations recommended for testing. The purpose of the archeological testing program will be to determine to the extent possible the presence or absence of archeological resources and to identify and evaluate whether any archeological resource encountered on the site constitutes a historical resource under CEQA.

At the completion of the archeological testing program, the archeological consultant shall submit a written report of the findings to the ERO. If based on the archeological testing program the archeological consultant finds that significant archeological resources may be present, the ERO in consultation with the archeological consultant shall determine whether additional measures are warranted. Additional measures that may be undertaken include additional archeological testing, archeological monitoring, and/or an archeological data recovery program. No archeological data recovery shall be undertaken without the prior approval of the ERO or the San Francisco Planning Department's archeologist. If the ERO determines that a significant archeological resource is present and that the resource could be adversely affected by the proposed project, at the discretion of the project sponsor either:

- (A) The proposed project shall be redesigned to avoid any adverse effect on the significant archeological resource. OR
- (B) A data recovery program shall be implemented, unless the ERO determines that the archeological resource is of greater interpretive than research significance and that interpretive use of the resource is feasible.

Archeological Monitoring Program. If the ERO in consultation with the archeological consultant determines that an archeological monitoring program shall be implemented, the archeological monitoring program shall minimally include the following provisions:

- The archeological consultant, project sponsor, and ERO shall meet and consult on the scope of the archeological monitoring program a reasonably prior to any project-related soil-disturbing activities commencing. The ERO in consultation with the archeological consultant shall determine what project activities shall be archeologically monitored. In most cases, any soil-disturbing activities, such as demolition, foundation removal, excavation, grading, utilities installation, foundation work, driving of piles (e.g., foundation, shoring), and site remediation, shall require archeological monitoring because of the risk these activities pose to potential archeological resources and to their depositional context.
- The archeological consultant shall advise all project contractors to be on the alert for evidence of the presence of the expected resource(s), how to identify the evidence of the expected resource(s) and the appropriate protocol in the event of apparent discovery of an archeological resource.
- The archeological monitor(s) shall be present on the project site according to a schedule agreed upon by the archeological consultant and the ERO until the ERO has, in consultation with the project's archeological consultant, determined that project construction activities could have no effects on significant archeological deposits.
- The archeological monitor shall record and be authorized to collect soil samples and artifactual/ecofactual material as warranted for analysis.
- If an intact archeological deposit is encountered, all soil-disturbing activities in the vicinity of the deposit shall cease. The archeological monitor shall be empowered to temporarily redirect demolition/excavation/pile driving/construction activities and equipment until the deposit is evaluated. If in

the case of pile driving or deep foundation activities (e.g., foundation, shoring), the archeological monitor has cause to believe that the pile driving or deep foundation activities may affect an archeological resource, the pile driving or deep foundation activities shall be terminated until an appropriate evaluation of the resource has been made in consultation with the ERO. The archeological consultant shall immediately notify the ERO of the encountered archeological deposit. The archeological consultant shall make a reasonable effort to assess the identity, integrity, and significance of the encountered archeological deposit, and present the findings of this assessment to the ERO.

Whether or not significant archeological resources are encountered, the archeological consultant shall submit a written report of the findings of the monitoring program to the ERO.

Archeological Data Recovery Program. The archeological data recovery program shall be conducted in accordance with an archeological data recovery plan (ADRP). The archeological consultant, project sponsor, and ERO shall meet and consult on the plan's scope of the ADRP prior to preparation of a draft ADRP. The archeological consultant shall submit a draft ADRP to the ERO. The ADRP shall identify how the proposed data recovery program will preserve the significant information the archeological resource is expected to contain. That is, the ADRP will identify what scientific/historical research questions are applicable to the expected resource, what data classes the resource is expected to possess, and how the expected data classes would address the applicable research questions. Data recovery, in general, should be limited to the portions of the historical property that could be adversely affected by the proposed project. Destructive data recovery methods shall not be applied to portions of the archeological resources if nondestructive methods are practical.

The scope of the ADRP shall include the following elements:

- *Field Methods and Procedures.* Descriptions of proposed field strategies, procedures, and operations.
- *Cataloguing and Laboratory Analysis.* Description of the selected cataloguing system and artifact analysis procedures.
- *Discard and Deaccession Policy.* Description of and rationale for field and post-field discard and deaccession policies.
- *Interpretive Program.* Consideration of an onsite/offsite public interpretive program during the course of the archeological data recovery program.
- *Security Measures.* Recommended security measures to protect the archeological resource from vandalism, looting, and unintentionally damaging activities.
- *Final Report.* Description of proposed report format and distribution of results.
- *Curation.* Description of the procedures and recommendations for the curation of any recovered data having potential research value, identification of appropriate curation facilities, and a summary of the accession policies of the curation facilities.

Human Remains, Associated or Unassociated Funerary Objects. The treatment of human remains and of associated or unassociated funerary objects discovered during any soil-disturbing activity shall comply with applicable state and federal laws, including immediate notification of the Office of the Chief Medical Examiner of the City and County of San Francisco and, in the event of the medical examiner's determination that the human remains are Native American, notification of the Native American Heritage Commission, which shall appoint a Most Likely

Descendant (MLD) (PRC section 5097.98). The ERO shall also be immediately notified upon discovery of human remains. The archeological consultant, project sponsor, ERO, and MLD shall have up to but not beyond 6 days after the discovery to make all reasonable efforts to develop an agreement for the treatment of human remains and associated or unassociated funerary objects with appropriate dignity (CEQA Guidelines, section 15064.5[d]). The agreement should take into consideration the appropriate excavation, removal, recordation, analysis, curation, possession, and final disposition of the human remains and associated or unassociated funerary objects. Nothing in existing state regulations or in this mitigation measure compels the project sponsor and the ERO to accept the recommendations of an MLD. The archeological consultant shall retain possession of any Native American human remains and associated or unassociated burial objects until completion of any scientific analyses of the human remains or objects as specified in the treatment agreement, if such an agreement has been made, or otherwise, as determined by the archeological consultant and the ERO. If no agreement is reached, state regulations shall be followed, including the reburial of the human remains and associated burial objects with appropriate dignity on the property in a location not subject to further subsurface disturbance (PRC section 5097.98).

Final Archeological Resources Report. The archeological consultant shall submit a draft final archeological resources report to the ERO that evaluates the historical significance of any discovered archeological resource and describes the archeological and historical research methods employed in the archeological testing/monitoring/data recovery program(s) undertaken. Information that may put at risk any archeological resource shall be provided in a separate removable insert within the final report.

Once approved by the ERO, copies of the draft final archeological resources report shall be distributed as follows: The California Archaeological Site Survey Northwest Information Center shall receive one copy and the ERO shall receive a copy of the transmittal of the report to the Northwest Information Center. The Environmental Planning Division of the San Francisco Planning Department shall receive one bound, one unbound, and one unlocked, searchable PDF copy on CD of the report, along with copies of any formal site recordation forms (CA DPR 523 series) and/or documentation for nomination to the NRHP/CRHR. In instances of high public interest in or the high interpretive value of the resource, the ERO may require a different final report content, format, and distribution than that presented above.

Impact CR-3: The proposed project could disturb human remains, including those interred outside of formal cemeteries. (Less than Significant with Mitigation)

Section 15064.5 of CEQA assigns special importance to human remains, and specifies procedures to be used when Native American remains are discovered. These procedures are detailed in PRC section 5097.98.

No known human burial locations were identified in the study area during the completion of the archeological investigation.⁵² However, the possibility cannot be discounted that human remains could be inadvertently exposed during ground-disturbing activities in the project site, given the elevated sensitivity for the area to harbor buried prehistoric resources. Therefore, project implementation could result in impacts on previously undiscovered human remains, including those interred outside of formal cemeteries, during ground-disturbing activities.

To reduce this potential impact to a less-than-significant level, the proposed project would comply with **Mitigation Measure M-CR-2, Archeological Testing**, which includes the procedures required for appropriate treatment of human remains. With

⁵² Environmental Science Associates, *Seawall Lots 323 & 324 Project, City and County of San Francisco, Addendum to the Archeological Research Design and Treatment Plan for the Broadway Hotel Project, City and County of San Francisco, California*, 2017.

implementation of **Mitigation Measure M-CR-2**, the proposed project impact related to the potential disturbance of human remains would be *less than significant with mitigation*.

Impact CR-4: The proposed project could cause a substantial adverse change in the significance of a tribal cultural resource as defined in Public Resources Code section 21074. (*Less than Significant with Mitigation*)

CEQA section 21074.2 requires the lead agency to consider the effects of a project on tribal cultural resources. As defined in section 21074, tribal cultural resources are sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe that are listed or determined to be eligible for listing, the national, state, or local register of historical resources. Based on discussions with Native American tribal representatives, in San Francisco, prehistoric archeological resources are presumed to be potential tribal cultural resources. A tribal cultural resource is adversely affected when a project causes a substantial adverse change in the resource's significance.

Pursuant to CEQA section 21080.3.1(d), within 14 days of a determination that an application for a project is complete or a decision by a public agency to undertake a project, the lead agency is required to contact the Native American tribes that are culturally or traditionally affiliated with the geographic area in which the project is located. Notified tribes have 30 days to request consultation with the lead agency to discuss potential impacts on tribal cultural resources and measures for addressing those impacts. On December 8, 2016, the San Francisco Planning Department contacted Native American individuals and organizations for the San Francisco area, providing a description of the project and requesting comments on the identification, presence, and significance of tribal cultural resources in the project vicinity. During the 30-day comment period, no Native American tribal representatives contacted the planning department to request consultation.

Research to establish baseline conditions and Native American outreach efforts completed by the City and the planning department have not revealed the presence of tribal cultural resources as defined in PRC section 21074 in the project site. Baseline research did reveal, however, that the project site exhibits elevated sensitivity for harboring buried (i.e., currently unknown) prehistoric archeological resources associated with the indigenous (Native American) inhabitation of the area. Such prehistoric resources may also be considered tribal cultural resources; under Assembly Bill (AB) 52, this class of cultural resource includes sites, features, and objects with cultural value to a California Native American tribe that are either listed in the CRHR, eligible for listing, or listed in a local register of historical resources as defined in PRC section 5020.1(k).

As described under Impacts CR-1 and CR-2, the potential exists for archeological resources to be present in the project area, and as described in Impact CR-3, the potential exists for human remains to be present. Unknown archeological resources may be encountered during construction that could be identified as tribal cultural resources at the time of discovery or at a later date. Therefore, the potential adverse effects of the proposed project on previously unidentified archeological resources, discussed under Impact CR-1 and CR-2, also represent a potentially significant impact on tribal cultural resources.

Implementation of **Mitigation Measure M-CR-4, Tribal Cultural Resources Interpretive Program**, would reduce potential adverse effects on tribal cultural resources to *less than significant with mitigation*. **Mitigation Measure M-CR-4** would require either preservation in place of the tribal cultural resources, if determined effective and feasible, or an interpretive program regarding the tribal cultural resources developed in consultation with affiliated Native American tribal representatives.

Mitigation Measure M-CR-4: Tribal Cultural Resources Interpretive Program

If the ERO determines that a significant archeological resource is present, and if in consultation with the affiliated Native American tribal representatives, the ERO determines that the resource constitutes a tribal cultural resource and that the resource could be adversely affected by the proposed project, the proposed project shall be redesigned to avoid any adverse effect on the significant tribal cultural resource, if feasible.

If the ERO, in consultation with the affiliated Native American tribal representatives and the project sponsor, determines that preservation in place of the tribal cultural resources is not a sufficient or feasible option, the project sponsor shall implement an interpretive program of the tribal cultural resource in consultation with affiliated tribal representatives. An interpretive plan produced in consultation with the ERO and affiliated tribal representatives, at a minimum, and approved by the ERO would be required to guide the interpretive program. The plan shall identify, as appropriate, proposed locations for installations or displays, the proposed content and materials of those displays or installation, the producers or artists of the displays or installation, and a long-term maintenance program. The interpretive program may include artist installations, preferably by local Native American artists, oral histories with local Native Americans, artifact displays and interpretation, and educational panels or other informational displays.

Impact-C-CR-1: The proposed project, in combination with past, present, and reasonably foreseeable future projects in the vicinity of the project site, could result in potentially significant cumulative impacts related to cultural resources. (*Less than Significant with Mitigation*)

Archeological resources, tribal cultural resources, and human remains are nonrenewable, finite resources. All adverse effects on archeological resources have the potential to erode a dwindling cultural/scientific resource base. Past, present, and reasonably foreseeable future development projects in San Francisco and the Bay Area region would include construction activities that could disturb archeological resources and tribal cultural resources and could contribute to cumulative impacts related to the loss of significant historical, scientific, and cultural information about the history and prehistory of California, the Bay Area, and San Francisco, including the history and prehistory of Native American peoples.

The cumulative impact for cultural resources includes potential future development within a 0.25-mile radius of the proposed project combined with effects of development on lands within the City of San Francisco. As shown in Table 3 and mapped in Figure 17 in Section B.3, cumulative projects have the potential to cumulatively affect cultural resources including historic resources, archeological and paleontological deposits, human remains, and tribal cultural resources. Because impacts resulting from cumulative projects are unknown, for a conservative assumption, cumulative impacts on archeological resources, human remains, and tribal cultural resources are considered to be significant. The proposed project could contribute to cumulative impacts on cultural resources if the proposed project and other projects listed in Table 3 would adversely affect cultural resources in the project vicinity.

Implementation of **Mitigation Measure M-CR-2** and **Mitigation Measure M-CR-4** would ensure that adverse project-specific impacts on unknown archeological resources and tribal cultural resources on the project site would not occur.

As shown in Table 3, the cumulative projects would involve modifications to existing buildings or the renovation/reuse of existing buildings for other uses, with the exception of the 88 Broadway and 735 Davis Street project. The cumulative projects would involve changes to existing buildings that could result in impacts on historic buildings; however, the 88 Broadway and 735 Davis Street project and the 940 Battery project are the only two cumulative projects in the Northeast Waterfront Landmark District. Therefore, the proposed changes to the other cumulative projects would not combine with the proposed project to result in a cumulative impact to the Northeast Waterfront Landmark District. The proposed 88 Broadway and 735 Davis Street project is a surface parking lot. Therefore, development on this lot would not result in the direct loss or change to a historic structure and a determination was made that 88 Broadway and 733 Davis Street would be compatible with the Northeast Waterfront Landmark District.⁵³ As noted in Table 2, the 940 Battery Street project would result in interior and exterior alterations to create a new fourth floor and fifth floor at the roof level, and also proposes a change of use

⁵³ San Francisco Planning Department, *88 Broadway & 735 Davis Street Final Mitigated Negative Declaration Certificate of Appropriateness Case Report*, Case No. 2016-007850COA, April 4, 2018. Approval motion included HPC determination that the proposed project would not destroy or damage any contributing elements or impact character-defining features within the Landmark District.

from warehouse to museum and retail. The impacts on the potentially historic building at 940 Battery Street⁵⁴ and its relationship to the Northeast Waterfront Landmark District were determined to be less than significant in the approved Final Mitigated Negative Declaration. All cumulative projects within the Northeast Waterfront Landmark District are subject to article 10 of the Planning Code, which requires that all new construction receive a Certificate of Appropriateness from the Historic Preservation Commission. As discussed under Impact CR-1, the proposed project's design was found to be compatible with the Northeast Waterfront Landmark District. Therefore, the proposed project would not combine with other cumulative projects to result in significant cumulative impacts on the Northeast Waterfront Landmark District.

Accordingly, with implementation of the mitigation measures listed above, the proposed project would not combine with cumulative development projects to create or considerably contribute to a cumulative impact on archaeological resources, human remains, or tribal cultural resources. Thus, the proposed project would not combine with cumulative projects to result in a cumulative effect on unknown archaeological resources, or tribal cultural resources, and impacts would be reduced to *less than significant with mitigation*.

⁵⁴ San Francisco Planning Department, *940 Battery Street Final Mitigated Negative Declaration*, Case No. 2015-001033ENV, June 20, 2018, amended July 13, 2018. Approval motion included HPC determination that that would not impact the project.

E.4. TRANSPORTATION AND CIRCULATION

Topics:	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact	Not Applicable
4. TRANSPORTATION AND CIRCULATION— Would the project:					
a) Conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Conflict with an applicable congestion management program, including but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location, that results in substantial safety risks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Result in inadequate emergency access?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f) Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The project site is not located within an airport land use plan area or in the vicinity of a private airstrip. Therefore, question 4c above, regarding the potential for changes in air traffic patterns resulting in substantial safety risks, is not applicable to the project. The following discussion is based on the information provided in the transportation impact study prepared for the proposed project in accordance with the San Francisco Planning Department's *Transportation Impact Analysis Guidelines for Environmental Review*.⁵⁵

Project Setting

The 59,750-square-foot project site is currently occupied by a surface parking lot with approximately 250 surface parking spaces and two temporary wooden pay booths. Some of the existing parking spaces are used by the Port for employee parking and by the adjacent KGO-TV and KRON 4 news station for parking for its news vans.

The proposed project would remove six existing parallel on-street parking spaces and three existing on-street motorcycle parking spaces along the project frontage on the north side of Broadway, three existing parallel on-street parking space along the project frontage on the east side of Davis Street, 20 existing perpendicular on-street Port parking spaces along the project frontage on the east side of Davis Street, and six existing perpendicular on-street Port parking spaces along the project frontage on the north side of Vallejo Street.

The project site fronts on two major arterials that pass through the Northeastern Waterfront area: The Embarcadero (running north to south) and Broadway (running east to west). Davis Street abuts the western edge of the project site, but vehicular through-access is restricted between Vallejo Street and The Embarcadero and between Davis and Green streets. The ROW in these areas is occupied primarily by a surface parking lot, which is not designed to allow vehicles to enter or exit at the

⁵⁵ CHS Consulting Group, *Seawall Lot 323 and 324 (Teatro Zinzanni) Project Final Transportation Impact Study*, May 2018.

Embarcadero or Green Street. Similarly, Vallejo Street cuts east to west through the site, but the ROW east of Davis Street is occupied by surface parking and does not provide a connection to The Embarcadero.

The site is well-served by public transit. Primary direct access is provided by Muni's historic streetcar service along The Embarcadero (E Embarcadero and F Market & Wharves), directly in front of the project site. Supplementary local transit service is provided in the area by Muni bus routes including the 10 Townsend, 12 Folsom–Pacific, 30X, and 82X Levi Plaza Express which travel along the Broadway/Pacific Avenue and Battery Street/Sansome Street couplets. Regional transit service is provided primarily by BART, at The Embarcadero Station along Market Street about 0.5 mile south of the project site. Additional local and regional transit services are within extended biking or walking distance of the project site, and can be accessed by transfers to and from the Muni routes listed above. The closest transit stops to the project site are the Broadway & The Embarcadero and Exploratorium/Green & The Embarcadero stations on the E Embarcadero and F Market & Wharves lines, located in the transit-only ROW in the median of The Embarcadero.

Major on-street bikeways in the project vicinity include class II facilities (bicycle lanes)⁵⁶ along The Embarcadero and class III facilities (shared lanes)⁵⁷ with *sharrows* (pavement markings) and signage along Broadway. Class II facilities are also provided for a short stretch of Front Street west of the project site. In addition, a popular shared-use promenade for bicyclists and pedestrians, designated as part of the San Francisco Bay Trail, is provided along the waterfront (east) side of The Embarcadero.

Sidewalks in the project vicinity are generally 10–15 feet wide, but are not continuous along the western edge of the project site along Davis Street, where the sidewalk terminates at mid-block north of Broadway. Some intersections in the vicinity lack marked crosswalks and *Americans with Disabilities Act compliant* curb ramps. Three curb cuts are provided for the site's existing surface parking lot, two along Broadway and Davis Street, and a third vehicular access point near the Davis Street/Vallejo Street intersection.

Vehicle Miles Traveled in San Francisco and the Bay Area

Many factors affect travel behavior. These factors include density, diversity of land uses, design of the transportation network, access to regional destinations, distance to high-quality transit, development scale, demographics, and transportation demand management. Typically, low-density development located far from other land uses, in areas with poor access to nonprivate vehicular travel modes, generates more automobile travel than development in urban areas, which feature higher density, a greater mix of land uses, and travel options other than private vehicles.

Given these travel behavior factors, San Francisco has a lower VMT ratio than the nine-county San Francisco Bay Area region. In addition, some areas of the city have lower VMT ratios than others. For transportation analysis and other planning purposes, San Francisco and the entire Bay Area are disaggregated into smaller geographic study areas, referred to as transportation analysis zones (TAZs). These zones vary in size from single city blocks in the downtown core, to multiple blocks in outer neighborhoods, to even larger zones in historically industrial areas like the Hunters Point Shipyard.

The San Francisco County Transportation Authority uses the San Francisco Chained Activity Model Process to estimate VMT by private automobiles and taxis for different land use types. This process calibrates travel behavior based on observed behavior from the California Household Travel Survey 2010–2012, U.S. Census data regarding automobile ownership rates and county-to-county worker flows, and observed vehicle counts and transit boardings.

⁵⁶ Class III facility (bicycle route): Shared use with pedestrian or motor vehicle traffic.

⁵⁷ Class II facility (bicycle lane): Striped lane for one-way bike travel on a street or highway.

The San Francisco Chained Activity Model Process uses a *synthetic population*, which is a set of individual actors representing the Bay Area's actual population who make simulated travel decisions for a complete day. The San Francisco County Transportation Authority uses a tour-based analysis for office and residential uses, which examines the entire chain of trips over the course of a day, not just trips to and from a project site. For retail uses, the transportation authority uses a trip-based analysis, which counts VMT from individual trips to and from the project site (as opposed to the entire chain of trips). A trip-based approach, as opposed to a tour-based approach, is necessary for retail projects because a tour is likely to consist of trips stopping in multiple locations, and summarizing tour VMT for each location would overestimate VMT.^{58,59}

Methodology for the Vehicle Miles Traveled Impact Analysis

Land use projects may cause substantial additional VMT. The following identifies thresholds of significance and screening criteria used to determine whether a land use project would result in significant impacts under the VMT metric.

Residential and Retail (and Similar) Projects

For residential projects, a project would generate substantial additional VMT if it exceeds the regional household VMT per capita minus 15 percent.⁶⁰ As documented in the OPR *Revised Proposal on Updates to the CEQA Guidelines on Evaluating Transportation Impacts in CEQA* (referred to here as the "proposed transportation impact guidelines"), a 15 percent threshold below existing development is "both reasonably ambitious and generally achievable."⁶¹ For retail projects, the San Francisco Planning Department uses a VMT efficiency metric approach for retail projects: a project would generate substantial additional VMT if it exceeds the regional VMT per retail employee minus 15 percent. This approach is consistent with CEQA section 21099 and the thresholds of significance for other land uses recommended in OPR's proposed transportation impact guidelines. For mixed-use projects, each proposed land use is evaluated independently relative to the significance criteria described previously.

OPR's proposed transportation impact guidelines provide screening criteria to identify types, characteristics, or locations of land use projects that would not exceed these VMT thresholds of significance. OPR recommends that if a project or land use proposed as part of a project meets any of the following screening criteria, VMT impacts are presumed to be less than significant for that land use and a detailed VMT analysis is not required.

The screening criteria applicable to the proposed project and their application in San Francisco are described below.

- ***Map-Based Screening for Residential and Retail Projects.*** OPR recommends mapping areas that exhibit VMT less than the applicable threshold for that land use. Accordingly, the San Francisco County Transportation Authority has developed maps depicting existing VMT levels in San Francisco for residential and retail land uses based on the San Francisco Chained Activity Model Process's 2012 base-year model run. The San Francisco Planning

⁵⁸ Stated another way: A tour-based assessment of VMT at a retail site would consider the VMT for all trips in the tour, for any tour with a stop at the retail site. If a single tour stops at two retail locations, such as a coffee shop on the way to work and a restaurant on the way back home, both retail locations would be allotted the total tour VMT. With a trip-based approach, all retail-related VMT can be apportioned to retail sites without double-counting.

⁵⁹ San Francisco Planning Department, *Executive Summary: Resolution Modifying Transportation Impact Analysis*, Appendix F, Attachment A, March 3, 2016.

⁶⁰ OPR's proposed transportation impact guidelines state that a project would cause substantial additional VMT if it exceeds both the existing City household VMT per capita minus 15 percent and existing regional household VMT per capita minus 15 percent. In San Francisco, the average VMT per capita is lower (8.4) than the regional average (17.2). Therefore, the City average is irrelevant for the purposes of the analysis.

⁶¹ Governor's Office of Planning and Research, *Revised Proposal on Updates to the CEQA Guidelines on Evaluating Transportation Impacts in CEQA*, January 20, 2016, p. III:20, http://www.opr.ca.gov/docs/Revised_VMT_CEQA_Guidelines_Proposal_January_20_2016.pdf.

Department uses these maps and associated data to determine whether a proposed project is located in an area of the city that is below the VMT threshold.

- *Proximity to Transit Stations.* OPR states that residential and retail projects, and projects that are a mix of these uses, that are proposed within one-half mile of an existing *major transit stop* (as defined by CEQA section 21064.3) or an existing stop along a *high-quality transit corridor* (as defined by CEQA section 21155) would not result in a substantial increase in VMT. However, this presumption would not apply if the project would have a floor area ratio of less than 0.75; would include more parking for use by residents, customers, or employees of the project than required or allowed, without a conditional use; or is inconsistent with the applicable sustainable communities strategy.⁶²

OPR's proposed transportation impact guidelines do not provide screening criteria or thresholds of significance for other types of land uses, other than for those projects that meet the definition of a *small project* (the proposed project does not meet the small project criterion). Therefore, the San Francisco Planning Department provides additional screening criteria and thresholds of significance to determine whether land uses similar in function to residential and retail would generate a substantial increase in VMT. These screening criteria and thresholds of significance are consistent with CEQA section 21099 and the screening criteria recommended in OPR's proposed transportation impact guidelines.

The planning department applies the Map-Based Screening and Proximity to Transit Station screening criteria to the following land use types:

- *Tourist Hotels, Student Housing, Single-Room Occupancy Hotels, and Group Housing.* Trips associated with these land uses typically function similarly to residential. Therefore, these land uses are treated as residential for screening and analysis.
- *Childcare; K-12 Schools; Medical; Postsecondary Institutional (nonstudent housing); and Production, Distribution, and Repair.* Trips associated with these land uses typically function similarly to office. Although some visitor/customer trips may be associated with some of these uses (e.g., childcare and school drop-off, patient visits), those trips are often side trips within larger tours. For example, the visitor/customer trips are influenced by the origin (e.g., home) and/or ultimate destination (e.g., work) of those tours. Therefore, these land uses are treated as office for screening and analysis.
- *Grocery Stores, Local-Serving Entertainment Venues, Religious Institutions, Parks, and Athletic Clubs.* Trips associated with these land uses typically function similar to retail. Therefore, these types of land uses are treated as retail for screening and analysis.
- *Theater (Entertainment).* For this use, the regional average daily VMT per capita threshold is assumed to be 17.1, representing an average of the VMT regional daily thresholds for retail, office, and household uses that are used by San Francisco. To determine the VMT associated with the proposed project's theater component in TAZ 830, the regional average daily visitor-related VMT was calculated using assumptions about origin-destination trip distribution percentages from the 1111 California Street Masonic Center Renovation Project Draft Environmental Impact Report. The Masonic Center represents a reasonably comparable project in terms of entertainment draw for both patrons and employees.

⁶² A project is considered to be inconsistent with the sustainable communities strategy if development is located outside of areas contemplated for development in the sustainable communities strategy.

2040 Cumulative Conditions

San Francisco 2040 cumulative conditions were projected using a modeling run of the San Francisco Chained Activity Model Process, using the same methodology as outlined for existing conditions, but including residential and job growth estimates and reasonably foreseeable transportation investments through 2040.

Average Daily Vehicle Miles Traveled Summary

Table 4 summarizes average daily VMT per capita or employee for residential, retail, and entertainment uses for the region (Bay Area) and the TAZ containing the project site (TAZ 830). Under existing conditions, regional average daily VMT is 17.2 (per capita) for residential uses, 14.9 (per employee) for retail uses, and 17.1 (per employee) for theater uses. Under 2040 cumulative conditions, regional average daily VMT is 16.1 for residential uses, 14.6 for retail uses, and 15.4 for theater uses.

TABLE 4 DAILY VEHICLE MILES TRAVELED

Proxy Land Use	Project Land Use	Existing Conditions			2040 Cumulative Conditions		
		Bay Area Regional Average	Bay Area Regional Average minus 15%	TAZ 830	Bay Area Regional Average	Bay Area Regional Average minus 15%	TAZ 830
Residential (households)	Hotel	17.2	14.6	2.6	16.1	13.7	2.2
Retail (employment)	Retail/restaurant	14.9	12.6	11.2	14.6	12.4	10.1
Theater	Theater	17.1	14.5	5.6	15.4	13.1	5.6

Sources: San Francisco Transportation Information Map, accessed online July 2016; CHS Consulting Group, *Seawall Lot 323 and 324 (Teatro Zinzanni) Project Final Transportation Impact Study*, May 2018, Table 13 and Table 16.

Notes:

For the hotel use, the household (residential) land use was used as a proxy land use, per the San Francisco Planning Department's Resolution Modifying Transportation Impact Analysis (March 3, 2016 staff report).

For the theater use, the Transportation Analysis Zone (TAZ) 830 vehicle miles traveled (VMT) were calculated using origin/destination trip generation data from the 1111 California Street Masonic Center Renovation Project Draft Environmental Impact Report (Case No. 2011.0471E, April 17, 2013). The hotel use regional average was calculated as a composite of the residential, office, and retail VMT per capita for TAZ 830.

Employment (retail) is the land use associated with the proposed project's retail and restaurant components.

Travel Demand

Travel demand for the proposed project was estimated according to the methodology and guidance provided in the San Francisco Planning Department's *Transportation Impact Analysis Guidelines for Environmental Review* (the *SF Guidelines*).⁶³ Additional information from other sources, including *Trip Generation* (published by the Institute of Transportation Engineers) and the American Community Survey (published by the U.S. Census Bureau), was incorporated into the travel demand analysis, in accordance with guidance from the *SF Guidelines* and standard practice for estimating travel demand for land use developments in San Francisco.

Trip generation for the proposed project was calculated based on the proposed number of hotel rooms, the proposed number of theater seats, and the gross square footage of proposed restaurant and retail uses. Existing vehicle trips entering and exiting the project site were not collected for purposes of the study. As stated, the project site is currently actively occupied by a 250-space off-street parking lot.

Table 5 presents the person-trip generation for the proposed project. Person-trips for the retail, eating/drinking, and hotel components were estimated based on the trip generation rates obtained from the *SF Guidelines*. The daily person-trip

⁶³ San Francisco Planning Department, *Transportation Impact Analysis Guidelines for Environmental Review*, 2002.

generation rate for the “quality sit-down” eating/drinking use is 200 trips per 1,000 gsf, with 13.5 percent of daily trips assumed to occur during the p.m. peak hour. The daily person-trip generation rate for the retail use is 150 trips per 1,000 gsf, with 9 percent of daily trips assumed to occur during the p.m. peak hour. The daily person-trip generation rate for the hotel use is typically seven person-trips per room, with 10 percent of the daily trips assumed to occur during the p.m. peak hour.

The person-trips for the theater component were estimated on information provided by the project sponsor in terms of the theater’s proposed seating capacity (285 seats), the hours of operation (Monday through Sunday from 8 a.m. to midnight, with shows scheduled Wednesday through Saturday from 6:30 p.m. to midnight, Sunday midday from 11:30 a.m. to 3 p.m., and Sunday evening from 5:30 p.m. to 10 p.m.), and the anticipated number of daily employees specifically working at the theater (62 employees). Each show at the theater was assumed to operate at full seating capacity, with all 62 theater staff working onsite during the show. One daily inbound trip and one daily outbound person-trip were assumed for each theater patron and employee for a weekday show, resulting in 694 daily person-trips (124 trips for the 62 employees, and 570 trips for the 285 show attendees). The resulting daily person-trip generation rate for the theater component was 2.44 trips per seat, assuming 694 daily person-trips for the 285 seats. The project sponsor anticipates 40 percent of theater employees (24 employees) and 50 percent of show patrons (143 attendees) to arrive during the p.m. peak hour (assumed as 5–6 p.m.), with none departing that same hour given the 7 p.m. show start time. The remainder of inbound theater employees (60 percent) and show patrons (50 percent) are assumed to arrive between 6 and 7 p.m., also with no outbound trips given the 7 p.m. start time. The resulting 167 person-trips during the p.m. peak hour represent 24 percent of the 694 daily person-trips. All outbound trips for the daily show would occur after the show concludes at midnight. As a result, the proposed project is expected to generate approximately 3,213 total daily person-trips and 447 p.m. peak-hour person-trips (264 inbound and 183 outbound).

TABLE 5 PROJECT PERSON-TRIPS

Land Use ¹	Size	Daily Trip Rate ²	Daily Person-Trips	P.M. Peak-Hour Percentage	P.M. Peak-Hour Person-Trips		
					Total	In	Out
Restaurant	4,420 gsf	200/1,000 gsf	884	13.5%	119	57	62
Theater	285 seats	2.44/seat ³	694	24.0%	167	167	0
Retail	1,950 gsf	150/1,000 gsf	292	9.0%	26	13	13
Hotel	192 rooms	7/room	1,344	10.0%	135	27	108
Total Person-Trips			3,214	–	447	264	183

Source: *Transportation Impact Analysis Guidelines for Environmental Review*, October 2002, Appendix C – Tables C-1 and C-2; CHS Consulting Group, *Seawall Lot 323 and 324 (Teatro Zinzanni) Project Final Transportation Impact Study*, May 2018. Table 8. Notes:

gsf = gross square feet

¹ Restaurant use corresponds with the *Transportation Impact Analysis Guidelines for Environmental Review (SF Guidelines)* “eating/drinking—quality sit-down” use. The theater use is based on sponsor staffing and visitor estimates. The retail use corresponds with the *SF Guidelines* “general retail” use. The hotel use corresponds with the *SF Guidelines* “hotel/motel” use.

² Daily and p.m. peak-hour person-trips in the table may differ slightly from calculations in Appendix F because of rounding.

³ Daily person-trip rate for the theater use was determined by dividing the number of daily person-trips (694) for the theater use by the number of seats (285) in the entertainment venue.

The person-trips generated by the proposed project were assigned to different transportation modes to determine the number of auto, transit, walk, and other trips to and from the project site. The modal split rate for the retail, theater, hotel, and restaurant uses was based on the information contained in the *SF Guidelines* for Superdistrict 1. Table 6 summarizes the mode split results. The proposed project would generate approximately 1,160 auto person-trips, 885 transit trips, 955 walk trips, and 213 other trips (e.g., bike) on a typical day. During the p.m. peak hour, the proposed project would generate 163 auto person-trips, 140 transit trips, 116 walk trips, and 26 other trips.

TABLE 6 PROJECT PERSON-TRIPS GENERATION BY MODE

Land Use	Daily					P.M. Peak Hour				
	Auto	Transit	Walk	Other	Total	Auto	Transit	Walk	Other	Total
Retail	105	50	102	36	292	9	4	9	3	26
Theater	252	211	191	40	694	60	49	47	10	167
Hotel	486	388	389	81	1,344	51	56	23	5	135
Restaurant	317	237	274	56	884	43	31	37	8	119
Total	1,160	885	955	213	3,213	163	140	116	26	447

Sources: *Transportation Impact Analysis Guidelines for Environmental Review*, October 2002, Appendix E – Tables E3, E10, and E11; CHS Consulting Group, *Seawall Lot 323 and 324 (Teatro Zinzanni) Project Final Transportation Impact Study*, May 2018. Table 9.

Note: Daily and p.m. peak-hour person-trips in table may differ slightly from calculations in Appendix F because of rounding.

Table 7 presents the estimated daily and p.m. peak-hour vehicle trips for the proposed project. Vehicle trips were estimated by dividing the number of auto person-trips by the vehicle occupancy rates. The vehicle occupancy rates for the retail, theater, hotel, and eating/drinking components were based on the information contained in the *SF Guidelines* for Superdistrict 1. As shown in Table 7, the proposed project would generate approximately 634 daily vehicle trips and 157 p.m. peak-hour vehicle trips (93 inbound to the site and 64 outbound from the site).

TABLE 7 PROJECT VEHICLE TRIP GENERATION

Land Use	Size	Vehicle Occupancy Rate ¹	Daily Vehicle Trips	P.M. Peak Hour		
				Total	In	Out
Retail	1,950 gsf	2.07	51	4	2	2
Theater	285 seats	2.15	117	60	60	0
Hotel	192 rooms	2.21	220	50	10	40
Restaurant	4,420 gsf	1.29	246	43	21	22
Total			634	157	93	64

Sources: *Transportation Impact Analysis Guidelines for Environmental Review*, October 2002, Appendix E – Tables E3, E10, and E11; CHS Consulting Group, *Seawall Lot 323 and 324 (Teatro Zinzanni) Project Final Transportation Impact Study*, May 2018. Table 10.

Notes:

gsf = gross square feet

¹ This rate is calculated by dividing daily person-trips for each land use by the daily vehicle trips for each land use.

² Daily and p.m. peak-hour vehicle trips presented in table may slightly differ from calculations in Appendix F because of rounding.

Trip Distribution

Table 8 shows the daily and p.m. peak-hour trip distribution patterns for the proposed project. Trip distribution patterns for theater, retail, hotel, and restaurant uses were based on the 2002 *SF Guidelines* for the Superdistrict 1. These trip distribution patterns were used as the basis for assigning the proposed project trips to the local streets in the study area.

TABLE 8 PROJECT TRIP DISTRIBUTION PATTERNS

Area	Retail		Theater		Hotel		Restaurant	
	Work	Non-work	Work	Non-work	Work	Non-work	Work	Non-work
Superdistrict 1	12.8%	19.0%	12.8%	22.0%	12.8%	22.0%	12.8%	22.0%
Superdistrict 2	14.4%	7.0%	14.4%	14.0%	14.4%	14.0%	14.4%	14.0%
Superdistrict 3	17.0%	8.0%	17.0%	13.0%	17.0%	13.0%	17.0%	13.0%
Superdistrict 4	11.2%	3.0%	11.2%	7.0%	11.2%	7.0%	11.2%	7.0%
East Bay	22.4%	11.0%	22.4%	11.0%	22.4%	11.0%	22.4%	11.0%
North Bay	6.1%	5.0%	6.1%	5.0%	6.1%	5.0%	6.1%	5.0%
South Bay	14.3%	8.0%	14.3%	7.0%	14.3%	7.0%	14.3%	7.0%
Other	1.8%	39.0%	1.8%	21.0%	1.8%	21.0%	1.8%	21.0%
Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Source: *Transportation Impact Analysis Guidelines for Environmental Review*, October 2002, Appendix E – Tables E3, E10, and E11; CHS Consulting Group, *Seawall Lot 323 and 324 (Teatro Zinzanni) Project Final Transportation Impact Study*, May 2018, Table 11.

Impact TR-1: The proposed project would not cause substantial additional VMT or substantially induce automobile travel. (*Less than Significant*)

Vehicle Miles Traveled Analysis – Tourist Hotel

As discussed above in Table 4, Daily Vehicle Miles Traveled, existing average daily VMT per capita for residential uses in TAZ 830 is 2.6, which is 85 percent below the existing regional average daily VMT per capita of 17.2. Because the project site is located in an area where existing VMT is less than the regional average minus 15 percent, the proposed project's hotel use would not result in substantial additional VMT. This impact would be *less than significant*. In addition, the project site meets the Proximity to Transit Stations screening criterion, which indicates that the proposed project's hotel uses would not cause substantial additional VMT.⁶⁴

Vehicle Miles Traveled Analysis – Retail

As discussed above in Table 4, Daily Vehicle Miles Traveled, existing average daily VMT per employee for retail uses in TAZ 830 is 11.2, which is 25 percent below the existing regional average daily VMT per capita of 14.9. Because the project site is located in an area where existing VMT is less than the regional average minus 15 percent, the proposed project's retail/restaurant uses would not result in substantial additional VMT. This impact would be *less than significant*. In addition, the project site meets the Proximity to Transit Stations screening criterion, which indicates that the proposed project's retail/restaurant uses would not cause substantial additional VMT.⁶⁵

Vehicle Miles Traveled Analysis – Theater

As discussed above in Table 4, Daily Vehicle Miles Traveled, existing average daily VMT per employee for theater uses in TAZ 830 is 5.6, which is 67 percent below the existing regional average daily VMT per capita of 17.1. Because the project site is located in an area where existing VMT is less than the regional average minus 15 percent, the proposed project's theater use would not result in substantial additional VMT. This impact would be *less than significant*. In addition, the

⁶⁴ San Francisco Planning Department, *Eligibility Checklist: CEQA Section 21099 – Modernization of Transportation Analysis*; *Seawall Lot 323 & 324*, May 4, 2018.

⁶⁵ Ibid.

project site meets the Proximity to Transit Stations screening criterion, which indicates that the proposed project's theater use would not cause substantial additional VMT.⁶⁶

Induced Automobile Travel Analysis

The proposed project is not a transportation project, but would include features that would alter the transportation network, including provision of bicycle parking, establishment of commercial and passenger loading zones, removal of on-street parking and demolition and construction of curb cuts. These features fit within the general types of projects that would not substantially induce automobile travel. As such, an analysis of induced automobile travel is not required. In addition, the proposed project would also remove a surface lot with approximately 250 parking spaces for automobiles and would not include any new or replacement spaces. Although up to 50 parking spaces would be leased at an offsite facility, primarily the Impark lot at 847 Front Street, to accommodate valet parking for the hotel guests and patrons, the project would still result in a net reduction in off-street parking. Parking for the entertainment venue would also occur at off-site, self-parking locations in close proximity to the project site including 847 Front Street, Pier 19, 1000 Front Street and One Maritime Plaza. Entertainment Venue patrons would also be allowed to access the hotel's valet services for a separately charged fee. Therefore, this impact would be *less than significant*.

Although the project would not result in substantial additional VMT or substantially induce automobile travel, transportation demand management measures could be implemented to further decrease less-than-significant impacts with regard to automobile traffic in the vicinity of the project site. The project sponsor should implement a TDM program that seeks to minimize the number of single-occupancy vehicle trips generated by the proposed project. The TDM program targets a reduction in single-occupancy vehicle trips by encouraging use of other modes of transportation, including walking, bicycling, transit, car-share, carpooling, and/or other modes, and would be in effect for the lifetime of the project.

The project sponsor has agreed to implement the following TDM measures:

- **PKG-4: Parking Supply Options (Option E).** Provide less than or equal to 60 percent and greater than 50 percent of the neighborhood nonresidential parking rate.
- **ACTIVE-1: Improve Walking Conditions (Option A).** Complete streetscape improvements consistent with the Better Streets Plan and any local streetscape plan so that the public right-of-way is safe, accessible, convenient, and attractive to persons walking by providing bulb-outs along the Davis Street and Broadway sidewalks to shorten crosswalk distances and reduce vehicle speed.
- **ACTIVE-2: Bicycle Parking (Option A).** Provide class I and class II bicycle parking spaces for hotel, retail, and theater uses as required by the planning code.
- **ACTIVE-5A: Bicycle Repair Station.** Provide onsite tools and space for bicycle repair.
- **DELIVERY-1: Delivery Supportive Amenities.** Facilitate delivery services by providing a staffed reception area for receipt of deliveries, and offering one of the following: clothes lockers for delivery services, or temporary storage for package deliveries, laundry deliveries, and other deliveries.

⁶⁶ San Francisco Planning Department, *Eligibility Checklist: CEQA Section 21099 – Modernization of Transportation Analysis; Seawall Lot 323 & 324*, May 4, 2018.

- **INFO-2: Real-Time Transportation Information Displays.** Provide real-time transportation information on displays in prominent locations on the project site to highlight sustainable transportation options and support informed trip-making.

Impact TR-2: The proposed project would not conflict with an applicable plan, ordinance, or policy establishing measures of effectiveness for the performance of the circulation system, nor would it conflict with an applicable congestion management program. (*Less than Significant*)

Vehicle Circulation

The proposed project would generate new vehicle-trips on the surrounding roadway network, but would also remove existing automobile-oriented uses (surface parking) that already generate substantial amounts of vehicle traffic and replace them with hotel, theater, retail and restaurant uses with no accessory off-street parking. Parking would be by valet only. The surface parking lot at the project site accommodates approximately 250 parking spaces, most of which are used by commuters traveling to and from workplaces in the area during the weekday a.m. and p.m. peak periods (7–9 a.m. and 4–6 p.m.). Some of the existing parking spaces are used by the Port for employee parking and used by the adjacent KGO-TV and KRON 4 news station for parking for its news vans. Three curb cuts along the project frontage provide ingress to and egress from the property: one curb cut on Broadway (28 feet long) and two curb cuts on Davis Street (28 feet and 20 feet long, respectively).

The Embarcadero is a major north-south roadway that connects San Francisco's Fisherman's Wharf area with the South Beach neighborhood. The Embarcadero roadway operates two-way, with generally two travel lanes in each direction. The Embarcadero receives a large volume of traffic, but the proposed project does not propose any sidewalk or loading changes on the project site segment and would not change circulation. Broadway is a major east-west street that connects The Embarcadero area with the Pacific Heights neighborhood. Broadway operates two-way, with generally two travel lanes in each direction between The Embarcadero and Fillmore Street. Hotel patron vehicles would access the passenger-loading bay from the westbound direction on Broadway. The passenger loading bay would be 80 feet long and would be able to store up to four vehicles entering and exiting the loading bay at any given time. Because there are two traffic lanes in the westbound direction along Broadway, there is adequate capacity to allow for vehicles to bypass hotel-related vehicles turning into the loading bay. As a result, minor vehicle queues would not occur along Broadway and would not exacerbate traffic circulation conditions during peak commute periods.

The other street segments fronting the project site, including Vallejo Street, Davis Street, and Green Street, function primarily as low-volume collector roadways providing local access to adjacent or nearby properties. Given these considerations, the proposed project's impact on local vehicle circulation would be *less than significant*.

Passenger Loading Impacts

Passenger loading for the hotel would take place in an 80-foot passenger loading zone proposed along Broadway, capable of accommodating up to four vehicles at any given time as mentioned above. The hotel use would generate 50 vehicle trips (nine inbound vehicle-trips and 36 outbound vehicle-trips) at the passenger loading zone during the p.m. peak hour, resulting in a peak passenger loading demand of up to two vehicles per minute. The proposed zone would have capacity to accommodate the anticipated peak passenger loading demand. The valet operation would primarily drop-off and retrieve vehicles to and from the Impark lot at 847 Front Street, approximately one block west of the project site, and would employ the necessary staffing level needed to maintain vehicular access to the zone at all times. No designated passenger loading activities would occur along The Embarcadero or Davis Street. In addition, there would be a secondary pedestrian entrance for the theater along The Embarcadero.

Although the project's impacts on traffic and bicycle circulation as a result of passenger loading activities would be *less than significant*, the following improvement measures could be implemented to further decrease these less-than-significant impacts.

Improvement Measure I-TR-2a: Monitoring and Abatement of Queues

As an improvement measure to reduce the potential for queuing of vehicles accessing the project site, it will be the responsibility of the project sponsor or subsequent property owner to ensure that recurring vehicle queues do not occur adjacent to the site (i.e., along Davis Street and Broadway loading areas or other surrounding streets).

It will be the responsibility of the owner/operator of the building to ensure that recurring vehicle queues do not occur on the public ROW. A vehicle queue is defined as one or more vehicles (destined to the loading zones on Davis Street or Broadway) blocking any portion of any public street, alley, or sidewalk for a consecutive period of 3 minutes or longer on a daily or weekly basis.

If a recurring queue occurs, the owner/operator of the building will employ abatement methods as needed to abate the queue. Appropriate abatement methods will vary depending on the characteristics and causes of the recurring queue, as well as the characteristics of the loading zone, the street(s) adjacent to the zone, and the associated land uses (if applicable).

Suggested abatement methods include but are not limited to the following: redesign of loading zones to improve vehicle circulation; use of additional offsite parking facilities or shared parking with nearby uses; and travel demand management strategies such as additional bicycle parking, customer shuttles, and delivery services.

If the planning director, or his or her designee, suspects that a recurring queue is present, the San Francisco Planning Department will notify the property owner in writing. Upon request, the owner/operator will hire a qualified transportation consultant to evaluate the conditions at the site for no less than 7 days. The consultant will prepare a monitoring report to be submitted to the planning department for review. If the planning department determines that a recurring queue does exist, the owner/operator will have 90 days from the date of the written determination to abate the queue.

Improvement Measure I-TR-2b: Active Valet Parking Management

Queues for arriving hotel patrons at the curbside valet passenger loading zone on Broadway will be managed by professionally trained valet staff to ensure that valet vehicle queues are confined within the valet loading zone and there is no vehicle spillover into the travel lanes on westbound Broadway back to The Embarcadero. The proposed project will provide adequate valet staffing to ensure the most efficient processing of arriving and departing hotel patron vehicles, which will be parked in an offsite garage facility under a covenant agreement with the project sponsor. Guests returning to the project curbside for their vehicles will be retrieved by valet staff and returned to the proposed 80-foot-long passenger loading zone along the project frontage on Broadway. Although no spillover queues are anticipated, if any recurring queues occur, the owner/operator of the project building will employ abatement methods as needed to abate such queues. Appropriate abatement methods will vary depending on the characteristics and causes of recurring queues, as well as the characteristics of the loading zone, the street(s) adjacent to the zone, and the associated land uses (if applicable), and are detailed in **Improvement Measure I-TR-2a, Monitoring and Abatement of Queues**.

Freight Loading Impacts

The proposed project would provide two off-street freight loading spaces in a loading dock along Davis Street in compliance with the requirements of San Francisco Planning Code section 152. The project would also establish a commercial loading zone (approximately 142½ feet long) along the Davis Street frontage of the project site. The proposed project would generate a demand for less than one freight/delivery loading space during both the average hour and peak hour of loading activities. Therefore, the proposed project's freight loading accommodations would satisfy the estimated loading demand.

Based on a turning template analysis that included fire truck turning movements⁶⁷, SU-30 trucks would be able to negotiate movements into and out of the dock along Davis Street. Freight loading activities, including deliveries and trash collection, would not result in adverse effects on traffic, transit, bicycle, or pedestrian circulation.

Although the project's impacts related to freight loading activities would be *less than significant*, the following improvement measures could be implemented to further decrease these less-than-significant impacts.

Improvement Measure I-TR-2c: Active Loading Dock Driveway Controls

As an improvement measure to reduce and/or eliminate any potential conflicts between freight delivery vehicles entering and exiting the project driveway to and from the off-street freight loading spaces and conflicts between moving vehicles and other users of the roadway (e.g., cyclists, pedestrians in sidewalk areas), it will be the responsibility of the project sponsor and/or property owner to install active management controls at the off-street freight loading space driveway and within the off-street freight loading area.

It is recommended that sensors be installed at the gated loading dock ramp and at the driveway entrance/exit lane at Davis Street to detect any outbound vehicles and pedestrians within the driveway and ramp area. Upon exiting the loading dock, vehicles traveling along the garage ramp and approaching the gate would then trigger a sensor that would activate an electronic sign, signal, or audible devices at the driveway entrance to notify any vehicles, pedestrians, or bicyclists of the exiting vehicle.

Additional traffic calming and safety treatments will be installed within the loading dock area. Specific signage will be installed to notify drivers exiting the parking driveway to slow, stop, and yield to any pedestrians walking along the sidewalk on Davis Street (e.g., "Caution: Pedestrian Crossings," "Watch for Pedestrians," "Exit Slowly," "STOP"). Diagonal mirrors will also be installed so that motorists exiting the loading dock area and pedestrians on the sidewalk can see each other. The project sponsor will also install rumble strips or similar devices to maintain slow speeds for vehicles exiting the loading dock.

Improvement Measure I-TR-2d: Coordination of Large Deliveries and Garbage Pickup

Trucks exceeding 40 feet in length will be scheduled and coordinated through hotel management and restaurant tenants, and directed to use the proposed curbside 142½-foot-long commercial loading zone along the Davis Street frontage of the project site.

To reduce the potential for double-parking (or other illegal parking activity) by delivery or trash vehicles in the travel lanes along the Davis Street or Broadway frontages of the project site (in the event that the existing or proposed on-street loading spaces are occupied), appropriate delivery and trash pickup procedures will be enforced

⁶⁷ KCA Engineers, Fire Truck Turning Movements Drawings, September 2017.

to avoid any blockages of Davis Street or Broadway over an extended period of time and reduce any potential conflicts between deliveries and pedestrians walking along Davis Street or Broadway.

The building manager will notify the hotel, restaurant, entertainment venue, and retail tenants of garbage pickup times and locations so that they are efficiently coordinated and result in minimum conflict with other loading activity and traffic circulation in the immediate vicinity of the project.

Construction Impacts

Project construction would take up to approximately 22 months. Construction hours would typically be from 7 a.m. to 5 p.m. on weekdays, with occasional work on Saturdays. Normal off-peak activities including equipment deliveries and other unique tasks would occasionally take place outside of standard work hours.

Construction activities would be staged primarily at the northern portion of the project site and would also require some temporary sidewalk closures, primarily along the project frontage along Vallejo Street and Davis Street, but also occasionally along Broadway (and possibly The Embarcadero) for various durations during the entire construction period. The proposed project would develop and implement a construction management plan to anticipate and minimize transportation-related impacts of various construction activities associated with the proposed project. The plan would ensure that overall circulation around the project site is maintained to the extent possible, with particular focus on ensuring transit, pedestrian, and bicycle access and connectivity.

The plan would supplement and expand, rather than modifying or superseding, any manual, regulations, or provisions set forth by SFMTA, SFPW, or other City departments and agencies, and the California Department of Transportation. The construction contractor would be required to meet SFMTA's *Regulations for Working in San Francisco Streets* (the "Blue Book"), and would be required to meet with SFMTA and other responsible City agencies to determine feasible traffic management measures to reduce traffic congestion during construction of this project and other nearby projects, as appropriate.

Construction worker parking would be at an offsite location yet to be determined. Some construction equipment and related machinery may also need to occupy sidewalk space and parking lanes on a temporary and periodic basis, depending on the construction phase. Temporary, periodic sidewalk closures may be necessary, requiring pedestrian diversion into parking lanes. It is anticipated that no travel lanes would need to be closed during construction.

In general, lane and sidewalk closures are subject to review and approval by the Transportation Advisory Staff Committee, an interdepartmental committee that includes the San Francisco Police Department, SFPW, the San Francisco Planning Department, SFFD, and SFMTA. The construction management plan reviewed by the committee would address issues of circulation (for traffic, bicycles, and pedestrians), safety, parking, and other project construction in the area. The project would be required to consult with SFMTA before construction to review potential effects on nearby transit operations.

Throughout the construction period, construction-related trucks would flow into and out of the site. Construction truck traffic would temporarily lessen the capacities of local streets because of the slower movement and larger turning radii of trucks, which may affect traffic operations. It is anticipated that a majority of the construction-related truck traffic would use Interstate 80, U.S. Highway 101, and Interstate 280 to access the project site. In general, trucks and construction workers would use The Embarcadero, Howard Street, Battery Street, First Street, Fremont Street, Front Street, Clay Street, Davis Street, Broadway, and Drumm Street to travel between the project site and these freeways.

On average, 125 construction workers per day are anticipated to be present at the project site, depending on the construction phase. Construction workers who drive to the site would be able to park in nearby public parking facilities in the vicinity of the project site or in available on-street parking spaces. To reduce worker-vehicle demand, construction workers would be

encouraged to carpool or take public transportation. It is anticipated that adding worker-related vehicle- or transit-trips would not substantially affect transportation conditions, because any impacts on local intersections or the transit network would be similar to, or less than, those associated with the proposed project.

Overall, construction-related impacts would be temporary and limited in duration, and would be *less than significant*. However, the following improvement measures could be implemented to further decrease these less-than-significant impacts.

Improvement Measure I-TR-2e: Construction Truck Deliveries during Off-Peak Periods

Any construction traffic occurring between 7 a.m. and 9 a.m. or between 3:30 p.m. and 6 p.m. on weekdays would coincide with weekday commute-period traffic and could temporarily disrupt traffic and transit flow, although it would not be considered a significant impact. Limiting truck movements to the hours between 9 a.m. and 3:30 p.m. on weekdays (or other times, if approved by SFMTA) would further minimize disruptions to circulation along adjacent streets during the weekday a.m. and p.m. peak periods.

As required, the project sponsor and construction contractor(s) will meet with SFMTA, SFFD, and the San Francisco Planning Department to determine feasible measures to reduce traffic congestion, including potential transit disruption and pedestrian circulation impacts, during construction of the project. To minimize cumulative traffic impacts due to project construction, the project sponsor will coordinate with construction contractors for any concurrent nearby projects that are planned for construction or which later become known, including the proposed mixed-use development at 88 Broadway and 753 Davis Street.

Improvement Measure I-TR-2f: Construction Management Plan

In addition to items required in the construction management plan, the project sponsor will include the following:

- *Carpool and Transit, and Other Access for Construction Workers.* As an improvement measure to minimize parking demand and vehicle-trips associated with construction workers, the construction contractor(s) will include methods to encourage carpooling, transit and bicycle use, or on-foot travel to and from the project site by construction workers in the construction management plan contracts.
- *Project Construction Updates.* As an improvement measure to minimize construction impacts on nearby businesses, the project sponsor will provide regularly updated information (typically in the form of a website, news articles, and onsite postings) regarding project construction and schedule, as well as contact information for specific construction inquiries or concerns.

Impact TR-3: The proposed project would not result in substantially increased hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses. (*Less than Significant*)

The proposed project would not include any design features that would substantially increase traffic hazards (e.g., a new sharp curve or dangerous intersections), and would not include any incompatible uses, as discussed in Section E.1, Land Use and Planning. Therefore, the proposed project would not cause adverse impacts associated with traffic hazards. In addition, the proposed project does not provide onsite parking facilities and would eliminate all existing curb cuts.

As discussed above under Impact TR-2, peak passenger loading demand of up to two vehicles per minute could occur with the proposed project. The proposed loading zone would have capacity to accommodate the anticipated peak passenger loading demand, and the valet operation would implement valet service rate measures as needed to maintain vehicular access to the zone at all times. This would ensure that the loading zones during peak traffic hours would not interfere with bicycle, pedestrian, or vehicular movements around the site.

Although the proposed project is not expected to result in substantial loading and impacts would be less than significant, **Improvement Measure I-TR-2a, Monitoring and Abatement of Queues, and Improvement Measure I-TR-2b, Active Valet Parking Management**, has been included to further decrease the severity of these less-than-significant impacts with regard to queuing and parking management. Based on the above, the proposed project would have a *less-than-significant* impact related to transportation hazards due to a design feature or resulting from incompatible uses.

Impact TR-4: The proposed project would not result in inadequate emergency access. (*Less than Significant*)

Although the proposed project would generate additional traffic in the surrounding area, such an increase in vehicles would not impede or hinder the movement of emergency vehicles, including routes from nearby fire stations. The street network—including Davis Street, Vallejo Street, and Broadway, all located immediately adjacent to the site—currently provides emergency-vehicle access to the project site, and would continue to do so with the project.

The existing SFFD easement along the northwesterly edge of the project site would be abandoned and replaced with an enhanced easement from Vallejo Street through the public park to The Embarcadero, a modification that has been reviewed by SFFD and the Port's fire marshal⁶⁸. Emergency vehicle access would be provided along a proposed vehicle and pedestrian pathway through the project's public plaza area on the northern side of the project site. The emergency access lane would be accessed from new 15-foot-long curb cuts at the east end (along The Embarcadero) and west end (at the northeastern corner of the Davis Street/Vallejo Street intersection), and general vehicle access would be restricted through use of removable/retractable bollards. A turning template analysis that included fire truck turning movements⁶⁹ shows that a fire truck would be able to turn into the emergency access lane from Vallejo Street.

Therefore, the proposed project's impacts on emergency-vehicle access would be *less than significant*.

Impact TR-5: The proposed project would not conflict with adopted policies, plans or programs regarding public transit, bicycle or pedestrian facilities, or otherwise decrease the performance or safety of such features. (*Less than Significant*)

Transit Impacts

Transit Screenlines

The proposed project would generate about 885 new daily transit person trips to and from the project site, with approximately 140 new transit person trips during the p.m. peak hour. Based on the distribution of transit trips associated with the proposed project during the p.m. peak hour, about 50 outbound transit trips would cross local and regional screenlines, with the remaining project-generated transit trips not crossing any screenlines. These 50 transit trips include 25 trips across local (Muni) screenlines and 25 trips across regional screenlines.

The project's impacts on transit capacity can be quantified across "screenlines" surrounding downtown San Francisco, representing groupings of local and regional transit services that serve a common origin or destination. For the weekday p.m. peak hour, the screenlines are typically oriented in the outbound direction leaving downtown, as this is the dominant direction of travel during the afternoon and evening. Screenlines may be further subdivided into corridors (for local transit) or operators/modes (for regional transit). Local transit (Muni) has a capacity utilization standard of 85 percent, while regional transit operators have a capacity utilization standard of 100 percent.

⁶⁸ SFFD Captain Ken Cofflin, email correspondence with the sponsor, the Port, and KCA Engineers, August 31, 2016.

⁶⁹ KCA Engineers, Fire Truck Turning Movements Drawings, September 2017.

For local transit, the proposed project would increase ridership on the downtown screenlines and corridors, but would not directly cause any of them to exceed the 85 percent capacity utilization threshold. However, several corridors currently exceed the 85 percent capacity utilization threshold under existing conditions and would continue to do so with the project. A contribution analysis indicates that the proposed project would not represent a considerable contribution to ridership on any of these corridors:

- On the Fulton/Hayes corridor (5 Fulton and 21 Hayes) in the Northwest screenline, the project would contribute 0.1 percent to the total ridership during the weekday p.m. peak hour.
- On the Third Street corridor (T Third Street) in the Southeast screenline, the project would contribute 0.01 percent to the total ridership during the weekday p.m. peak hour.

Therefore, the proposed project would result in *less-than-significant* impacts on capacity utilization on the downtown screenlines for local transit.

For regional transit, the proposed project would increase ridership on the downtown screenlines and corridors, but would not directly cause any of them to exceed the 100 percent capacity utilization threshold. However, BART service to the East Bay currently exceeds the 100 percent capacity utilization threshold under existing conditions and would continue to do so with the project. A contribution analysis indicates that the proposed project would not represent a considerable contribution to ridership on BART service to the East Bay:

- On BART service in the East Bay screenline, the project would contribute less than 0.01 percent to the total ridership during the weekday p.m. peak hour.

Therefore, the proposed project would result in *less-than-significant* impacts on capacity utilization on the downtown screenlines for regional transit.

Transit Operations

The proposed project would not modify or relocate any existing Muni bus or streetcar stops, and would not introduce any design features that would preclude or alter access to nearby transit facilities. The proposed project would generate automobile traffic along nearby local roadways that currently accommodate bus transit routes (i.e., Battery Street), but would not result in substantial conflicts between project-generated vehicles destined to the project site and transit vehicles, as these local streets include adequate travel lanes (and roadway capacity) to allow transit vehicles to bypass any vehicles slowing to pull into the curbside loading zones adjacent to the project site. Therefore, the project's impacts on transit operations would be *less than significant*.

Bicycle Impacts

The proposed project would provide class I and class II bicycle parking in compliance with the requirements of planning code sections 155.1 and 155.2, including 20 class I spaces in a secure bicycle room within the ground-floor level of the hotel along the Davis Street frontage and 43 class II spaces within sidewalks adjacent to the project site.

The proposed project would generate approximately 26 person-trips on "other" modes during the weekday p.m. peak hour, of which a substantial portion are anticipated to be bicycle trips. The project site is within convenient bicycling distance of nearby mixed-use neighborhoods (including North Beach, the Financial District, South of Market, and South Beach), and is located adjacent to major bikeways along The Embarcadero (Route 5 and the San Francisco Bay Trail) and Broadway (Route 10).

The proposed project would not increase automobile or bicycle traffic to a level that adversely affects existing bicycle conditions in the area. Furthermore, the project would not include design features or generate activities (such as freight

loading) that would create potentially hazardous conditions for bicyclists or otherwise substantially interfere with bicycle accessibility to the site and adjoining areas. Therefore, the proposed project's impact on bicycle facilities and circulation would be *less than significant*.

Although the project's impacts on bicycle conditions would be less than significant, several improvement measures could be implemented to further decrease these less-than-significant impacts. **Improvement Measure I-TR-2b, Active Valet Parking Management**, discussed in more detail in the preceding "Passenger Loading Impacts" section, would address potential project effects as a result of activities at the proposed passenger and commercial loading zones. **Improvement Measure I-TR-2c, Active Loading Dock Driveway Controls** and **Improvement Measure I-TR-2d, Coordination of Large Deliveries and Trash Pickup**, discussed in more detail in the preceding "Freight Loading Impacts" section, would address potential project effects as a result of freight loading activities.

Pedestrian Impacts

The proposed project would generate approximately 256 pedestrian trips during the weekday p.m. peak hour, including approximately 140 transit trips and 116 walk-only trips. The proposed project would include multiple pedestrian entrances along Broadway and The Embarcadero to accommodate employees, hotel guests, patrons, and other visitors, and the new pedestrian activity generated by the project would be spread across several adjacent sidewalks and crosswalks. The proposed project's primary entrance for the hotel would be provided on the northern side of Broadway adjacent to the curbside loading zone, where the main lobby area and elevators are located to allow hotel patrons to access the hotel rooms. An additional pedestrian entrance would be provided from the western side of The Embarcadero, and would serve as the primary entrance for the entertainment venue and an alternative to the Broadway entrance for all other project uses.

The project includes Better Streets Plan streetscape improvements in compliance with Planning Code section 138.1, including two new 8½-foot-wide bulb-outs along Broadway (at intersection corners with The Embarcadero and Davis Street), two new 6-foot-wide bulb-outs along Davis Street (at intersection corners with Vallejo Street and Broadway), two new marked crosswalks at the Davis Street/Vallejo Street intersection, and sidewalk landscaping. The project would also remove (i.e., fill in) the two existing curb cuts, and install continuous new sidewalk along the eastern side of Davis Street north of Broadway, and construct one new curb cut to serve a ground-floor loading dock. Overall, these improvements would enhance walkability and the pedestrian realm.

The proposed project would not increase automobile or pedestrian traffic to a level that adversely affects existing pedestrian conditions in the area. Furthermore, the project would not include design features or generate activities (such as freight loading) that would create potentially hazardous conditions for pedestrians or otherwise substantially interfere with pedestrian accessibility to the site and adjoining areas. Therefore, the proposed project's impact on pedestrian facilities and circulation would be *less than significant*.

Although the project's impacts on pedestrian conditions would be less than significant, several improvement measures could be implemented to further decrease these less-than-significant impacts. **Improvement Measure I-TR-2a, Monitoring and Abatement of Queues**, and **Improvement Measure I-TR-2b, Active Valet Parking Management**, discussed in more detail in the preceding "Passenger Loading Impacts" section, would address potential project effects as a result of activities at the proposed passenger and commercial loading zones. **Improvement Measure I-TR-2c, Active Loading Dock Driveway Controls**, and **Improvement Measure I-TR-2d, Coordination of Large Deliveries and Trash Pickup**, discussed in more detail in the preceding "Freight Loading Impacts" section, would address potential project effects as a result of freight loading activities.

Impact C-TR-1: The proposed project, in combination with past, present, and reasonably foreseeable future projects, would not substantially contribute to cumulative transportation and circulation impacts related to VMT, transit, bicycles, pedestrians, loading, emergency access, or construction. (*Less than Significant*)

VMT, by its very nature, is largely a cumulative impact. The VMT associated with past, present, and future projects contribute to physical secondary environmental impacts. It is likely that no single project by itself would be sufficient in size to prevent the region or state from meeting its VMT reduction goals. Instead, a project's individual VMT contributes to cumulative VMT impacts. The project-level thresholds for VMT and induced automobile travel are based on levels at which new projects are not anticipated to conflict with state and regional long-term GHG emission reduction targets and statewide VMT per capita reduction targets set in 2020. Therefore, because the proposed project would not exceed the project-level thresholds for VMT and induced automobile travel (Impact TR-1), the proposed project would not be considered to result in a cumulatively considerable contribution to VMT impacts.

Furthermore, as shown in Table 4, Daily Vehicle Miles Traveled, projected 2040 average daily VMT for land uses in TAZ 830 is 2.2 (per capita) for residential uses, 10.1 (per employee) for retail uses, and 5.6 (per employee) for theater uses. This is below the corresponding regional averages of 16.1 for residential uses (86 percent lower), 14.6 for retail uses (31 percent lower), and 15.4 for theater uses (43 percent lower).

Because the project site is located in an area where VMT is less than the projected 2040 regional average minus 15 percent, the proposed project's hotel, retail/restaurant, and entertainment uses would not result in substantial additional VMT. Therefore, the proposed project would not contribute considerably to any substantial cumulative increase in VMT. This impact would be *less than significant*.

Transit Impacts

The analysis of transit capacity utilization under cumulative (year 2040) conditions considers future ridership growth (including new ridership from future land use development) and foreseeable changes in local and regional transit service in the future (such as Muni Forward improvements). Although some local transit screenlines and corridors and regional transit screenlines and operators would operate above their established capacity utilization threshold (85 percent for local transit, 100 percent for regional transit) by 2040, the proposed project would contribute less than 1 percent of the total ridership on these services.

The project would generate automobile traffic on the surrounding street network, but would not make a considerable contribution to the increase in traffic levels between now and year 2040 such that substantial conflicts to transit operations could occur. Therefore, the project's contribution to cumulative transit impacts would be *less than significant*.

Bicycle and Pedestrian Impacts

Bicycle and pedestrian activity may increase between now and year 2040 with the addition and enhancement of pedestrian and bicycle facilities, future land use development, and other transportation changes such as the Muni Forward improvements and The Embarcadero Enhancement Project. However, the proposed project would not create potentially hazardous conditions for bicyclists or pedestrians or otherwise interfere with pedestrian or bicycle accessibility to the project site and adjoining areas. The project would not substantially affect nearby bicycle routes or contribute to substantial overcrowding on public sidewalks under cumulative conditions, and would not conflict with any proposed streetscape plans in the vicinity of the project under cumulative conditions. Therefore, the proposed project, in combination with past, present, and reasonably foreseeable developments in San Francisco, would result in *less-than-significant* cumulative bicycle and pedestrian impacts.

Passenger and Freight Loading Impacts

The proposed project would not contribute to any modification and/or elimination of existing or proposed passenger and freight loading spaces, or to any substantial passenger and freight loading demand in excess of the available capacity of corresponding facilities, such that adverse effects on traffic, transit, bicycle, or pedestrian circulation could occur under cumulative conditions. The 88 Broadway and 753 Davis Street^{70,71} project has potential to have a cumulative impact on traffic and loading because of the proximity to the proposed project site. The 88 Broadway and 753 Davis Street project would add two 35-foot long passenger loading spaces (one located along the project frontage on the west side of Davis Street, and one located along the south side of Vallejo Street) in addition to a new 35-foot long on-street commercial loading space along the project frontage on Front Street. While both projects would include passenger loading zones along Davis Street, given existing and projected vehicle traffic, and the expected increase in traffic activity generated by the two sites, as well as the physical separation between the various passenger and commercial loading zones, potential conflicts between the two sites or with existing plus planned traffic circulation would not constitute a substantial traffic safety hazard. There would be enough space for vehicle traffic and passenger loading zones for the two projects to coexist (along the west side of Davis Street and south side of Vallejo Street) or the proposed commercial loading areas along the east side of Davis Street. Additional caution may be needed for larger trucks using the loading areas which may require more time and space to move through Davis Street, however, this would be a short term, temporary impact. The proposed project would not contribute to any potential elimination and/or modification to existing or future loading spaces, nor contribute to such adverse conditions in combination with other planned projects, including 88 Broadway and 753 Davis Street. Therefore, the proposed project, in combination with past, present, and reasonably foreseeable developments in San Francisco, would result in *less-than-significant* cumulative impacts related to passenger and freight loading.

Emergency-Vehicle Access Impacts

There are no existing or planned facilities such as hospitals or fire stations in the immediate vicinity of the project site that would generate unusual amounts of emergency-vehicle activity under cumulative conditions. The project would generate automobile traffic on the surrounding street network, but would not make a considerable contribution to the increase in traffic levels between now and year 2040 such that substantial conflicts with emergency-vehicle access could occur. Although the proposed project and other cumulative projects may involve streetscape changes, emergency vehicles would continue to have access to the project site and surrounding properties, and along the surrounding street network, as under existing conditions. Therefore, the proposed project, in combination with past, present, and reasonably foreseeable developments in San Francisco, would result in *less-than-significant* cumulative impacts on emergency-vehicle access.

Construction Impacts

Localized transportation impacts could occur under cumulative conditions as a result of construction activities for future, foreseeable projects that take place concurrently with construction activities for the proposed project. The 88 Broadway and 753 Davis Street project is anticipated to begin in 2019 and is likely to have some overlapping construction with the proposed project. The following improvement measures **I-TR-2e: Construction Truck Deliveries during Off-Peak Periods** and **I-TR-2f: Construction Management Plan** will help reduce potential cumulative impacts. In addition, the project sponsor has included measures under **I-TR-2f** to minimize parking demand and vehicle-trips associated with construction workers and the construction contractor(s) will include methods to encourage carpooling, transit and bicycle use, or on-foot travel to and from the project site by construction workers in the construction management plan contracts. Also, the sponsor will provide project construction updates which will minimize construction impacts related to the construction of the 88 Broadway and

⁷⁰ CHS Consulting Group, Seawall Lot 323 and 324 (Teatro Zinzanni) Project Final Transportation Impact Study, May 2018.

⁷¹ San Francisco Planning Department, *88 Broadway and 735 Davis Street Project Final Mitigated Negative Declaration*, Case No. 2016-007850ENV, October 25, 2017, amended February 27, 2018. http://sfmea.sfplanning.org/2016-007850ENV_FMND.pdf. Project was approved but construction has not begun.

753 Davis Street project as well as nearby businesses. The construction manager for each individual project would work with the various City departments to develop a detailed and coordinated plan that would address construction vehicle routing, traffic control, and circulation for all modes adjacent to the construction area for the duration of any overlap in construction activity. Overall, cumulative construction-related impacts would be temporary and limited in duration, and would be *less than significant*.

E.5. NOISE

Topics:	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact	Not Applicable
5. NOISE- -Would the project result in:					
a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) For a project located within an airport land use plan area, or, where such a plan has not been adopted, in an area within two miles of a public airport or public use airport, would the project expose people residing or working in the area to excessive noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) For a project located in the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

The project site is not located within an airport land use plan area, within 2 miles of a public airport or public use airport, or in the vicinity of a private airstrip. The nearest public airport is approximately 10 miles from the project site. As such, questions 5e and 5f are not applicable and will not be discussed further.

AECOM prepared a technical report to evaluate the potential noise and vibration effects associated with the proposed project. The analysis methods and results of the noise report have been incorporated into this initial study and are included in the project case file.⁷² Noise impacts as they relate to traffic and construction activities also relied on data provided in the transportation impact study prepared by CHS Consulting Group⁷³ and the preliminary geotechnical reports prepared by ENGEO Incorporated,⁷⁴ ⁷⁵ respectively.⁷⁶

Noise and Vibration Overview

Noise

Noise is generally defined as unwanted or objectionable sound. The effects of noise on people can include general annoyance, interference with speech communication, sleep disturbance, and in the extreme, hearing impairment. Noise effects can be caused by pitch or loudness. Pitch is the height of a tone; higher-pitched sounds are louder to humans than lower-pitched sounds. Loudness is the intensity or amplitude of sound. The sound-pressure level is the most common descriptor used to characterize the loudness of a sound level. Because sound pressure can vary enormously within the range of human hearing, the logarithmic decibel scale (dB) is used to quantify sound levels.

⁷² AECOM, *ZinZanni Hotel & Theater Noise and Vibration Technical Report*, July 20, 2018.

⁷³ CHS Consulting Group, 2018. *Seawall Lot 323 and 324 (Teatro ZinZanni) Project Final Transportation Impact Study*, May 2018.

⁷⁴ ENGEO Incorporated, 2016. *Geotechnical Exploration for the Hotel and Teatro ZinZanni Project*, September 13, 2016.

⁷⁵ ENGEO Incorporated, 2018. *Summary of Geotechnical and Environmental Studies and Summary of Project Construction Methodologies*, April 6, 2018.

⁷⁶ The updated traffic analysis in the May 2018 Project Final Transportation Impact Study would not change the results in this section which are based on a greater number of daily vehicle trips.

The human ear is not equally sensitive to all frequencies within the entire sound spectrum, so noise measurements are weighted more heavily for frequencies to which humans are sensitive. This specific “filtering” of sound is called “A-weighting.” Because humans are less sensitive to low-frequency sound than to high-frequency sound, A-weighted decibel (dBA) levels deemphasize low-frequency sound energy to better represent how humans hear.

Different descriptors for sound-level measurements are used to characterize the time-varying nature of sound. Several rating scales have been developed to analyze the adverse effect of community noise on people. Because environmental noise fluctuates over time, these scales consider that noise effects are dependent on the total acoustical energy content and the time and duration of occurrence.

In a typical environment, the day-night sound level (DNL or L_{dn}) and community noise equivalent level noise descriptors rarely differ by more than 1 decibel (dB). As a matter of practice, L_{dn} and community noise equivalent level values are considered to be equivalent and are treated as such in this section. For a stationary point-source of sound, sound typically attenuates at a rate of 6 dB per doubling of distance (i.e., 6 dB at 50 feet, 12 dB at 100 feet, 18 dB at 200 feet). For a line source of sound such as free-flowing traffic on a freeway, sound attenuates at a rate of approximately 3 dB per doubling of distance (i.e., 3 dB at 50 feet, 6 dB at 100 feet, 9 dB at 200 feet). In typical noisy environments, changes in noise of 1–2 dB are generally not perceptible. However, it is widely accepted that people are able to begin to detect sound level increases of 3 dB in typical noisy environments. Further, an increase of 5 dB is generally perceived as a distinctly noticeable increase, and an increase of 10 dB is generally perceived as a doubling of loudness.

Atmospheric conditions including wind, temperature gradients, and humidity can change how sound propagates (travel) over distance and can affect the level of sound received at a given location. The degree to which the ground surface absorbs acoustical energy also affects sound propagation. Sound that travels over an acoustically absorptive surface such as grass attenuates at a greater rate than sound that travel over a hard surface such as pavement. The increased attenuation due to ground sound absorption is typically in the range of 1–2 dB per doubling of distance. Barriers such as building and topography that block the line of sight between a source and receiver also increase the attenuation of sound over distance.

Vibration

Construction activity can result in varying degrees of ground vibration depending on the equipment and method used. Equipment such as air compressors, light trucks, and hydraulic loaders generate little or no ground vibration. Dynamic construction equipment such as pile drivers can create vibrations that radiate along the surface and downward into the earth. These surface waves can be felt as groundborne vibration. However, no pile driving is proposed under this project. Vibration can result in effects ranging from annoying people to damaging structures. Variations in geology and distance result in different vibration levels comprising different frequencies and displacements. In all cases, vibration amplitudes decrease with increasing distance from the vibration source.

Noise and Vibration Regulations

The City has adopted regulations and policies that are based in part on federal and state regulations and guidelines, and are intended to control, minimize, or mitigate environmental noise. Standards and guidelines applicable to the proposed project are discussed below.

San Francisco Noise Control Ordinance

The San Francisco Noise Control Ordinance regulates both construction noise and stationary-source noise within the city limits, such as transportation, construction, mechanical equipment, entertainment, and human or animal behavior. Found in article 29, “Regulation of Noise,” of the San Francisco Police Code, the ordinance addresses noise from construction

equipment, nighttime construction work, and noise from stationary mechanical equipment and waste processing activities.⁷⁷ Section 2907 of the Noise Control Ordinance limits noise levels from construction equipment to maximum 80 dBA at 100 feet (or other equivalent noise level at another distance) between 7 a.m. and 8 p.m. The provisions of section 2907 do not apply to impact tools and equipment that have intake and exhaust mufflers as recommended by the manufacturers and are approved by the director of SFPW or the director of DBI as accomplishing maximum noise attenuation. The noise exemption also does not apply to pavement breakers and jackhammers that are equipped with acoustically attenuating shields or shrouds as recommended by the manufacturers and are approved by the director of SFPW or the director of DBI as accomplishing maximum noise attenuation. In addition, construction work at night (between 8 p.m. and 7 a.m.) may not exceed the ambient level by 5 dBA at the nearest property lane, unless a permit is granted by the director of SFPW or the director of DBI, pursuant to section 2908 of the Noise Control Ordinance.

Section 2904 of the Noise Control Ordinance provides a maximum noise limit of 75 dBA as measured at 50 feet from a waste disposal truck. The noise limit applies only to the truck's mechanical or hydraulic system, and not to the noise associated with crushing, impacting, dropping, or moving garbage on the truck.

Section 2909 of the Noise Control Ordinance regulates noise from onsite stationary noise sources within specific land uses. Section 2909 states that the noise levels from equipment operating on the project property shall not exceed the ambient noise levels at the property line by 5 dBA if the noise source is on residential property, 8 dBA if the noise source is on a commercial/industrial property, and 10 dBA if the noise source is on a public property. In addition, section 2909(d) states that no fixed (permanent) noise source, as defined by the ordinance, may cause the noise level inside any sleeping or living room in a residential dwelling unit to exceed 45 dB between 10 p.m. and 7 a.m. or 55 dB between 7 a.m. and 10 p.m. when windows are open, except where building ventilation is achieved through mechanical systems that allow windows to remain closed.

San Francisco General Plan Noise Compatibility Standards



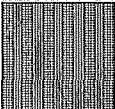

The Environmental Protection Element of the San Francisco General Plan contains land use compatibility guidelines for community noise. These guidelines, which are similar to state guidelines promulgated by the Governor's Office of Planning and Research, indicate maximum acceptable noise levels for various newly developed land uses. The uses for the proposed project correspond to the "transient lodging," "playgrounds, parks," and "auditoriums, concert halls, amphitheaters, music shells" land use categories in the land use compatibility guidelines, re-created below in Table 9.⁷⁸ For a transient lodging use, the maximum "satisfactory, with no special insulation requirements" exterior noise levels are approximately 60 dBA L_{dn} . Where exterior noise levels exceed 60 dBA L_{dn} for new transient lodging, it is generally recommended that a detailed analysis of noise reduction requirements be conducted before final review and approval of the project, and that the needed noise insulation features be included in the project design. For a playground/parks land use, the maximum "satisfactory, with no special insulation requirements" exterior noise levels are approximately 70 dBA L_{dn} .⁷⁹ Where exterior noise levels exceed 70 dBA L_{dn} for a playground/parks land use, it is generally recommended that a detailed analysis of noise reduction requirements be conducted before final review and approval of the project, and that the needed noise insulation features be included in the project design. For any new auditorium, concert hall, amphitheater, or music shell land use, it is recommended that a detailed analysis of noise reduction requirements be conducted before final review and approval of the project, and that the needed noise insulation features be included in the project design.

⁷⁷ San Francisco Police Code, article 29, Regulation of Noise, *Guidelines for Noise Control Ordinance Monitoring and Enforcement*, <https://www.sfdph.org/dph/files/EHSdocs/ehsNoise/GuidelinesNoiseEnforcement.pdf>, accessed April 2018.

⁷⁸ *San Francisco General Plan*, Environmental Protection Element, Land Use Compatibility Chart for Community Noise, http://generalplan.sfplanning.org/I6_Environmental_Protection.htm#ENV_TRA_9_I, accessed January 9, 2018.

⁷⁹ Ibid.

TABLE 9 GENERAL PLAN LAND USE COMPATIBILITY CHART FOR COMMUNITY NOISE

Land Use Category	Sound Levels and Land Use Consequences						
	L _{dn} Value in Decibels						
	55	60	65	70	75	80	85
Residential: All Dwellings, Group Quarters							
Transient Lodging: Hotels and Motels							
Schools, Classrooms, Libraries, Churches, Hospitals, Nursing Homes, etc.							
Auditoriums, Concert Halls, Amphitheaters, Music Shells							
Sports Arena, Outdoor Spectator Sports							
Playgrounds, Parks							
Golf Courses, Riding Stables, Water-based Recreation Areas, Cemeteries							
Office Buildings: Personal Businesses and Professional Services							
Commercial: Retail, Movie Theaters, Restaurants							
Commercial: Wholesale and Some Retail, Industrial/Manufacturing, Transportation, Communications and Utilities							
Manufacturing Communications: Noise-Sensitive							
Notes: L _{dn} = day-night sound level							
 Satisfactory, with no special noise insulation requirements				New construction is discouraged. If new construction does not proceed, a detailed analysis of the noise reduction requirements must be made and needed noise insulation features included in the design.			
 New construction or development should be undertaken only after a detailed analysis of the noise reduction requirement is made and needed noise insulation features included in the design.				New construction or development should generally not be undertaken.			

Source: San Francisco General Plan Noise and Land Use Compatibility Guidelines.

Other Relevant Noise and Vibration Standards

- The 2016 California Building Code, CCR title 24, part 2, section 1207.4, mandates that an interior noise level attributed to exterior sources shall not exceed 45 dBA L_{dn} for any habitable room in a multifamily building.
- The CALGreen Code, which establishes noise criteria for commercial spaces, requires that interior noise levels be no greater than 50 dBA equivalent noise level (L_{eq}) during the noisiest hour of operation.

Existing Conditions

Noise-Sensitive Land Uses

Noise-sensitive land uses generally consist of those uses where exposure to noise would result in adverse effects, as well as uses for which quiet is an essential element of their intended purpose. Residential dwellings are of primary concern because of the potential for increased and prolonged exposure of individuals to both interior and exterior noise. Other noise-sensitive land uses include hospitals, convalescent facilities, parks, hotels, churches, libraries, and other uses where low noise levels are essential.

The project site is in a highly urbanized area of the city and is bounded by commercial, residential, and office uses. The nearest noise-sensitive land use to the project site is the Gateway Apartments, a five-story apartment building located across Broadway, about 80 feet south of the project site, as illustrated in Figure 18. The northern edge of the project site abuts a three-story office building occupied by the KGO-TV news station. Although the news station is a commercial use and typically would not be characterized as a noise-sensitive land use, the TV studio is considered a vibration-sensitive land use per Federal Transit Administration (FTA) guidance.⁸⁰ Two office buildings and a surface parking lot are located across Davis Street, about 50 feet west of the project site.⁸¹ Various Port commercial tenants, including the Waterfront Restaurant, are located across The Embarcadero from the project site to the east. These office and commercial uses are not considered noise-sensitive land uses.

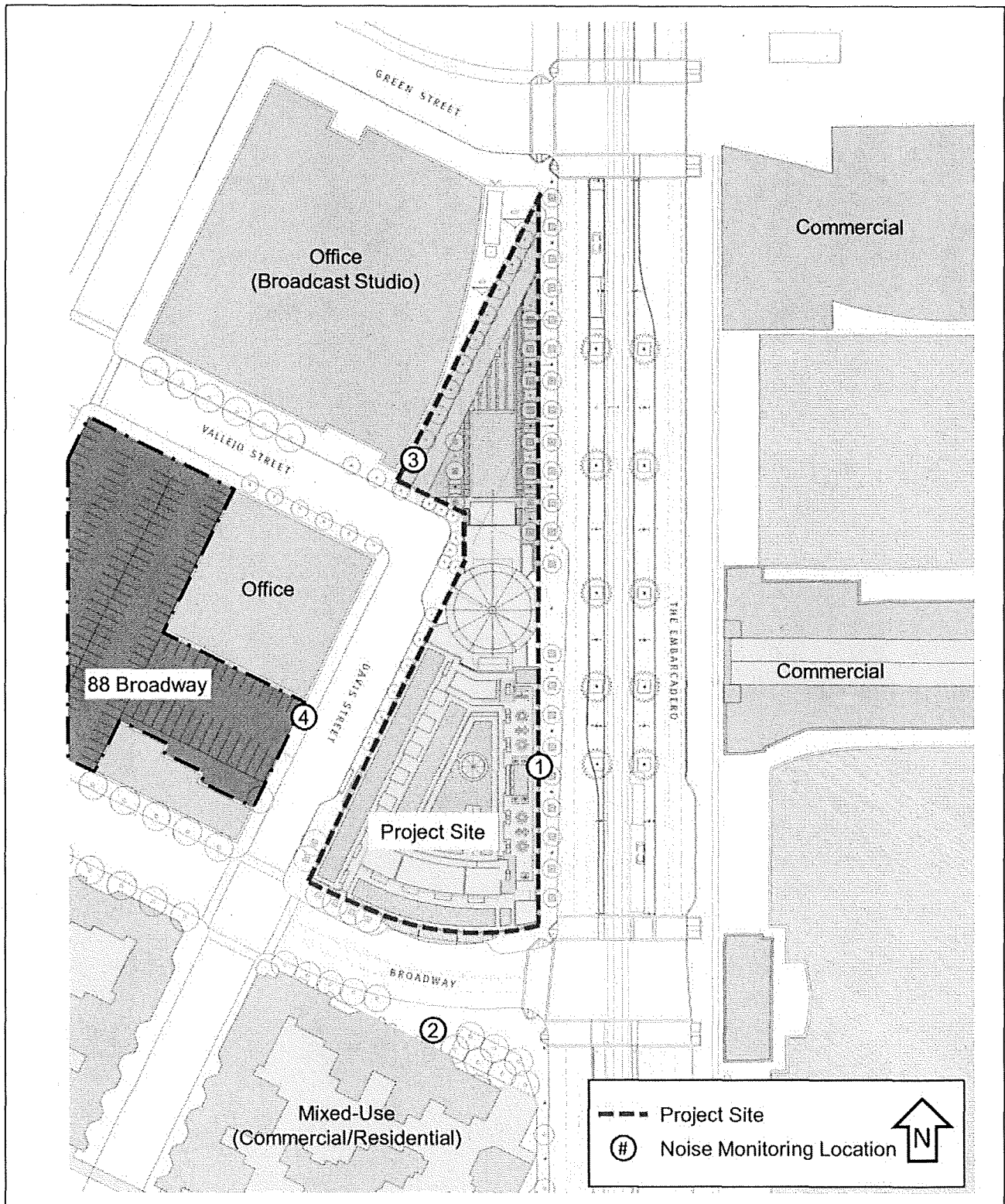
Existing Ambient Noise Levels

Ambient noise in the project vicinity is typical of noise levels found in San Francisco and includes noise caused by traffic, transit, and trucks, commercial activities, surface parking lot activities, and other miscellaneous noise sources associated with typical urban activities. This understanding is consistent with section 5.2 of the City's Guidelines for Noise Control Ordinance Monitoring and Enforcement, which state: "The ambient sound level measured may include regularly reoccurring noises such as traffic noise, construction, wind chimes, or other sounds from nearby sources not in the control of the owner or operator."⁸² Existing ambient noise measurements were conducted at four selected locations surrounding the project site (Figure 18). The ambient noise measurements were taken using a Larson Davis Model 870 integrated sound level meter, which is a Type 1 standard instrument as defined in American National Standards Institute S1.4. All instruments were calibrated and operated according to the manufacturer's specifications. The noise sensor device (microphone) was placed approximately 5 feet above the local grade. The ambient noise measurements were conducted on Sunday, July 10, 2016, and Monday, July 11, 2016. Two 15-minute measurements were conducted at each receptor location, representing daytime and nighttime hours.

⁸⁰ Federal Transit Administration, *Transit Noise and Vibration Impact Assessment*, 2006, Table 8-2.

⁸¹ San Francisco Planning Department, *88 Broadway and 735 Davis Street Project Final Mitigated Negative Declaration*, Case No. 2016-007850ENV, October 25, 2017, amended February 27, 2018. http://sfmea.sfplanning.org/2016-007850ENV_FMND.pdf.

⁸² San Francisco Police Code, article 29, Regulation of Noise, *Guidelines for Noise Control Ordinance Monitoring and Enforcement*, <https://www.sfdph.org/dph/files/EHSdocs/ehsNoise/GuidelinesNoiseEnforcement.pdf>, accessed April 2018.



Source: AECOM, 2017

FIGURE 18 NOISE MONITORING LOCATIONS

Table 11 shows the measured ambient noise levels. As shown, the existing daytime ambient noise levels ranged from 57.7 to 66.7 dBA L_{eq} for the weekend measurements (Sunday, July 10, 2016) and 56.9 to 68.1 dBA L_{eq} for the weekday measurements (Monday, July 11, 2016). The nighttime ambient noise levels ranged from 57.4 to 65.5 dBA L_{eq} for the weekend measurements and 53.4 to 64.6 dBA L_{eq} for the weekday measurements. Based on field observation and measured sound data, the current ambient noise environment in the vicinity of the project site (i.e., plan area) is influenced primarily by vehicular traffic on local roadways and public transit.

TABLE 11 EXISTING AMBIENT NOISE LEVELS

Location ¹	Description	Measurement Date/Time	Measured Noise Levels, A-Weighted Sound Level (dBA)		
			L_{eq}	L_{min}	L_{max}
1	Project site eastern boundary, along The Embarcadero	Sunday 7/10/2016			
		- 12:52 p.m.–1:07 p.m.	66.7	52.8	85.0
		- 10:41 p.m.–10:56 p.m.	65.5	51.9	87.3
		Monday 7/11/2016			
		- 10:24 a.m.–10:39 a.m.	68.1	51.8	86.6
2	Gateway Apartments (mixed-use), on the southern side of Broadway, south of the project site	- 1 a.m.–1:15 a.m.	61.9	46.6	75.8
		Sunday 7/10/2016			
		- 1:11 p.m.–1:26 p.m.	64.6	51.9	78.4
		- 11:02 p.m.–11:17 p.m.	65.5	51.6	80.4
		Monday 7/11/2016			
3	The office building (KGO-TV) at the northwestern corner of Vallejo Street and Davis Street, west of the project site	- 10:42 a.m.–10:57 a.m.	67.0	51.4	83.0
		- 12:41 a.m.–12:56 a.m.	64.6	46.0	81.8
		Sunday 7/10/2016			
		- 1:48 p.m.–2:03 p.m.	59.5	49.6	75.2
		- 10:04 p.m.–10:19 p.m.	57.4	49.6	66.6
4	The office building/parking lot on western side of Davis Street, west of the project site (proposed housing project, 88 Broadway)	Monday 7/11/2016			
		- 11:01 a.m.–11:16 a.m.	56.9	49.5	71.7
		- 12:08 a.m.–12:23 a.m.	53.4	45.8	67.4
		Sunday 7/10/2016			
		- 1:30 p.m.–1:45 p.m.	57.7	50.0	73.7
		- 10:23 p.m.–10:38 p.m.	58.6	49.3	69.9
		Monday 7/11/2016			
		- 11:18 a.m.–11:33 a.m.	59.3	50.2	76.1
		- 12:25 a.m.–12:40 a.m.	58.5	45.0	74.0

Notes:

L_{eq} = equivalent noise level; L_{max} = maximum noise level; L_{min} = minimum noise level

¹ Monitoring locations correspond to those depicted in Figure 18.

Source: Data collected by AECOM on July 10 and 11, 2016

In addition to the ambient noise measurements, existing traffic noise on local roadways in the areas surrounding the project site was estimated to quantify the 24-hour L_{dn} noise levels, based on the existing traffic volumes as provided in the project's transportation impact analysis.⁸³ Traffic noise levels along local roadways were estimated based on daily volumes and their distribution, using the roadway noise calculation procedures provided in the California Department of Transportation *Technical Noise Supplement to the Traffic Noise Analysis Protocol*,⁸⁴ which is based on the roadway noise prediction methodologies in the Federal Highway Administration Highway Traffic Noise Prediction Model (RD-77-108).

⁸³ CHS Consulting Group, *Seawall Lot 323 and 324 (Teatro Zinzanni) Project Final Transportation Impact Study*, May 2018.

⁸⁴ California Department of Transportation, *Technical Noise Supplement to the Traffic Noise Analysis Protocol*, Division of Environmental Analysis, Environmental Engineering, Hazardous Waste, Air, Noise, Paleontology Office, September 2013.

Table 12 provides the estimated traffic noise levels for the analyzed local roadway segments based on existing traffic volumes. As shown, the existing L_{dn} attributable to surface-street traffic volumes only ranged from 57.0 dBA L_{dn} along Green Street west of Front Street to 68.2 dBA L_{dn} along The Embarcadero south of Broadway. Estimates of traffic-related noise level estimates generally agree with the measured levels of outdoor ambient sound appearing in Table 11; for instance, the estimated existing traffic noise L_{dn} value for The Embarcadero segment between Green Street and Broadway appearing in Table 12, 66.9 dBA, is 3 dBA less than an L_{dn} value of 70 dBA calculated from the Monday morning and nighttime measured L_{eq} values presented in Table 11. Such close correlation between the measured and modeled levels suggests that roadway traffic noise is a dominant contributor to the current outdoor ambient sound environment, and that the traffic noise methodology should reasonably predict changes to the existing outdoor sound environment caused by project-related changes to existing roadway traffic volumes.

TABLE 12 PREDICTED EXISTING ROADWAY TRAFFIC NOISE LEVELS

Roadway Segment	Estimated Traffic Noise Levels, ¹ dBA L_{dn}	Adjacent Land Uses	Existing Noise Exposure Compatibility Category ²
The Embarcadero			
North of Green Street	66.6	Commercial/Office, Park	2
From Green Street to Broadway	66.9	Commercial, Parking	1
South of Broadway	68.2	Mixed-Use Commercial/ Residential, Park	2
Davis Street			
From Vallejo Street to Broadway	57.7	Office, Parking	1
South of Broadway	62.5	Mixed-Use Commercial/ Residential, Park	2
Front Street			
North of Green Street	55.9	Commercial/Office	1
From Green Street to Vallejo Street	58.4	Office (TV studio)	1
From Vallejo Street to Broadway	59.6	Commercial	1
South of Broadway	61.3	Mixed-Use Commercial/ Residential, Park	2
Green Street			
West of Front Street	57.0	Commercial/Office	1
From Front Street to The Embarcadero	57.9	Office (TV studio)	1
Vallejo Street			
West of Front Street	59.4	Commercial/Office	1
From Front Street to Davis Street	57.3	Office (TV studio)	1
Broadway			
West of Front Street	65.2	Commercial/Office	2
From Front Street to Davis Street	64.7	Mixed-Use Commercial/ Residential, Parking	2
From Davis Street to The Embarcadero	63.5	Mixed-Use Commercial/ Residential, Parking	2

Notes:

dBA = A-weighted decibels; L_{dn} = day-night sound level

¹ Predicted traffic noise levels do not account for shielding from existing noise barriers or intervening structures. Traffic noise levels may vary depending on actual setback distances and localized shielding.

² The indicated noise exposure compatibility is based on the most stringent land use category, pursuant to the San Francisco General Plan, as follows:

1: Satisfactory, with no special insulation requirements.

2: New construction or development should be undertaken only after a detailed analysis of the noise reduction requirements is made and needed noise insulation features included in the design.

3: New construction or development should generally be discouraged. If new construction or development does proceed, a detailed analysis of the noise reduction requirements must be made and needed noise insulation features included in the design.

4: New construction or development should generally not be undertaken.

Source: Data modeled by AECOM, 2017.

Impact NO-1: The proposed project would not result in a substantial permanent increase in ambient noise levels, expose persons to or generate noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies, and would not be substantially affected by existing noise levels. (Less than Significant)

Analysis under this criterion addresses potential noise-generated impacts on nearby sensitive noise receptors from operation of the proposed project. In *California Building Industry Association v. Bay Area Air Quality Management District (CBIA v. BAAQMD)*,⁸⁵ decided in 2015, the California Supreme Court held that CEQA does not generally require lead agencies to consider how existing environmental conditions might affect a project's occupant, except with certain types of specified projects or where the project would significantly exacerbate an existing environmental condition.

Accordingly, the significance criteria listed above related to a substantial permanent increase in ambient noise levels and to exposure of people to noise levels in excess of standards specified in the San Francisco General Plan or the San Francisco Noise Ordinance (article 29 of the Police Code) or applicable standards of other agencies are relevant only to the extent that the project would significantly exacerbate the existing noise and vibration environment. Thus, the analysis below evaluates whether the proposed project could exacerbate the existing or future noise environment. An impact is considered significant if implementing the proposed project would exacerbate existing or future noise and vibration levels above the thresholds described in the "Noise and Vibration Regulations" subsection above.

Section 2909 of the Police Code requires that mechanical equipment noise and outdoor use areas not exceed 8 dBA over ambient noise levels at the property plane of the commercial noise-emitting property. Although the City does not have quantitative criteria for project-generated traffic noise, the San Francisco Planning Department often applies the following criteria: in general, traffic noise increases of less than L_{dn} 3 dBA are barely perceptible to people, while an increase of 5 dBA L_{dn} is readily noticeable. Therefore, permanent increases in ambient noise levels of more than L_{dn} 5 dBA are considered to be a significant noise impact in any existing or resulting noise environment. However, in places where the existing or resulting noise environment is "conditionally acceptable," "conditionally unacceptable," or "unacceptable" based on the San Francisco Land Use Compatibility Chart for Community Noise shown in Table 9 above, for sensitive noise receptors any noise increase greater than L_{dn} 3 dBA is considered a significant noise impact.

Operational Noise

Operational noise generated by the proposed project would result primarily from onsite stationary sources (heating, ventilation, and air conditioning [HVAC] equipment, loading dock/trash compactor, and amplified sound system) and offsite mobile sources (roadway traffic). Project-related noise impacts associated with onsite stationary sources were determined based on the standards set forth by the City's Noise Control Ordinance.

Mechanical Equipment Noise

Police Code section 2909(a),⁸⁶ part of the San Francisco Noise Ordinance, establishes a noise limit for the proposed project's rooftop mechanical equipment (e.g., HVAC systems, emergency backup generators) at the project's property plane. These noise limits are based on the outdoor ambient noise level plus 8 dBA. For purposes of this analysis, the lower of the two L_{eq} values (Sunday and Monday for the daytime or nighttime period of the study) shown in Table 11 conservatively represent the ambient noise level. The proposed project's HVAC mechanical equipment would be located mostly on the building rooftop within mechanical penthouses and within the interior of the building on the second floor. The main mechanical system for the

⁸⁵ *California Building Industry Association v. Bay Area Air Quality Management District*, December 17, 2015, <http://www.courts.ca.gov/opinions/documents/S213478.PDF>.

⁸⁶ San Francisco Police Code, article 29, Regulation of Noise, *Guidelines for Noise Control Ordinance Monitoring and Enforcement*, <https://www.sfdph.org/dph/files/EHSdocs/ehsNoise/GuidelinesNoiseEnforcement.pdf>, accessed April 2018.

theater would be a chilled water system along with primary and secondary chiller pumps that would be located in the mechanical room. For heating, hot water boilers would also be in the roof's mechanical room. In addition, an 800-kilowatt, diesel-powered emergency generator would be located in the mechanical penthouse.

Some mechanical equipment would be located outside of the mechanical room on the roof, where outside air is required to operate, such as heat pumps and an air scrubber/pollution unit for the main kitchen exhaust and a make-up air unit. Operation of the outdoor HVAC equipment may generate audible noise. Rooftop HVAC equipment and emergency generators for the proposed project are expected to be similar to the equipment used at the existing buildings surrounding the project site, and would likely generate noise at levels typical of standard HVAC systems and emergency generators suitable for the project's proposed services and operations. Standard noise reduction elements would be implemented (e.g., screening walls, parapet barriers) that meet the requirements established for fixed-source noise by Police Code section 2909(a), part of the San Francisco Noise Ordinance, and would acoustically occlude noise emissions from the project's HVAC equipment. The outdoor mechanical equipment outside the mechanical penthouse would be screened by a metal screen with green vegetation grown vertically to dampen the noise and provide a visual enhancement. All building mechanical equipment, including air intakes and exhaust openings, would be designed with appropriate noise control devices and sound abatement, such as the aforementioned screens and acoustically absorptive duct attenuators and equipment cabinet linings.

The intent of such a design would be to result in aggregate noise levels that do not exceed existing outdoor ambient levels by more than 8 dBA at the adjacent property plane. Based on the field-surveyed sound pressure levels presented in Table 11, the acoustical objective for the project's HVAC systems can be quantified as follows: 70 dBA L_{eq} for daytime and nighttime at the receiving property plane of the mixed-use development south of Broadway.

That is, the aggregate sound pressure level from the typical rooftop packaged air-conditioning unit(s) and accompanying HVAC equipment, with either noise control elements incorporated into their design or barriers placed on the rooftop to occlude their individual sound propagation paths, would need to be no greater than 70 dBA L_{eq} at the project's property plane where it adjoins the existing Broadway development. Such noise control features and sound abatement would keep the proposed project's HVAC noise levels compliant with the City's Noise Ordinance.

Operation of the project's proposed 800-kilowatt emergency generator, located inside the mechanical penthouse at roof level, would also need to comply with Police Code section 2909(a) during nonemergency testing conditions. In emergency situations, the generator would operate to offset local power outages and would thus be exempt from the City's Noise Control Ordinance (per section 2901[d]). For routine testing and maintenance, however, the emergency generator would be operated for short durations, approximately 30 minutes per month during a daytime hour. Noise control and sound abatement features for nonemergency operation of the emergency generator would be incorporated into the proposed project's design.

A typical 800 kW emergency generator would generate noise level of approximately 89 dBA at a distance of 23 feet, based on manufacturer noise data.⁸⁷ Based on distance sound attenuation, the mechanical penthouse, and insertion loss provided by the rooftop parapet, the noise level from the emergency generator would range from approximately 49.7 dBA at receptor/measurement location 3 from Table 11 to 63.8 dBA at receptor/measurement location 2 from Table 11. The estimated noise from the emergency generator at receptor 2 (63.8 dBA) when added to the existing ambient noise level (64.6 dBA) would equal to 67.2 dBA, which would result in maximum of 2.6 dBA increase over the daytime ambient noise level. In summary, mechanical systems (including the emergency generator) would feature a variety of noise reduction measures inherent to the proposed project design, and thus, would achieve the noise performance standards set by Police Code section 2909. Therefore, noise impacts from the project's mechanical equipment would be *less than significant*.

⁸⁷ Cummins Power Generator, Model DQFAB with standard weather protected enclosure.

Other Stationary Sources

The proposed project includes a loading dock located at the interior of the building, on the building's western side (facing Davis Street). A trash compactor would be located adjacent to the loading dock, inside an enclosed room. Operation of the loading dock and trash compactor would generate noise levels of approximately 71 dBA L_{eq} and 65 dBA L_{eq} , respectively, at a distance of 50 feet. As a result, the design and placement of the loading dock and trash compactor meet the City's Noise Control Ordinance noise limit of 75 dBA at a distance of 50 feet (section 2904). Accordingly, impacts would be *less than significant*.

Outdoor and Event Spaces

The proposed project includes various outdoor spaces, including one ground-level restaurant outdoor seating/dining area along The Embarcadero (at the southeastern corner), and others at The Embarcadero and Broadway and on the 3,970-square-foot rooftop deck. The rooftop deck would be accessible to hotel guests and patrons only. Noise associated with the restaurant's outdoor seating/dining area and the rooftop deck would typically include people talking and amplified sound (music). The amplified sound system at the outdoor seating/dining area would be used primarily for background music, and would be designed to be heard in the immediate vicinity of the outdoor speaker systems. The amplified sound systems were assumed to generate a maximum sound level of 70 dBA L_{eq} at 50 feet from the loudspeaker system at the restaurant's outdoor seating/dining area and 80 dBA L_{eq} at 50 feet from the loudspeaker system at the rooftop deck. The maximum sound levels for the amplified sound system are specified to meet the City's Noise Control Ordinance, to avoid an increase of 8 dBA at the proposed project's property plane (per Section 2909[b]) and avoid causing interior noise levels at neighboring residences in excess of 55 dBA with windows open (per Section 2909[d]). Table 13 presents the estimated noise levels from the outdoor uses. Additionally, there are no specific noise ordinance limits for unamplified voices, and unamplified voices are not considered an impact under CEQA unless the noise could rise to a level of substantial interference with activities such as sleep, speech, and learning, or physiological effects such as hearing loss. Published noise levels for typical males and females speaking at raised voice levels, 65 dBA and 62 dBA, respectively, were used for the noise analysis. As indicated, the estimated noise levels from the proposed project's outdoor uses would comply with the Noise Ordinance.

TABLE 13 ESTIMATED NOISE LEVELS FROM PROPOSED PROJECT OUTDOOR SPACES

Location	Ambient Noise Levels, ¹ dBA L_{eq}	Estimated Noise Levels from Outdoor Spaces, dBA L_{eq}	Estimated Noise Levels from Outdoor Spaces at Residential Interior, dBA L_{eq}	Outdoor / Interior Noise Thresholds ² , dBA L_{eq}	Estimated Noise Levels Comply?
1 ³	61.9	66.5	54.5 ⁴	69.9 / 55	Yes
2	64.6	64.0	52.0 ⁴	72.6 / 55	Yes
3	53.4	52.5	40.5 ⁴	61.4 / 55	Yes
4	58.5	54.4	42.4 ⁴	66.5 / 55	Yes

Source: Data modeled by AECOM in 2016; http://www.opr.ca.gov/docs/OPR_COMPLETE_7.31.17.pdf

Notes: dBA = A-weighted decibels; L_{eq} = equivalent noise level

¹ Measured nighttime ambient noise levels (see Table 11).

² The significance thresholds equal to the existing ambient noise levels plus 8 dBA at the property plane, and less than 55 dBA for estimated noise level at the nearest residential interior.

³ The estimated noise level at Location 1 is at the commercial use on the eastern side of The Embarcadero.

⁴ Includes application of a conservative minimum of a 12–18 dBA reduction to estimated outdoor noise levels with windows partially open, per State of California General Plan Guidelines (2017).

The proposed entertainment venue would be located at ground level and would include a 285-seat auditorium. The entertainment venue would be hosted inside the 100-year-old spiegel tent, which would be encased inside a pavilion. The entertainment venue would have two shows per day on the weekends. Measured sound levels from an existing theater of similar size, the Teatro ZinZanni in Seattle (a 292-seat theater), were used for the proposed project's noise analysis. The

measured sound levels varied from 83 to 102 dBA inside the entertainment venue and 76 to 84 dBA outside of the entertainment use tent.⁸⁸ The pavilion enclosing the area would be constructed of glass and metal walls and roof as illustrated in the elevations and sections shown in Figures 12 through 16. The pavilion structure is estimated to provide a minimum of 20 dBA interior-to-exterior sound reduction. Table 14 presents the estimated noise levels from the proposed entertainment venue. As indicated, the estimated noise levels from the proposed entertainment venue would be below the significance thresholds.

TABLE 14 ESTIMATED NOISE LEVELS FROM PROPOSED ENTERTAINMENT VENUE

Location	Ambient Noise Levels, ¹ dBA L _{eq}	Estimated Noise Levels from Theater, dBA L _{eq}	Estimated Noise Levels from Outdoor Spaces at Residential Interior, dBA L _{eq}	Outdoor / Interior Noise Thresholds, ² dBA L _{eq}	Estimated Noise Levels Comply?
1 ³	61.9	57.2	45.2 ⁴	69.9 / 55	Yes
2	64.6	35.7	23.7 ⁴	72.6 / 55	Yes
3	53.4	58.9	46.9 ⁴	61.4 / 55	Yes
4	58.5	64.1	52.4 ⁴	66.5 / 55	Yes

Source: Data modeled by AECOM in 2016; http://www.opr.ca.gov/docs/OPR_COMPLETE_7.31.17.pdf

Notes: dBA = A-weighted decibels; L_{eq} = equivalent noise level

¹ Measured nighttime ambient noise levels (see Table 11).

² The significance thresholds equal to the existing ambient noise levels plus 8 dBA at the property plane, and less than 55 dBA for estimated interior noise level noise level at the nearest residential interior.³ The estimated noise level at Location 1 is at the commercial use on the eastern side of The Embarcadero.

⁴ Includes application of a conservative minimum of a 12–18 dBA reduction to estimated outdoor noise levels with windows partially open, per State of California General Plan Guidelines (2017).

The proposed project includes a small outdoor stage area located at the south end of the proposed public park. The outdoor stage would be used for small-scale performances, including those for family gatherings, storytelling and neighborhood festivals, nonprofit gatherings, and other waterfront public events. These events would occur on weekdays and weekends during normal business hours, subject to Port requirements. In addition, the theater would include operable doors on the northern side of the theater building that would open up onto the outdoor stage area. However, the entertainment area doors would remain closed during regularly scheduled theater performances. The park would be only 14,000 square feet and would be limited in size, which would reduce the possibilities for large events. No large music festivals or other ticketed events would be held at the proposed outdoor stage or in the proposed public park. Section 2909(c) of the Noise Control Ordinance allows sound from “public property” to be up to 10 dBA above ambient at a distance of 25 feet. Amplified sound emanating from the outdoor stage or other portion of the public park that would exceed the ordinance would be required to obtain a permit from the Port in accordance with Section 2909(e) of the Noise Control Ordinance. The project sponsor would be required to apply for event permits from the Port to host these activities or events, which may occur approximately one time per week.

As shown in Table 14, noise from the outdoor use areas would not exceed the limit established by Police Code section 2909(b), part of the San Francisco Noise Ordinance, of 8 dBA above the existing ambient noise level at the proposed project’s property lines. Accordingly, impacts would be *less than significant* and no mitigation measures are required.

Project-Related Roadway Noise

As stated previously, for sensitive noise receptors, a traffic noise increase greater than L_{dn} 3 dBA is considered a significant noise impact. Generally, a doubling of traffic flows would be needed for traffic-generated noise levels to increase to 3 dBA above the existing L_{dn} ambient noise levels. As shown in Table 15, because the roadways adjacent to the project site currently

⁸⁸ Annie Jamison, Teatro ZinZanni Employee, email correspondence with the sponsor and AECOM about sound data, July 06, 2016.

experience high traffic volumes, the additional daily vehicle trips on these roadways would be expected to be marginal and would not double traffic volumes.

The proposed project would result in approximately 634 daily vehicle trips in the vicinity of the project site.⁸⁹ The increase in the traffic volumes was analyzed to determine whether any traffic-related noise impacts would result from the project. The project-related traffic noise impact is determined by comparing the increase in noise levels from existing conditions to existing plus project conditions with the project's significance threshold. Table 15 provides a summary of the roadway noise level analysis.

TABLE 15 ROADWAY TRAFFIC NOISE IMPACTS – PROJECT LEVEL

Roadway Segment	Calculated Traffic Noise Levels, ¹ dBA L _{dn}		Increase in Noise Levels due to Proposed Project, dBA L _{dn}
	Existing Conditions	Existing + Proposed Project	
The Embarcadero			
North of Green Street	66.6	66.6	0.0
From Green Street to Broadway	66.9	66.9	0.0
South of Broadway	68.2	68.3	0.1
Davis Street			
From Vallejo Street to Broadway	57.7	57.8	0.1
South of Broadway	62.5	62.5	0.0
Front Street			
North of Green Street	55.9	55.9	0.0
From Green Street to Vallejo Street	58.4	58.4	0.0
From Vallejo Street to Broadway	59.6	59.6	0.0
South of Broadway	61.3	61.3	0.0
Green Street			
West of Front Street	57.0	57.0	0.0
From Front Street to The Embarcadero	57.9	57.9	0.0
Vallejo Street			
West of Front Street	59.4	59.5	0.1
From Front Street to Davis Street	57.3	57.4	0.1
Broadway			
West of Front Street	65.2	65.3	0.1
From Front Street to Davis Street	64.7	64.9	0.2
From Davis Street to The Embarcadero	63.5	63.9	0.4

Source: Data modeled by AECOM in 2017.

Notes:

dBA = A-weighted decibels; L_{dn} = day-night sound level

¹ Predicted traffic noise levels do not account for shielding from existing noise barriers or intervening structures. Traffic noise levels may vary depending on actual setback distances and localized shielding.

⁸⁹ CHS Consulting Group, *Seawall Lot 323 and 324 (Teatro ZinZanni) Project Final Transportation Impact Study*, May 2018.

As shown in Table 15, the proposed project would result in a maximum traffic noise increase of 0.4 dBA L_{dn} along Broadway (from Davis Street to The Embarcadero). The estimated traffic noise increase would be lower at all other analyzed roadway segments. The incremental changes in traffic noise levels attributable to the proposed project would be below the 3 dBA L_{dn} significance criterion.

Project-related onsite stationary sources and offsite traffic would not result in a substantial increase in ambient noise levels in the project vicinity. Therefore, this impact would be *less than significant*.

Impact NO-2: During construction, the proposed project would not result in a substantial temporary or periodic increase in ambient noise levels and vibration in the project vicinity above levels existing without the project. (*Less than Significant*)

The analysis under this criterion addresses potential noise and vibration impacts on nearby sensitive noise receptors during construction of the proposed project.

The primary noise impacts from construction would occur from noise generated by the operation of heavy equipment on the project site. Noise impacts would also result from construction trucks arriving to and departing from the site, which would be an intermittent source of construction noise. Project construction activities would include demolishing existing pavement, grading, installing utilities, landscaping, and erecting the buildings. The equipment typically used in these activities includes bulldozers, excavators, graders, backhoes, concrete trucks, loaders, and heavy-duty trucks. The closest noise-sensitive land uses that would experience noise generated by project construction are the Gateway Apartments (approximately 80 feet south of the project site) and the proposed 88 Broadway Apartments (approximately 60 feet west of the project site).⁹⁰ Demolition, excavation, and building construction would cause a temporary increase in noise levels in the project vicinity. Construction equipment would generate noise and vibration at nearby properties that could be considered an annoyance by occupants and potentially cause damage to historic architectural structures.

The proposed project would include excavation of material to a maximum depth of approximately 6 feet below grade to accommodate building foundations. Project construction is anticipated to occur for up to approximately 22 months, and to be completed in 2020. Project construction would generally include site preparation and demolition (1 month), excavation/foundation work (2 months), structure building (7 months), exterior buildout (4 months), and interior buildout (8 months). Export material (e.g., concrete and asphalt surfaces) and soil would be hauled from the project site during the site demolition and excavation phases. Construction hours would be from 7 a.m. to 5 p.m. Monday through Friday, with Saturdays as alternate dates. Impact pile driving is not required and nighttime construction is not proposed.

Noise impacts from construction activities would be a function of the noise generated by construction equipment, the location of the equipment, the timing and duration of the noise-generating construction activities, and the distance to noise-sensitive receptors. Construction activities for the proposed project would include development of the infrastructure and buildings.

Individual pieces of non-impact-type construction equipment that would be used for construction of the proposed project produce maximum noise levels of 74–84 dBA at a reference distance of 50 feet from the noise source, as provided in Table 16. The construction equipment noise levels at 50 feet distance (referenced maximum noise levels) are based on the *FHWA Roadway Construction Noise Model User's Guide*,⁹¹ a technical report that contains actual measured noise data for

⁹⁰ San Francisco Planning Department, *88 Broadway and 735 Davis Street Project Final Mitigated Negative Declaration*, Case No. 2016-007850ENV, October 25, 2017, amended February 27, 2018. http://sfmea.sfplanning.org/2016-007850ENV_FMND.pdf. Project was approved but construction has not begun.

⁹¹ Federal Highway Administration, *FHWA Roadway Construction Noise Model User's Guide*, 2006.

various types of construction equipment. The construction noise levels at a distance of 100 feet are calculated based on the reference noise level at 50 feet and based on a 6 dB attenuation (applicable to a point source).

Construction noise is regulated by the San Francisco Noise Ordinance, article 29 of the Police Code. Police Code section 2907 requires that noise levels from individual pieces of construction equipment, other than impact tools, not exceed 80 dBA at a distance of 100 feet. Section 2908 prohibits construction work between 8 p.m. and 7 a.m. if noise would exceed the ambient noise level by 5 dBA at the project property line, unless a special permit is authorized by the director of DBI. The proposed project would be required to comply with regulations set forth by the San Francisco Ordinance in Police Code section 2907. The estimated construction equipment noise levels at a distance of 100 feet (68–78 dBA) would be below the City's specified 80 dBA noise limit (applicable to daytime construction activities). In addition, project construction activities would be limited to daytime hours, between 7 a.m. and 5 p.m. Therefore, project construction activities would comply with the City's Noise Control Ordinance. As such, the construction noise impact would be *less than significant*.

TABLE 16 NOISE LEVELS GENERATED BY TYPICAL CONSTRUCTION EQUIPMENT

Construction Equipment	Reference Noise Levels at 50 Feet, ¹ dBA L _{max}	Estimated Noise Levels at 100 Feet, ² dBA L _{max}
Air Compressor	78	72
Auger Drill Rig (for shoring)	84	78
Backhoe	78	72
Compactor	83	77
Concrete Pump	79	73
Concrete Truck	81	75
Crane	81	75
Rubber-Tired Dozer	82	76
Excavator	84	78
Forklift	75	69
Generator	81	75
Loader	79	73
Dump/Haul/Delivery Truck	76	70
Welders	74	68

Notes:

dBA = A-weighted decibels; L_{max} = maximum noise level

¹ The Federal Highway Administration—published noise emission levels at 50 feet distance.

² Calculated noise levels at 100 feet distance.

Source: Federal Highway Administration, *FHWA Roadway Construction Noise Model User's Guide*, 2006.

Construction Vibration Impacts

Construction activities can generate varying degrees of ground vibration, depending on the construction procedures and the type of construction equipment used. FTA has published vibration levels for various types of construction equipment, as provided in Table 17.⁹² As shown in the table, construction equipment would generate groundborne vibration from approximately 58 VdB (e.g., small bulldozer) to 87 VdB (e.g., large bulldozer or caisson drilling) at a distance of 25 feet from the equipment. The nearest residential use to the project site (receptor 2) would be exposed to groundborne vibration level up to 72 VdB, because of the larger bulldozer used during site excavation phase and caisson drilling during the

⁹² Federal Transit Administration, *Transit Noise and Vibration Impact Assessment*, 2006, Table 12-2.

construction phase. The estimated vibration level at the nearest residential use would be below the FTA criterion of 80 VdB, applicable to residential use. Because project construction would occur only during the daytime hours, construction activities would avoid the more sensitive time period when residents are at home or sleeping (i.e., nighttime hours).

The estimated vibration level at either the KGO-TV building (receptor 3) or 60 Broadway caused by the project construction equipment would be up to 73 VdB. FTA provides a groundborne vibration impact criterion of 65 VdB for TV studios. Based on the FTA manual, a three- to four-story masonry building would provide approximately 10 VdB of vibration attenuation (coupling to building foundation).⁹³ Therefore, the groundborne vibration at the interior of the KGO-TV building would be attenuated from 73 VdB to 63 VdB, which would be below the FTA 65 VdB criterion. Additionally, Table 17 shows that with respect to building damage risk, for either typical masonry structures or those akin to historic structures that may be extremely susceptible to vibration; the anticipated construction-attributed vibration levels are lower than the applicable thresholds. Therefore, the project construction-related vibration impact would be *less than significant*.

TABLE 17 VIBRATION LEVELS GENERATED BY TYPICAL CONSTRUCTION EQUIPMENT

Construction Equipment	Reference Vibration Levels at 25 Feet, ¹ VdB	Estimated Vibration Levels, ² VdB		
		Receptor 2 (Gateway Apartment)	Receptor 3 (KGO-TV or 60 Broadway)	Receptor 4 (88 Broadway)
Large Bulldozer	87	72	63 ³	74
Caisson Drilling	87	72	63 ³	74
Loaded Trucks	86	71	62 ³	73
Jackhammer	79	64	55 ³	55
Small Bulldozer	58	43	34 ³	45
Significance Threshold (annoyance or operations interruption), VdB		80	65 ⁴	80
Significance Threshold (building damage risk), VdB		94 ⁶	90 ⁵	94 ⁶

Source: Federal Transit Administration, *Transit Noise and Vibration Impact Assessment*, 2006; data modeled by AECOM in 2017

Notes:

VdB = vibration decibels

¹ Federal Transit Administration (FTA)-published vibration levels at 25 feet distance.

² Calculated vibration levels per FTA procedures.

³ After consideration of ground-to-building vibration coupling loss.

⁴ FTA-published vibration criterion for TV studios.

⁵ FTA-published vibration criterion for "TV. Buildings extremely susceptible to vibration damage" risk category.

⁶ FTA-published vibration criterion for "III. ...masonry buildings" risk category.

Impact-C-NO-1: The proposed project, in combination with past, present, and reasonably foreseeable future projects in the vicinity of the project site, would result in less-than-significant cumulative impacts related to noise. (*Less than Significant*)

The geographic context for an analysis of cumulative impacts related to noise is the immediate project area. As shown in Table 3 and mapped in Figure 17 in Section B.3, Cumulative Projects, reasonably foreseeable projects within a 0.25-mile radius of the project site include new residential, museum, a childcare facility, and senior housing, and space for community, retail, and office uses.

⁹³ Ibid., Table 10-1.

Construction Noise

Noise from construction activities would typically affect areas close to the construction site because noise impacts are typically localized. Construction noise dissipates/attenuates quickly as the distance between the construction site and the receptor increases, and as intervening structures provide noise reduction. Therefore, only those projects within 500 feet of the project site were considered for the analysis of cumulative construction noise impacts. The cumulative project within 500 feet of the project site is the proposed 88 Broadway and 753 Davis Street project, a senior housing development located directly west of the project site (on the western side of Davis Street). Construction of the 88 Broadway and 753 David Street project is anticipated to start in 2018, during the proposed project's exterior/interior buildout construction phase (which would generate less noise than other phases).

Construction activities for the cumulative project would generate noise at each project site, and cumulative construction noise could exceed ambient noise levels at the nearest sensitive uses. However, construction activities for the cumulative project would be required to comply with the City's noise limit for construction equipment (80 dBA) and time restriction (7 a.m. to 8 p.m.). In addition, construction noise would be intermittent and temporary and would cease at the end of the construction phase. Because construction activities would be required to comply with the City's Noise Control Ordinance, the cumulative construction-related noise impact would be *less than significant*.

Operational Noise

The geographic context for the analysis of cumulative operational mobile-source (roadway) noise impacts is defined as the area immediately surrounding the roadways that would be affected by implementation of the proposed project and cumulative development. Potential cumulative operational impacts related to roadway noise were analyzed based on cumulative traffic conditions for the year 2040, which include both regional growth and approved developments.

Cumulative operational noise would be generated by both onsite stationary sources (e.g., mechanical equipment) and offsite sources (e.g., auto traffic). Onsite noise sources, such as mechanical equipment from the proposed project and the 88 Broadway and 753 Davis Street project, would be required to comply with the City's Noise Control Ordinance. Therefore, cumulative noise impacts associated with onsite stationary sources would be *less than significant*.

Offsite auto traffic from the proposed project together with the 88 Broadway and 753 Davis Street project could contribute to the overall cumulative noise level along nearby roadway segments. Table 18 summarizes the analysis of cumulative offsite roadway noise impacts. As shown, the cumulative traffic would result in a maximum traffic noise increase of 1.3 dBA L_{dn} along Green Street west of Front Street. The incremental changes in traffic noise levels attributable to the proposed project would be below the 3 dBA L_{dn} significance criterion. Therefore, cumulative offsite traffic noise impacts would be *less than significant*.

Construction-Related and Operational Vibration

Potential construction-related vibration impacts are generally limited to effects on buildings and structures located close to the construction site. Because of the rapid attenuation of groundborne vibration and the distance to the nearest sensitive receptors, cumulative construction impacts related to groundborne vibration are not anticipated. Although each individual project in the vicinity may produce construction vibration, the vibration levels would not combine to create or contribute to vibration impacts. The proposed project would not cause significant construction vibration to the same buildings as the 88 Broadway Street and 753 Street project. Such impacts, therefore, would be *less than significant*.

Therefore, this impact would be *less than significant*.

TABLE 18 ROADWAY TRAFFIC NOISE IMPACTS – CUMULATIVE LEVEL

Roadway Segment	Calculated Traffic Noise Levels, ¹ dBA L _{dn}		Increase in Noise Levels due to Cumulative Traffic, dBA L _{dn}
	Existing Conditions	Future Cumulative Conditions	
The Embarcadero			
North of Green Street	66.6	67.2	0.6
From Green Street to Broadway	66.9	67.5	0.6
South of Broadway	68.2	68.8	0.6
Davis Street			
From Vallejo Street to Broadway	57.7	56.3	-1.4
South of Broadway	62.5	62.7	0.2
Front Street			
North of Green Street	55.9	56.0	0.1
From Green Street to Vallejo Street	58.4	58.5	0.1
From Vallejo Street to Broadway	59.6	59.7	0.1
South of Broadway	61.3	61.4	0.1
Green Street			
West of Front Street	57.0	58.3	1.3
From Front Street to The Embarcadero	57.9	59.1	1.2
Vallejo Street			
West of Front Street	59.4	59.5	0.1
From Front Street to Davis Street	57.3	55.6	-1.7
Broadway			
West of Front Street	65.2	65.6	0.4
From Front Street to Davis Street	64.7	65.2	0.5
From Davis Street to The Embarcadero	63.5	64.0	0.5

Notes:

dBA = A-weighted decibels; L_{dn} = day-night sound level

¹ Predicted traffic noise levels do not account for shielding from existing noise barriers or intervening structures. Traffic noise levels may vary depending on actual setback distances and localized shielding.

Source: Data modeled by AECOM in 2017.

E.6. AIR QUALITY

Topics:	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact	Not Applicable
6. AIR QUALITY.—Would the project:					
a) Conflict with or obstruct implementation of the applicable air quality plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal, state, or regional ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Expose sensitive receptors to substantial pollutant concentrations?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Create objectionable odors affecting a substantial number of people?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Overview

The Bay Area Air Quality Management District is the regional agency with jurisdiction over the nine-county San Francisco Bay Area Air Basin (SFBAAB), which includes San Francisco, Alameda, Contra Costa, Marin, San Mateo, Santa Clara, and Napa counties and portions of Sonoma and Solano counties. BAAQMD is responsible for attaining and maintaining air quality in the SFBAAB within federal and state air quality standards, as established by the federal Clean Air Act and the California Clean Air Act, respectively. Specifically, BAAQMD monitors ambient air pollutant levels throughout the SFBAAB and develops and implements strategies to attain the applicable federal and state standards.

The federal and California clean air acts require that plans be developed for areas that do not meet air quality standards, generally. The Bay Area's current clean air plan, titled *Spare the Air, Cool the Climate: A Blueprint for Clean Air and Climate Protection in the Bay Area, Final 2017 Clean Air Plan* (referred to in this initial study as the 2017 Clean Air Plan), serves as an update to the Bay Area 2010 Clean Air Plan and continues to provide the framework for the SFBAAB to achieve attainment of the national and California ambient air quality standards. The 2017 Clean Air Plan updates the Bay Area's ozone plan, which is based on the "all feasible measures" approach to meet the requirements of the California Clean Air Act. Additionally, it sets a goal of reducing health risk impacts on local communities by 20 percent by 2020. Furthermore, the 2017 Clean Air Plan lays the groundwork for reducing GHG emissions in the Bay Area to meet the state's 2030 GHG reduction target and 2050 GHG reduction goal. It also includes a vision for the Bay Area in a postcarbon year 2050 that encompasses the following actions:⁹⁴

- Construct buildings that are energy efficient and powered by renewable energy.
- Walk, bicycle, and use public transit for the majority of trips and use electric-powered autonomous public transit fleets.
- Incubate and produce clean energy technologies.

⁹⁴ Bay Area Air Quality Management District, *Spare the Air, Cool the Climate: A Blueprint for Clean Air and Climate Protection in the Bay Area, Final 2017 Clean Air Plan*, adopted April 19, 2017, <http://www.baaqmd.gov/plans-and-climate/air-quality-plans/current-plans>.

- Live a low-carbon lifestyle by purchasing low-carbon foods and goods in addition to recycling and putting organic waste to productive use.

The 2017 Clean Air Plan represents the most current applicable air quality plan for the SFBAAB. Consistency with this plan is the basis for determining whether the proposed project would conflict with or obstruct implementation of air quality plans.

Criteria Air Pollutants

In accordance with the federal and California clean air acts, air pollutant standards have been established for the following six criteria air pollutants: ozone, carbon monoxide (CO), particulate matter (PM),⁹⁵ nitrogen dioxide, sulfur dioxide (SO₂), and lead. These air pollutants are termed “*criteria air pollutants*” because they are regulated by developing specific public health– and welfare-based criteria as the basis for setting permissible levels.

In general, the SFBAAB experiences low concentrations of most pollutants when compared to federal or state standards. The air basin is designated as either in *attainment* or *unclassified* for most criteria air pollutants, with the exceptions of ozone, PM_{2.5}, and PM₁₀, for which the air basin is designated as *nonattainment* for either the state or federal standard. By its very nature, regional air pollution is largely a cumulative impact in that no single project is sufficient in size to result in nonattainment of air quality standards by itself. Instead, a project’s individual emissions contribute to existing cumulative air quality impacts. If a project’s contribution to cumulative air quality impacts is considerable, then the project’s impact on air quality would be considered significant.⁹⁶

Land use projects may contribute to regional criteria air pollutants during the projects’ construction and operational phases. Table 20 identifies air quality significance thresholds followed by a discussion of each threshold. Projects that would result in criteria air pollutant emissions below these significance thresholds would not violate an air quality standard, contribute substantially to an air quality violation, or result in a cumulatively considerable net increase in criteria air pollutants within the SFBAAB.

TABLE 20 CRITERIA AIR POLLUTANT SIGNIFICANCE THRESHOLDS

Pollutant	Construction Thresholds	Operational Thresholds	
	Average Daily Emissions (lb/day)	Average Daily Emissions (lb/day)	Maximum Annual Emissions (tons/year)
ROG	54	54	10
NO _x	54	54	10
PM ₁₀	82 (exhaust)	82	15
PM _{2.5}	54 (exhaust)	54	10
Fugitive Dust	Construction Dust Ordinance or other best management practices		Not applicable

Source: Bay Area Air Quality Management District, *Revised Draft Options and Justification Report, California Environmental Quality Act Thresholds of Significance*, October 2009.

Notes: lb/day = pounds per day; NO_x = oxides of nitrogen; PM_{2.5} = particulate matter equal to or less than 2.5 microns in diameter; PM₁₀ = particulate matter equal to or less than 10 microns in diameter; ROG = reactive organic gases

⁹⁵ Particulate matter (PM) is subdivided into two classes based on particle size: PM equal to or less than 10 microns in diameter (PM₁₀) and PM equal to or less than 2.5 microns in diameter (PM_{2.5}).

⁹⁶ Bay Area Air Quality Management District, *California Environmental Quality Act Air Quality Guidelines*, May 2017, p. 2-1.

Ozone Precursors

As discussed previously, the SFBAAB is currently designated as nonattainment for ozone and particulate matter. Ozone is a secondary air pollutant produced in the atmosphere through a complex series of photochemical reactions involving reactive organic gases (ROG) and oxides of nitrogen (NO_x). The potential for a project to result in a cumulatively considerable net increase in criteria air pollutants, which may contribute to an existing or projected air quality violation, is based on the emissions limits for stationary sources established by the federal and California clean air acts. To make sure that new stationary sources do not cause or contribute to a violation of an air quality standard, BAAQMD regulation 2, rule 2 requires any new source that emits criteria air pollutants above a specified emissions limit to offset those emissions. For the ozone precursors ROG and NO_x, the offset emissions level is an annual average of 10 tons per year (or 54 pounds per day [lb/day]).⁹⁷ These levels represent emissions below which new sources are not anticipated to contribute to an air quality violation or result in a considerable net increase in criteria air pollutants.

Although this regulation applies to new or modified stationary sources, land use development projects generate ROG and NO_x emissions through increases in vehicle trips, architectural coatings, and construction activities. Therefore, the thresholds mentioned above can be applied to the construction and operational phases of land use projects. Those projects that would result in emissions below these thresholds would not be considered to contribute to an existing or projected air quality violation or to result in a considerable net increase in ROG and NO_x emissions. Because of the temporary nature of construction activities, only the average daily thresholds are applicable to construction-phase emissions.

Particulate Matter (PM₁₀ and PM_{2.5})⁹⁸

BAAQMD has not established an offset limit for PM_{2.5}. However, the emissions limit in the federal New Source Review for stationary sources in nonattainment areas is an appropriate significance threshold. For PM₁₀ and PM_{2.5}, the emissions limits under the New Source Review are 15 tons per year (82 lb/day) and 10 tons per year (54 lb/day), respectively. These emissions limits represent levels below which a source is not expected to have an impact on air quality.⁹⁹ As with ozone precursors as identified above, land use development projects typically generate PM emissions as a result of increases in vehicle trips, space heating and natural gas combustion, landscape maintenance, and construction activities. Therefore, the thresholds mentioned above can be applied to the construction and operational phases of land use projects. Again, because construction activities are temporary, only the average daily thresholds are applicable to construction-phase emissions.

Fugitive Dust

Fugitive dust emissions are typically generated during construction phases. Studies have shown that applying best management practices (BMPs) at construction sites significantly controls fugitive dust,¹⁰⁰ and individual measures have been shown to reduce fugitive dust by 30–90 percent.¹⁰¹ BAAQMD has identified a number of BMPs to control fugitive dust emissions from construction activities.¹⁰² The City's Construction Dust Control Ordinance (Ordinance 176-08, effective July 30, 2008) requires a number of measures to control fugitive dust. Employing BMPs in compliance with this City ordinance is an effective strategy for controlling construction-related fugitive dust.

⁹⁷ Bay Area Air Quality Management District, *Revised Draft Options and Justification Report, California Environmental Quality Act Thresholds of Significance*, October 2009, p. 17.

⁹⁸ PM₁₀ is often termed "coarse" particulate matter and is made of particulates that are 10 microns in diameter or smaller. PM_{2.5}, termed "fine" particulate matter, is composed of particles that are 2.5 microns or less in diameter.

⁹⁹ Bay Area Air Quality Management District, *Revised Draft Options and Justification Report, California Environmental Quality Act Thresholds of Significance*, October 2009, p. 16.

¹⁰⁰ Western Regional Air Partnership. 2006. *WRAP Fugitive Dust Handbook*, September 7, 2006, http://www.wrapair.org/forums/dejff/dh/content/FDHandbook_Rev_06.pdf, accessed February 16, 2012.

¹⁰¹ Bay Area Air Quality Management District, *Revised Draft Options and Justification Report, California Environmental Quality Act Thresholds of Significance*, October 2009, p. 27.

¹⁰² Bay Area Air Quality Management District, *CEQA Air Quality Guidelines*, May 2011.

Other Criteria Pollutants

Regional concentrations of CO in the Bay Area have not exceeded state standards in the past 11 years and SO₂ concentrations have never exceeded the standards. The primary source of CO emissions from development projects is vehicle traffic. Construction-related SO₂ emissions represent a negligible portion of the total basinwide emissions and construction-related CO emissions represent less than 5 percent of the Bay Area's total basinwide CO emissions. As discussed previously, the Bay Area is in attainment for both CO and SO₂. Furthermore, BAAQMD has demonstrated, based on modeling, that to exceed the California ambient air quality standard of 9.0 parts per million (8-hour average) or 20.0 parts per million (1-hour average) for CO, project traffic in addition to existing traffic would have to exceed 44,000 vehicles per hour at affected intersections (or 24,000 vehicles per hour where vertical and/or horizontal mixing is limited). Therefore, given the Bay Area's attainment status and the limited CO and SO₂ emissions that could result from development projects, development projects would not result in a cumulatively considerable net increase in CO or SO₂, and a quantitative analysis is not required.

Local Health Risks and Hazards

In addition to criteria air pollutants, individual projects may emit toxic air contaminants (TACs). TACs collectively refer to a diverse group of air pollutants that are capable of causing chronic (long-duration) and acute (severe but short-term) adverse effects on human health, including carcinogenic effects. Human health effects of TACs include birth defects, neurological damage, cancer, and mortality. There are hundreds of different types of TACs with varying degrees of toxicity. Individual TACs vary greatly in the health risks they present; at a given level of exposure, one TAC may pose a hazard that is many times greater than another.

Unlike criteria air pollutants, TACs do not have ambient air quality standards. BAAQMD regulates TACs, using a risk-based approach to determine which sources and pollutants to control and the degree of control. A health risk assessment is an analysis that estimates human health exposure to toxic substances, and considers such exposure together with information regarding the substances' toxic potency to provide quantitative estimates of health risks.¹⁰³

Air pollution does not affect every individual in the population in the same way, and some groups are more sensitive to adverse health effects than others. Land uses such as residences, schools, children's day care centers, hospitals, and nursing and convalescent homes are considered the most sensitive to poor air quality: the population groups associated with these uses are more susceptible to respiratory distress, or, as in the case of residential receptors, their exposure time is greater than that for other land uses. Therefore, these groups are referred to as *sensitive receptors*. Guidance on exposure assessment typically assumes that residences would be exposed to air pollution 24 hours per day, 350 days per year, for 70 years. Therefore, assessments of residential exposure to air pollutants typically result in the greatest adverse health outcomes of all population groups.

Exposures to fine particulate matter (PM_{2.5}) are strongly associated with mortality, respiratory diseases, and lung development in children, and other endpoints such as hospitalization for cardiopulmonary disease.¹⁰⁴ Diesel PM is also a concern. The California Air Resources Board (ARB) identified diesel PM as a TAC in 1998, based primarily on evidence

¹⁰³ In general, a health risk assessment is required if BAAQMD concludes that projected emissions of a specific air toxic compound from a proposed new or modified source suggest a potential public health risk. The project sponsor is then subject to a health risk assessment for the source in question. Such an assessment generally evaluates chronic, long-term effects, estimating the increased risk of cancer as a result of exposure to one or more TACs.

¹⁰⁴ San Francisco Department of Public Health, *Assessment and Mitigation of Air Pollutant Health Effects from Intra-Urban Roadways: Guidance for Land Use Planning and Environmental Review*, May 2008.

demonstrating cancer effects in humans.¹⁰⁵ The estimated cancer risk from exposure to diesel exhaust is much higher than the risk associated with any other TAC routinely measured in the region.

In an effort to identify the areas of San Francisco most adversely affected by sources of TACs, the City partnered with the BAAQMD to conduct a citywide health risk assessment based on an inventory and assessment of air pollution and exposures from mobile, stationary, and area sources in San Francisco. Areas with poor air quality, termed “*air pollutant exposure zones*,” were identified based on health-protective criteria that consider estimated cancer risk, exposures to fine particulate matter, proximity to freeways, and locations with particularly vulnerable populations. The project site is located within an air pollutant exposure zone. Each criterion for an air pollutant exposure zone is discussed below.

Excess Cancer Risk

The criteria of greater than 100 per 1 million persons excess cancer risk is based on U.S. Environmental Protection Agency (U.S. EPA) guidance for conducting air toxics analyses and making risk management decisions at the facility and community levels.¹⁰⁶ As described by BAAQMD, U.S. EPA considers a cancer risk of 100 per million to be within the “acceptable” range of cancer risk. Furthermore, in the 1989 preamble to the benzene National Emissions Standards for Hazardous Air Pollutants rulemaking,¹⁰⁷ U.S. EPA states that it “...strives to provide maximum feasible protection against risks to health from hazardous air pollutants by (1) protecting the greatest number of persons possible to an individual lifetime risk level no higher than approximately one in one million and (2) limiting to no higher than approximately one in ten thousand [100 in one million] the estimated risk that a person living near a plant would have if he or she were exposed to the maximum pollutant concentrations for 70 years.” The criterion of 100 per 1 million excess cancer cases is also consistent with the ambient cancer risk in the most pristine portions of the Bay Area based on BAAQMD regional modeling.¹⁰⁸

Fine Particulate Matter

In April 2011, U.S. EPA published *Policy Assessment for the Particulate Matter Review of the National Ambient Air Quality Standards*. In its PM policy assessment, U.S. EPA staff concludes that the then-current federal annual PM_{2.5} standard of 15 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) should be revised to a level within the range of 11–13 $\mu\text{g}/\text{m}^3$, with evidence strongly supporting a standard within the range of 11–12 $\mu\text{g}/\text{m}^3$. The air pollutant exposure zones for San Francisco are based on the health-protective PM_{2.5} standard of 11 $\mu\text{g}/\text{m}^3$, as supported by U.S. EPA’s PM policy assessment, although lowered to 10 $\mu\text{g}/\text{m}^3$ to account for uncertainty in accurately predicting air pollutant concentrations using emissions modeling programs.

Proximity to Freeways

According to ARB, studies have shown an association between the proximity of sensitive land uses to freeways and a variety of respiratory symptoms, exacerbation of asthma cases, and decreases in lung function in children. Siting sensitive uses close to freeways increases both exposure to air pollution and the potential for adverse health effects. Because evidence shows that sensitive uses in areas within 500 feet of any freeway are at an increased health risk from air pollution,¹⁰⁹ lots that are within 500 feet of freeways are included in the air pollutant exposure zone.

¹⁰⁵ California Air Resources Board, Fact Sheet, “The Toxic Air Contaminant Identification Process: Toxic Air Contaminant Emissions from Diesel-fueled Engines,” October 1998.

¹⁰⁶ Bay Area Air Quality Management District, *Revised Draft Options and Justification Report, California Environmental Quality Act Thresholds of Significance*, October 2009, p. 67.

¹⁰⁷ 54 *Federal Register* 38044, September 14, 1989.

¹⁰⁸ Bay Area Air Quality Management District, *Revised Draft Options and Justification Report, California Environmental Quality Act Thresholds of Significance*, October 2009, p. 67.

¹⁰⁹ California Air Resources Board, *Air Quality and Land Use Handbook: A Community Health Perspective*, 2005, <http://www.arb.ca.gov/ch/landuse.htm>.

Health-Vulnerable Locations

Based on BAAQMD's evaluation of health vulnerability in the Bay Area, those zip codes (94102, 94103, 94105, 94124, and 94130) in the worst quintile of Bay Area health vulnerability scores as a result of air pollution-related causes were afforded additional protection by lowering the standards for identifying lots in the air pollutant exposure zone to: (1) an excess cancer risk greater than 90 per 1 million persons exposed, and/or (2) PM_{2.5} concentrations in excess of 9 µg/m³.¹¹⁰

The above citywide health risk modeling was also used as the basis for approving a series of amendments to the San Francisco Building and Health codes, generally referred to as the Enhanced Ventilation Required for Urban Infill Sensitive Use Developments or Health Code article 38 (Ordinance 224-14, effective December 8, 2014). The purpose of Health Code article 38 is to protect the public health and welfare by establishing an air pollutant exposure zone and imposing an enhanced ventilation requirement for all urban infill development of sensitive uses within an air pollutant exposure zone. In addition, projects within an exposure zone require special consideration to determine whether project activities would add substantial emissions to areas already adversely affected by poor air quality. The proposed project is located within an air pollutant exposure zone.¹¹¹

IMPACT DISCUSSION

Project-related air quality impacts fall into two categories: short-term impacts from construction and long-term impacts from project operation.

Construction Air Quality Impacts

The following discussion addresses the proposed project's construction-related air quality impacts, which are estimated to last up to approximately 22 months. For the purposes of the environmental analysis, it is assumed that project construction would start 2019 and be completed by 2020 (approximately 484 workdays).

Impact AQ-1: The proposed project's construction activities would generate fugitive dust and criteria air pollutants, but would not violate air quality standards, contribute substantially to an existing or projected air quality violation, or result in a cumulatively considerable net increase in air quality levels. (*Less than Significant*)

Construction activities (short-term) typically result in emissions of ozone precursors and particulate matter (PM₁₀ and PM_{2.5}) in the form of dust (fugitive dust) and exhaust (e.g., vehicle tailpipe emissions). Such emissions are primarily a result of the combustion of fuel from on-road and off-road vehicles. However, ROG's are also emitted from activities that involve painting, other types of architectural coatings, or asphalt paving. The proposed project would include the demolition of the existing parking lot and construction of a mixed-use development consisting of a hotel, an entertainment venue, and a public park. During the project's approximately 22-month construction period, construction activities would have the potential to result in emissions of particulate matter, as discussed below, and ozone precursors, discussed below under "Criteria Pollutants."

Fugitive Dust

Project-related demolition, excavation, grading, and other construction activities may generate windblown dust that could contribute particulate matter into the local atmosphere. Although there are federal standards for air pollutants and implementation of state and regional air quality control plans, air pollutants continue to affect human health throughout the country. California has found that PM exposure can cause health effects at lower levels than identified in national standards.

¹¹⁰ San Francisco Planning Department and San Francisco Department of Public Health, *2014 Air Pollutant Exposure Zone Map (Memo and Map)*, April 9, 2014. These documents are part of San Francisco Board of Supervisors File No. 14806, Ordinance No. 224-14.

¹¹¹ San Francisco Planning Department, San Francisco Property Information Map, Version 3.4.4 Map, 2016, <http://propertymap.sfplanning.org/?dept=planning>, accessed on September 29, 2016.

The current health burden of PM demands that, where possible, public agencies take feasible available actions to reduce sources of exposure. According to ARB, reducing PM_{2.5} concentrations to federal and state standards of 12 µg/m³ in the San Francisco Bay Area would prevent between 200 and 1,300 premature deaths.¹¹²

Dust can be an irritant, causing eyes to water or irritating the lungs, nose, and throat. Demolition, excavation, grading, and other construction activities can generate windblown dust that adds particulate matter to the local atmosphere. Depending on exposure, adverse health effects can result from this PM in general and from specific contaminants such as lead or asbestos that may be constituents of soil.

In response, the San Francisco Board of Supervisors approved a series of amendments to the San Francisco Building and Health codes, generally referred hereto as the Construction Dust Control Ordinance (Ordinance 176-08, effective July 30, 2008). The intent of this ordinance is to reduce the quantity of dust generated during site preparation, demolition, and construction work to protect the health of the general public and onsite workers, minimize public nuisance complaints, and avoid stop-work orders by DBI.

The ordinance requires all site preparation work, demolition, or other construction activities in San Francisco that could create dust, or that could expose or disturb more than 10 cubic yards or 500 square feet of soil, to comply with specified dust control measures, whether or not the activity requires a permit from DBI. The director of DBI may waive this requirement for activities on sites less than one-half acre that are unlikely to generate any visible windblown dust.

In compliance with the Construction Dust Control Ordinance, the project sponsor and the contractor responsible for construction activities at the project site would be required to use the following practices to control construction dust on the site or other practices that result in equivalent dust control that are acceptable to the director. Dust suppression activities may include watering all active construction areas sufficiently to prevent dust from becoming airborne; increased watering frequency may be necessary whenever wind speeds exceed 15 miles per hour. During excavation and dirt-moving activities, contractors shall wet-sweep or vacuum the streets, sidewalks, paths, and intersections where work is in progress at the end of the workday. Inactive stockpiles (where no disturbance occurs for more than 7 days) greater than 10 cubic yards or 500 square feet of excavated material, backfill material, import material, gravel, sand, road base, and soil shall be covered with a 10 mil (0.01 inch) polyethylene plastic (or equivalent) tarp, shall be braced down, or shall use other equivalent soil stabilization techniques. City Ordinance 175-91 restricts the use of potable water for soil compaction and dust control activities during any construction or demolition project occurring within the boundaries of San Francisco, unless permission is obtained from SFPUC. Nonpotable water must be used for soil compaction and dust control activities during project construction and demolition. SFPUC operates a recycled-water truck-fill station at the Southeast Water Pollution Control Plant that provides recycled water for these activities at no charge.

For projects larger than one-half acre, such as the proposed project, the Construction Dust Control Ordinance requires the project sponsor to submit a dust control plan for approval by the San Francisco Department of Public Health. The Port's building department would not issue a building permit without written notification from the department's director that the project sponsor has a site-specific dust control plan, unless the director waives the requirement. Interior-only tenant improvement projects larger than one-half acre that would not produce exterior visible dust are exempt from the requirement for a site-specific dust control plan.

The site-specific dust control plan required by the Dust Control Ordinance would require the project sponsor to: (a) submit a map to the Director of Public Health showing all sensitive receptors within 1,000 feet of the site; (b) wet down areas of soil at

¹¹² California Air Resources Board, *Methodology for Estimating Premature Deaths Associated with Long-term Exposure to Fine Airborne Particulate Matter in California*, Staff Report, Table 4c, October 24, 2008.

least three times per day; (c) provide an analysis of wind direction and install upwind and downwind particulate dust monitors; (d) record particulate monitoring results; (e) hire an independent third party to conduct inspections and keep a record of those inspections; (f) establish shutdown conditions based on wind, soil migration, etc.; (g) establish a hotline for surrounding community members who have the potential to be affected by project-related dust; (h) limit the area subject to construction activities at any one time; (i) install dust curtains and windbreaks on the property lines, as necessary; (j) limit the amount of soil in hauling trucks to the size of the truck bed and securing with a tarpaulin; (k) enforce a speed limit of 15 miles per hour for vehicles entering and exiting construction areas; (l) sweep affected streets with water sweepers at the end of the day; (m) install and use wheel washers to clean truck tires; (n) terminate construction activities when winds exceed 25 miles per hour; (o) apply soil stabilizers to inactive areas; and (p) sweep off adjacent streets to reduce particulate emissions.

The project sponsor would be required to designate an individual to monitor compliance with these dust control requirements. Compliance with the regulations and procedures set forth by the San Francisco Dust Control Ordinance would reduce potential dust-related air quality impacts to *less than significant*.

Criteria Air Pollutants

Construction activities would result in emissions of criteria air pollutants from the use of off- and on-road vehicles and equipment. To assist lead agencies in determining whether short-term construction-related emissions of air pollutants require further analysis about whether the project may exceed the significance thresholds for criteria air pollutants shown in Table 20 above, BAAQMD developed screening criteria in its *CEQA Air Quality Guidelines* (May 2017). If a proposed project meets the screening criteria, then construction of the project would result in less-than-significant impacts with regard to criteria air pollutants. A project that exceeds the screening criteria may require a detailed air quality assessment to determine whether criteria air pollutant emissions would exceed significance thresholds. The *CEQA Air Quality Guidelines* note that the screening levels are generally representative of new development on *greenfield*¹¹³ sites without any form of mitigation measures taken into consideration. In addition, the screening criteria do not account for project design features, attributes, or local development requirements that could also result in lower emissions.

The proposed construction activities are anticipated to include soil transport that would exceed the BAAQMD screening threshold of 10,000 cubic yards; therefore, a quantitative analysis was conducted. Construction-related criteria air pollutants generated by the proposed project were quantified using the California Emissions Estimator Model (version 2016.3.1) and provided in an air quality technical report.¹¹⁴ The model was developed, including default data (e.g., emission factors, meteorology), in collaboration with California air districts' staff. Default assumptions were used where project-specific information was unknown.

Construction of the proposed project would occur over a period of approximately 22 months and approximately 22 working days per month. Emissions were converted from tons per year to lb/day using the estimated construction duration of 484 working days. Table 21 presents the proposed project's total and average daily construction emissions from criteria pollutants.¹¹⁵

Construction of the proposed project would generate emissions associated with heavy-duty construction equipment, material-hauling trucks, and construction worker vehicles. Construction would involve demolishing an existing onsite parking lot, and

¹¹³ A greenfield site refers to agricultural or forest land or an undeveloped site earmarked for commercial, residential, or industrial projects.

¹¹⁴ AECOM, *Zinzanni Hotel & Theater Project Final Air Quality Technical Report*, July 2017.

¹¹⁵ To present the most conservative scenario for estimating emissions, the construction emission estimates contained herein assume that construction would begin in fall 2018. As described under "Estimation Methodology," these emissions estimates present worst-case emissions resulting from construction of the proposed project.

new construction activities would include grading, building construction, and exterior and interior buildout. Emissions were calculated using project-specific equipment lists and construction schedules estimated by the project sponsor. California Emissions Estimator Model outputs including full construction assumptions were calculated. The following primary construction assumptions were used to model construction-related air pollutant emissions:

- *Construction Schedule:* Up to 22 months
- *Acres to be Disturbed:* 1.33 acres
- *Demolition (existing parking lot):* 3,000 cubic yards of asphalt
- *Cut/Fill Volumes:* 11,100 cubic yards exported
- *Maximum Daily Construction Workers:* 125 workers per day assumed during all phases

TABLE 21 CONSTRUCTION-RELATED CRITERIA AIR POLLUTANT EMISSIONS ESTIMATES

Construction Year/Phase	Emissions (tons)			
	ROG	NOx	PM ₁₀ exhaust	PM _{2.5} exhaust
2017				
Demolition	0.02	0.16	0.00	0.00
Grading	0.08	0.79	0.02	0.02
2018				
Grading	0.00	0.05	0.00	0.00
Building Construction	0.20	1.41	0.07	0.07
Exterior	0.08	0.54	0.02	0.02
Interior	0.02	0.11	0.01	0.01
2019				
Interior	0.13	0.85	0.04	0.03
Total Construction Emissions (tons)	0.53	4.31	0.16	0.15
Average Daily Construction Emissions (lb/day) ¹	2.18	17.83	0.68	0.63
Significance Threshold	54	54	82	82
Exceed Threshold? (Yes/No)	No	No	No	No

Source: Estimated by AECOM in 2017. The shift in the construction start dates would not change these estimates in a perceptible manner.

Notes:

lb/day = pounds per day; NOx = oxides of nitrogen; PM₁₀ = particulate matter equal to or less than 10 microns in diameter; PM_{2.5} = particulate matter equal to or less than 2.5 microns in diameter; ROG = reactive organic gases

Exhaust emissions from the construction equipment fleet are expected to decrease over time as stricter standards take effect; as advancements in engine technology occur, as older equipment is retrofitted; and as turnover occurs. Therefore, exhaust emissions are anticipated to result in lower levels of emissions if construction occurs in later years.

¹ Average daily construction emissions calculated assuming a total construction duration of 22 months, 22 days per month.

As shown in Table 21, emissions of criteria air pollutants from construction equipment exhaust would not exceed the average daily thresholds. Impacts from project-related construction activities on regional air quality would be *less than significant*.

Impact AQ-2: The proposed project's construction activities would generate toxic air contaminants, including diesel particulate matter, that may expose sensitive receptors to substantial pollutant concentrations. (*Less than Significant with Mitigation*)

As stated previously, the project site is located within an air pollutant exposure zone, as mapped and defined by Health Code article 38. The following is a list of the nearest sensitive receptors:

- Gateway Apartments, 80 feet away to the south
- Kai Ming Head Start Broadway Center, 0.12 mile to the west
- John Yehall Chin Elementary School, 0.25 mile to the west
- Wu Yee Children's Services, 0.28 mile to the west

Additionally, an affordable family and senior housing residential complex has been proposed to be located at 88 Broadway and 735 Davis Street, which is approximately 60 feet west of the project site.¹¹⁶

With regard to construction emissions, off-road equipment (which includes construction-related equipment) is a large contributor to diesel PM emissions in California, although since 2007, ARB has found the emissions to be substantially lower than previously expected.¹¹⁷ Newer and more refined emission inventories have substantially lowered the estimates of diesel PM emissions from off-road equipment, such that off-road equipment is now considered the sixth largest source of such emissions in California.¹¹⁸ For example, revised PM emission estimates for the SFBAAB for the year 2010 (diesel PM is a major component of total PM) have decreased by 83 percent from previous 2010 emissions estimates.¹¹⁹ Approximately half of the reduction in emissions can be attributed to the economic recession and half to updated methodologies used to better assess construction emissions.¹²⁰

Additionally, a number of federal and state regulations require cleaner off-road equipment. Specifically, both U.S. EPA and California have set emissions standards for new off-road equipment engines, ranging from tier 1 to tier 4. Tier 1 emission standards were phased in between 1996 and 2000 and tier 4 interim and final emission standards for all new engines were phased in between 2008 and 2015. To meet the tier 4 emission standards, engine manufacturers must produce new engines with advanced emission-control technologies. Although the full benefits of these regulations would not be realized for several years, U.S. EPA estimates that implementing the federal tier 4 standards would reduce NO_x and PM emissions by more than 90 percent.¹²¹

In addition, construction activities do not lend themselves to analysis of long-term health risks because of their temporary and variable nature. As explained in BAAQMD's *CEQA Air Quality Guidelines*:

Due to the variable nature of construction activity, the generation of TAC emissions in most cases would be temporary, especially considering the short amount of time such equipment is typically within an influential distance that would result in the exposure of sensitive receptors to substantial concentrations. Concentrations of mobile-source diesel PM emissions are typically reduced by 70 percent at a distance of approximately 500 feet (ARB 2005). In addition, current models and methodologies for conducting health risk assessments are associated with longer-term exposure periods of 9, 40, and 70 years, which do not correlate well with the temporary and highly variable nature of construction activities. This results in difficulties with producing accurate estimates of health risk.¹²²

¹¹⁶ San Francisco Planning Department, *88 Broadway and 735 Davis Street Project Final Mitigated Negative Declaration*, Case No. 2016-007850ENV, October 25, 2017, amended February 27, 2018. http://sfmea.sfplanning.org/2016-007850ENV_FMND.pdf.

¹¹⁷ California Air Resources Board, *Staff Report: Initial Statement of Reasons for Proposed Rulemaking, Proposed Amendments to the Regulation for In-Use Off-Road Diesel-Fueled Fleets and the Off-Road Large Spark-Ignition Fleet Requirements*, October 2010, p. 1 and p. 13 (Figure 4).

¹¹⁸ Ibid.

¹¹⁹ California Air Resources Board, *In-Use Off-Road Equipment, 2011 Inventory Model*, http://www.arb.ca.gov/msei/categories.htm#inuse_or_category, accessed April 2, 2012.

¹²⁰ California Air Resources Board, *Staff Report: Initial Statement of Reasons for Proposed Rulemaking, Proposed Amendments to the Regulation for In-Use Off-Road Diesel-Fueled Fleets and the Off-Road Large Spark-Ignition Fleet Requirements*, October 2010.

¹²¹ U.S. Environmental Protection Agency, "Clean Air Nonroad Diesel Rule: Fact Sheet," May 2004.

¹²² Bay Area Air Quality Management District, *CEQA Air Quality Guidelines*, May 2011, p. 8-6.

Therefore, project-level analyses of construction activities have a tendency to produce overestimated assessments of long-term health risks. However, within an air pollutant exposure zone, as discussed above, additional construction activity may adversely affect populations that are already at higher risk for adverse long-term health risks from existing sources of air pollution.

Project construction activities would result in short-term emissions of diesel PM and other TACs. The project site is located in an area that already experiences poor air quality and project construction activities would generate additional air pollution, affecting nearby sensitive receptors and resulting in a significant impact. Implementation of **Mitigation Measure M-AQ-2, Construction Air Quality**, would reduce the magnitude of this impact to a less-than-significant level. Emission reductions from limiting idling, educating workers and the public, and properly maintaining equipment are difficult to quantify. However, other measures, specifically the requirement for equipment with tier 2 engines and the level 3 verified diesel emission control strategy (VDECS),¹²³ can reduce construction emissions by 89–94 percent compared to equipment with engines meeting no emission standards and without VDECS.⁵³ Emissions reductions from the combination of tier 2 equipment with level 3 VDECS is almost equivalent to requiring only equipment with tier 4 final engines. Therefore, compliance with **Mitigation Measure M-AQ-2** would reduce construction emissions impacts on nearby sensitive receptors to *less than significant with mitigation*.

Mitigation Measure M-AQ-2: Construction Air Quality

The project sponsor or the project sponsor's contractor shall comply with the following:

A. Engine Requirements.

Where access to alternative sources of power is available, portable diesel engines shall be prohibited. Diesel engines, whether for off-road or on-road equipment, shall not be left idling for more than 2 minutes, at any location, except as provided in exceptions to the applicable state regulations regarding idling for off-road and on-road equipment (e.g., traffic conditions, safe operating conditions). The contractor shall post legible and visible signs in English, Spanish, and Chinese, in designated queuing areas, and at the construction site to remind operators of the 2-minute idling limit.

The contractor shall instruct construction workers and equipment operators on the maintenance and tuning of construction equipment, and require that such workers and operators properly maintain and tune equipment in accordance with manufacturer specifications.

¹²³ PM emissions benefits are estimated by comparing off-road PM emission standards for tier 2 with tier 1 and 0. Tier 0 off-road engines do not have PM emission standards, but the U.S. Environmental Protection Agency's Exhaust and Crankcase Emissions Factors for Nonroad Engine Modeling – Compression Ignition has estimated tier 0 engines between 50 hp and 100 hp to have a PM emission factor of 0.72 g/hp-hour and greater than 100 hp to have a PM emission factor of 0.40 g/hp-hour. Therefore, requiring off-road equipment to have at least a tier 2 engine would result in between a 25 percent and 63 percent reduction in PM emissions, as compared to off-road equipment with tier 0 or tier 1 engines. The 25 percent reduction comes from comparing the PM emission standards for off-road engines between 25 hp and 50 hp for tier 2 (0.45 g/boiler horsepower [bhp]-hour) and tier 1 (0.60 g/bhp-hour). The 63 percent reduction comes from comparing the PM emission standards for off-road engines above 175 hp for tier 2 (0.15 g/bhp-hour) and tier 0 (0.40 g/bhp-hour). In addition to the tier 2 requirement, ARB level 3 VDECSs are required and would reduce PM by an additional 85 percent. Therefore, the mitigation measure would result in between an 89 percent (0.0675 g/bhp-hr) and 94 percent (0.0225 g/bhp-hour) reduction in PM emissions, as compared to equipment with tier 1 (0.60 g/bhp-hour) or tier 0 engines (0.40 g/bhp-hour).

B. Waivers.

1. The Planning Department's environmental review officer or designee may waive the alternative source of power requirement of subsection (A)(2) if an alternative source of power is limited or infeasible at the project site. If the ERO grants the waiver, the contractor must submit documentation that the equipment used for onsite power generation meets the requirements of subsection (A)(1).
2. The ERO may waive the equipment requirements of subsection (A)(1) if: a particular piece of off-road equipment with an ARB Level 3 VDECS is technically not feasible; the equipment would not produce desired emissions reduction due to expected operating modes; installation of the equipment would create a safety hazard or impaired visibility for the operator; or there is a compelling emergency need to use off-road equipment that is not retrofitted with an ARB level 3 VDECS. If the ERO grants the waiver, the contractor must use the next cleanest piece of off-road equipment, according to Table M-AQ-2.

**TABLE M-AQ-2 OFF-ROAD EQUIPMENT COMPLIANCE STEP-DOWN SCHEDULE
COMPLIANCE**

Compliance Alternative	Engine Emission Standard	Emissions Control
1	Tier 2	ARB Level 2 VDECS
2	Tier 2	ARB Level 1 VDECS
3	Tier 2	Alternative Fuel*

How to use the table: If the ERO determines that the equipment requirements cannot be met, then the project sponsor would need to meet Compliance Alternative 1. If the ERO determines that the contractor cannot supply off-road equipment meeting Compliance Alternative 1, then the contractor must meet Compliance Alternative 2. If the ERO determines that the contractor cannot supply off-road equipment meeting Compliance Alternative 2, then the contractor must meet Compliance Alternative 3. Alternative fuels are not a VDECS.

C. Construction Emissions Minimization Plan. Before starting onsite construction activities, the contractor shall submit a construction emissions minimization plan to the ERO for review and approval. The plan shall state, in reasonable detail, how the contractor will meet the requirements of Section A.

1. The plan shall include estimates of the construction timeline by phase, with a description of each piece of off-road equipment required for every construction phase. The description may include, but is not limited to: equipment type, equipment manufacturer, equipment identification number, engine model year, engine certification (tier rating), horsepower, engine serial number, and expected fuel usage and hours of operation. For VDECS installed, the description may include: technology type, serial number, make, model, manufacturer, ARB verification number level, and installation date and hour meter reading on installation date. For off-road equipment using alternative fuels, the description shall also specify the type of alternative fuel being used.
2. The project sponsor shall ensure that all applicable requirements of the plan have been incorporated into the contract specifications. The plan shall include a certification statement that the contractor agrees to comply fully with the plan.
3. The contractor shall make the plan available to the public for review onsite during working hours. The contractor shall post at the construction site a legible and visible sign summarizing the plan. The sign shall also state that the public may ask to inspect the plan for the project at any time during working hours and shall explain how to request to inspect the plan. The contractor shall post at least one copy of the sign in a visible location on each side of the construction site facing a public right-of-way.

D. Monitoring. After start of construction activities, the contractor shall submit quarterly reports to the ERO documenting compliance with the plan. After completion of construction activities and prior to receiving a final

certificate of occupancy, the project sponsor shall submit to the ERO a final report summarizing construction activities, including the start and end dates and duration of each construction phase, and the specific information required in the plan.

Operational Air Quality Impacts

Land use projects typically result in criteria air pollutant and TAC emissions primarily from an increase in motor vehicle trips. However, land use projects may also result in emissions of criteria air pollutants and TACs from combustion of natural gas, landscape maintenance, use of consumer products, and architectural coatings. The following discussion addresses the proposed project's operational air quality impacts.

Impact AQ-3: The proposed project would result in emissions of criteria air pollutants, but not at levels that would violate an air quality standard, contribute to an existing or projected air quality violation, or result in a cumulatively considerable net increase in criteria air pollutants. (*Less than Significant*)

BAAQMD, in its *CEQA Air Quality Guidelines* (May 2017), has developed screening criteria to determine whether a project requires an analysis of project-generated criteria air pollutants. If a proposed project meets all the screening criteria, then the lead agency or project sponsor does not need to perform a detailed air quality assessment. BAAQMD's *CEQA Air Quality Guidelines* identify screening criteria for operational criteria air pollutant emissions for a "hotel" development at 489 rooms, a "quality restaurant" at 47,000 square feet, a "city park" at 2,613 acres, and a "regional shopping center" (assumed in place of the theater use) at 99,000 square feet; the proposed project falls substantially below the screening criteria for operational criteria pollutants for a hotel, quality restaurant, city park, or regional shopping center. Additionally, new buildings are required to comply with the current building energy efficiency standards and the CALGreen Code. Thus, quantification of project-generated criteria air pollutant emissions is not required, and the proposed project would not exceed any of the significance thresholds for criteria air pollutants. Therefore, the proposed project would result in a *less-than-significant* impact with respect to criteria air pollutants.

Impact AQ-4: The proposed project could generate substantial amounts of toxic air contaminants or expose sensitive receptors to substantial air pollutant concentrations. (*Less than Significant with Mitigation*)

Sensitive uses were described previously under Impact AQ-2. Although a recent California Supreme Court decision in *CBLA v. BAAQMD* held that impacts of the environment on a project generally are not within the purview of the CEQA statute, the following assessment is provided for the purpose of informing decision-makers.¹²⁴

Vehicle Trips

Individual projects result in emissions of TACs primarily as a result of an increase in vehicle trips. BAAQMD considers roads with fewer than 10,000 vehicles per day "minor, low-impact" sources that do not pose a significant health impact even in combination with other nearby sources and recommends that these sources be excluded from the environmental analysis. The proposed project's approximately 634 daily vehicle trips would be well below this level and would be distributed among the local roadway network; therefore, an assessment of project-generated TACs resulting from vehicle trips is not required,

¹²⁴ In a decision issued on December 17, 2015, the California Supreme Court held that CEQA does not generally require an agency to consider the effects of existing environmental conditions on a proposed project's future users or residents except with certain types of specified projects or where a project or its residents may exacerbate existing environmental hazards (*California Building Industry Association v. Bay Area Air Quality Management District*, December 17, 2015, Case No. S213478, <http://www.courts.ca.gov/opinions/documents/S213478.PDF>). Thus, the analysis herein focuses on whether the proposed project would exacerbate existing or future air quality emissions in the project area. It is noted that existing local regulations, including article 38, would reduce exposure of new sensitive uses to air pollutant concentrations.

and the proposed project would not generate a substantial amount of TAC emissions that could affect nearby sensitive receptors.

Onsite Backup Diesel Generators

The proposed project includes a backup emergency generator. This diesel-fueled, 800-kilowatt generator would be located within the rooftop mechanical enclosure. Emergency generators are regulated by BAAQMD through its New Source Review (regulation 2, rule 5) permitting process. The project sponsor would be required to obtain applicable permits to operate an emergency generator from BAAQMD. Although emergency generators are intended only to be used in periods of power outages, monthly testing of the generator would be required. BAAQMD limits testing to no more than 50 hours per year. Additionally, as part of the permitting process, BAAQMD would limit the excess cancer risk from any facility to no more than 10 per 1 million population and would require any source that would result in an excess cancer risk greater than 1 per 1 million population to install best available control technology for toxics. However, because the project site is located in an area that already experiences poor air quality, the proposed emergency backup generator has the potential to expose sensitive receptors to substantial concentrations of diesel emissions, a known TAC, resulting in a significant air quality impact. Implementation of **Mitigation Measure M-AQ-4, Best Available Control Technology for Diesel Generators**, would reduce the magnitude of this impact to a less-than-significant level by reducing emissions by 89–94 percent compared to equipment with engines that do not meet any emission standards and without a VDECS. Therefore, although the proposed project would add a new source of TACs in an area that already experiences poor air quality, implementation of **Mitigation Measure M-AQ-4** would reduce this impact to *less than significant with mitigation*.

Mitigation Measure M-AQ-4: Best Available Control Technology for Diesel Generators

The project sponsor shall ensure that the backup diesel generator meets or exceeds one of the following emission standards for particulate matter: (1) tier 4 certified engine, or (2) tier 2 or tier 3 certified engine that is equipped with an ARB level 3 verified diesel emissions control strategy (VDECS). A nonverified diesel emission control strategy may be used if the filter has the same particulate matter reduction as the identical ARB-verified model and if BAAQMD approves of its use. The project sponsor shall submit documentation of compliance with the BAAQMD New Source Review permitting process (regulation 2, rule 2, and regulation 2, rule 5) and the emission standard requirement of this mitigation measure to the Planning Department for review and approval prior to issuance of a permit for a backup diesel generator from any City agency.

Impact AQ-5: The proposed project would not conflict with or obstruct implementation of the 2017 Clean Air Plan. (Less than Significant)

The most recently adopted air quality plan for the air basin is the 2017 Clean Air Plan. The plan is a road map that demonstrates how the San Francisco Bay Area will achieve compliance with the state ozone standards as expeditiously as practicable and how the region will reduce the transport of ozone and ozone precursors to neighboring air basins. In determining consistency with the 2017 Clean Air Plan, this analysis considers whether the project would: (1) support the primary goals of the 2017 Clean Air Plan; (2) include applicable control measures from the 2017 Clean Air Plan; and (3) avoid disrupting or hindering implementation of control measures identified in the 2017 Clean Air Plan.

The primary goals of the 2017 Clean Air Plan are to: (1) Protect air quality and health at the regional and local scale; (2) eliminate disparities among Bay Area communities in cancer health risk from toxic air contaminants; and (3) protect the climate by reducing GHG emissions. To meet the primary goals, the 2017 Clean Air Plan recommends specific control measures and actions. These control measures are grouped into various categories and include stationary- and area-source measures, mobile-source measures, transportation control measures, land use measures, and energy and climate measures. The plan recognizes that to a great extent, community design dictates individual travel mode, and that a key long-term control strategy to reduce emissions of criteria pollutants, air toxics, and GHGs from motor vehicles is to channel future Bay Area

growth into vibrant urban communities where goods and services are close at hand, and people have a range of viable transportation options. To this end, the 2017 Clean Air Plan includes 85 control measures aimed at reducing air pollution in the air basin.

The measures most applicable to the proposed project are transportation control measures and energy and climate control measures. The proposed project's impact with respect to GHGs are discussed in Section E7, Greenhouse Gas Emissions, which demonstrates that the proposed project would comply with the applicable provisions of the City's GHG reduction strategy.

The compact development of the proposed project and high availability of viable transportation options ensure that residents could bicycle, walk, and ride transit to and from the project site instead of taking trips via private automobile. These features ensure that the project would avoid substantial growth in automobile trips and vehicle miles traveled. The proposed project's anticipated 1,160 vehicle trips would result in a negligible increase in air pollutant emissions. Furthermore, the proposed project would be generally consistent with the General Plan, as discussed in Section A, Project Description. Transportation control measures that are identified in the 2017 Clean Air Plan are implemented by the General Plan and the Planning Code, such as through the City's Transit First Policy, bicycle parking requirements, and transit impact development fees. Compliance with these requirements would ensure that the project would include relevant transportation control measures specified in the 2017 Clean Air Plan. Therefore, the proposed project would include applicable control measures identified in the 2017 Clean Air Plan to meet the plan's primary goals.

Examples of a project that could cause the disruption or delay of 2017 Clean Air Plan control measures are projects that would preclude the extension of a transit line or bike path, or projects that propose excessive parking beyond parking requirements. The proposed project would construct a mixed-use development consisting of three components – an approximately 29,570-gsf dinner theater–entertainment venue; an approximately 118,000-square-foot hotel with 192 rooms; and an approximately 14,000-gsf, privately financed and maintained public park – in a dense, walkable urban area near a concentration of regional and local transit service. It would not preclude the extension of a transit line or a bike path or any other transit improvement, and thus, would not disrupt or hinder implementation of control measures identified in the 2017 Clean Air Plan.

For the reasons described above, the proposed project would not interfere with implementation of the 2017 Clean Air Plan. Because the proposed project would be consistent with the applicable air quality plan that demonstrates how the region would improve ambient air quality and achieve the federal and state ambient air quality standards, this impact would be *less than significant*.

Air quality plans describe air pollution control strategies to be implemented by a city, county, or region. The primary purpose of such a plan is to bring an area that does not attain federal and state air quality standards into compliance with the requirements of the federal and California clean air acts. BAAQMD prepares plans to attain national and California ambient air quality standards in the SFBAAB. BAAQMD adopted the 2017 Clean Air Plan on April 19, 2017. This plan provides a regional strategy to attain federal and state air quality standards by reducing emissions of ozone, PM, and TACs.

Air quality plans identify potential control measures and strategies, including rules and regulations that could be implemented to reduce air pollutant emissions from industrial facilities, commercial processes, on- and off-road motor vehicles, and other sources. The primary goals of the 2017 Clean Air Plan are to protect public health and the climate by reducing emissions, concentrations of harmful air pollutants, and exposure to the pollutants that pose the greatest health risk. The 2017 Clean Air Plan includes individual control measures that describe specific actions to reduce emissions of air pollutants and GHGs, with measures assigned into categories such as mobile-source, stationary-source, and land use and local impacts measures.

The proposed project would be consistent with the 2017 Clean Air Plan if it would support the plan's goals, would include applicable control measures from the plan, and would not disrupt or hinder implementation of any of the plan's control measures. Consistency with this plan is the basis for determining whether the proposed project would conflict with or obstruct implementation of an applicable air quality plan.

For mobile sources, the 2017 Clean Air Plan includes measures applicable to the project related to the use of off-road construction equipment. Mobile Source Measure C-1, Construction and Farming Equipment, calls for incentives to retrofit construction equipment with diesel PM filters or upgrade to tier 3 or 4 engines and use renewable alternative fuels in applicable equipment. The proposed project would be consistent with Mobile Source Measure C-1 because it would use construction equipment equipped with diesel PM filters or tier 4 engines, as required by the Clean Construction Ordinance.

For stationary sources, the 2017 Clean Air Plan includes stationary-source control measures to enhance BAAQMD's regulatory program. Stationary-Source Measure 21, Revise Regulation 2, Rule 5: New Source Review for Air Toxics, supports implementing more stringent requirements. The proposed project would be consistent with these control measures from the 2017 Clean Air Plan.

The 2017 Clean Air Plan also includes Transportation Control Measure D3, Local Land Use Strategies. This measure calls for promoting and supporting land use patterns, policies, and infrastructure investments that support high-density mixed-use, residential, and employment development to facilitate walking, bicycling, and transit use. The compact, dense development of the proposed project would be consistent with the goals of the 2017 Clean Air Plan control measures. In addition, section 169 of the San Francisco Planning Code requires that the project sponsor develop a TDM plan to reduce the use of single-occupancy vehicles and encourage the use of transit and nonmotorized travel modes. The proposed project would include TDM measures to further reduce impacts, resulting in a *less-than-significant* impact.

Impact AQ-6: The proposed project would not create objectionable odors that would affect a substantial number of people. (*Less than Significant*)

Typical odor sources of concern include wastewater treatment plants, sanitary landfills, transfer stations, composting facilities, petroleum refineries, asphalt batch plants, chemical manufacturing facilities, fiberglass manufacturing facilities, auto body shops, rendering plants, and coffee roasting facilities. During construction, diesel exhaust from construction equipment would generate some odors. However, construction-related odors would be temporary and would not persist upon project completion. Observation indicates that the project site is not substantially affected by sources of odors.¹²⁵ Additionally, the proposed project would include hotel, entertainment, and retail/restaurant uses, which would not be a significant source of new odors. Any proposed restaurant would be required to meet regulations regarding proper venting of stove and other kitchen equipment, and an application to be reviewed and approved by DBI would be required before construction of a restaurant. Therefore, odor impacts from the proposed project would be *less than significant*.

Impact-C-AQ-1: The proposed project, in combination with past, present, and reasonably foreseeable future development in the project area, would not contribute to cumulative air quality impacts. (*Less than Significant with Mitigation*)

The geographic context for an evaluation of cumulative air quality impacts is the SFBAAB, as governed by BAAQMD. Emissions from past, present, and future projects contribute to the region's adverse air quality on a cumulative basis. No single project would be sufficient in size to result in regional nonattainment of ambient air quality standards by itself. Instead,

¹²⁵ A reconnaissance of the project site and environs was conducted by AECOM staff on December 21, 2016.

a project's individual emissions contribute to existing cumulative adverse air quality impacts.¹²⁶ The project-level thresholds for criteria air pollutants are based on levels by which new sources are not anticipated to contribute to an air quality violation or result in a considerable net increase in criteria air pollutants. Because the proposed project's construction-related (Impact AQ-1) and operational (Impact AQ-3) emissions would not exceed the project-level thresholds for criteria air pollutants, the proposed project would not be considered to result in a cumulatively considerable contribution to regional air quality impacts.

As discussed above, the project site is located in an air pollution exposure zone, an area that already experiences poor air quality; thus, past, present, and reasonably foreseeable development would worsen air quality and result in a significant cumulative impact. The proposed project would be required to implement **Mitigation Measure M-AQ-2, Construction Air Quality**, which could reduce construction period emissions, and **Mitigation Measure M-AQ-4, Best Available Control Technology for Diesel Generators**, which requires best available control technology to limit emissions from the project's emergency backup generator. Implementing these mitigation measures would reduce the project's contribution to cumulative air quality impacts to a *less-than-significant* level.

¹²⁶ Bay Area Air Quality Management District, *CEQA Air Quality Guidelines*, May 2011, p. 2-1.

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E.7. GREENHOUSE GAS EMISSIONS

Topics:	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact	Not Applicable
7. GREENHOUSE GAS EMISSIONS.— Would the project:					
a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Conflict with any applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Greenhouse gas emissions and global climate change represent cumulative impacts. GHG emissions cumulatively contribute to the significant adverse environmental impacts of global climate change. No single project could generate enough GHG emissions to noticeably change the global average temperature; instead, the combination of GHG emissions from past, present, and future projects have contributed and would continue to contribute to global climate change and its associated environmental impacts.

BAAQMD has prepared guidelines and methodologies for analyzing GHGs. These guidelines are consistent with CEQA Guidelines sections 15064.4 and 15183.5, which address the analysis and determination of significant impacts from a proposed project's GHG emissions. CEQA Guidelines section 15064.4 allows lead agencies to rely on a qualitative analysis to describe GHG emissions resulting from a project. CEQA Guidelines section 15183.5 allows for public agencies to analyze and mitigate GHG emissions as part of a larger plan for the reduction of GHGs and describes the required contents of such a plan. Accordingly, San Francisco has prepared *Strategies to Address Greenhouse Gas Emissions*,¹²⁷ which presents a comprehensive assessment of policies, programs, and ordinances that collectively represent San Francisco's qualified GHG reduction strategy in compliance with the CEQA Guidelines. These GHG reduction actions have resulted in a 28 percent reduction in GHG emissions in 2015 compared to 1990 levels,¹²⁸ exceeding the year 2020 reduction goals outlined in BAAQMD's 2017 Clean Air Plan, Executive Order S-3-05, and AB 32 (also known as the Global Warming Solutions Act).¹²⁹

Given that the City has met the state's and region's 2020 GHG reduction targets and San Francisco's GHG reduction goals are consistent with, or more aggressive than, the long-term goals established under Executive Orders S-3-05¹³⁰ and

¹²⁷ San Francisco Planning Department, *Strategies to Address Greenhouse Gas Emissions in San Francisco*, 2017, <http://sf-planning.org/strategies-address-greenhouse-gas-emissions>.

¹²⁸ San Francisco Department of the Environment, *San Francisco's Carbon Footprint*, <https://sfenvironment.org/carbon-footprint>, accessed July 19, 2017.

¹²⁹ Executive Order S-3-05, AB 32, and the air district's 2017 Clean Air Plan (continuing the trajectory set in the 2010 Clean Air Plan) set a target of reducing GHG emissions to below 1990 levels by year 2020.

¹³⁰ Office of the Governor, Executive Order S-3-05, June 1, 2005, <http://www.pcl.org/projects/2008symposium/proceedings/Coatsworth12.pdf>, accessed March 16, 2016. Executive Order S-3-05 sets forth a series of target dates by which statewide emissions of GHGs need to be progressively reduced, as follows: by 2010, reduce GHG emissions to 2000 levels (approximately 457 million metric tons of carbon dioxide equivalents [MTCO₂e]); by 2020, reduce emissions to 1990 levels (approximately 427 million MTCO₂e); and by 2050 reduce emissions to 80 percent below 1990 levels (approximately 85 million MTCO₂e). Because of the differential heat absorption potential of various GHGs, GHG emissions are frequently measured in "carbon dioxide-equivalents," which present a weighted average based on each gas's heat absorption (or "global warming") potential.

B-30-15^{131,132} and SB 32,^{133,134} the City's GHG reduction goals are consistent with Executive Orders S-3-05 and B-30-15, AB 32, SB 32, and the 2017 Clean Air Plan. Therefore, proposed projects that are consistent with the City's GHG reduction strategy would be consistent with the aforementioned GHG reduction goals, would not conflict with these plans or result in significant GHG emissions, and would therefore not exceed San Francisco's applicable GHG threshold of significance.

The following analysis of the proposed project's impact on climate change focuses on the project's contribution to cumulatively significant GHG emissions. Because no individual project could emit GHGs at a level that could result in a significant impact on the global climate, this analysis is in a cumulative context, and this section does not include an individual project-specific impact statement.

Impact C-GG-1: The proposed project would generate greenhouse gas emissions, but not at levels that would result in a significant impact on the environment or conflict with any policy, plan, or regulation adopted for the purpose of reducing GHG emissions. (*Less than Significant*)

Individual projects contribute to the cumulative effects of climate change by directly or indirectly emitting GHGs during the construction and operational phases. Direct emissions include GHG emissions from new vehicle trips and area sources (natural gas combustion). Indirect emissions include emissions from electricity providers; energy required to pump, treat, and convey water; and emissions associated with waste removal, disposal, and landfill operations.

The proposed project would increase activity onsite through removal of the surface parking lot and construction of the proposed mixed-use development that would include a hotel and theater. Once in operation, the proposed project would contribute to annual long-term increases in GHGs as a result of increased vehicle trips (mobile sources) and hotel and entertainment operational activities that would result in an increase in energy use, water use, wastewater treatment, and solid waste disposal. Construction activities would also result in temporary increases in GHG emissions.

The proposed project would be subject to regulations adopted to reduce GHG emissions as identified in the GHG Reduction Strategy. As discussed below, compliance with the applicable regulations would reduce the proposed project's GHG emissions related to transportation, energy use, waste disposal, wood burning, and use of refrigerants.

The proposed project would not provide any on-site vehicle parking. This combined with compliance with the City's Commuter Benefits Program, Emergency Ride Home Program, Transportation Sustainability Fee, Jobs-Housing Linkage Program, and bicycle parking requirements would reduce the proposed project's transportation-related emissions. The proposed project would not provide any vehicle parking but would offer valet parking at offsite facilities. This combined with compliance with the bicycle parking requirements that promote alternative forms of transportation would reduce the proposed project's transportation-related emissions. The sponsor has agreed to TDM measures consisting of a bicycle repair station in the onsite employee bicycle room, real-time transportation information displays in prominent locations within the project site, multimodal wayfinding signage in key locations to support access to transportation services and infrastructure, and a staffed

¹³¹ Office of the Governor, Executive Order B-30-15, April 29, 2015, <https://www.gov.ca.gov/news.php?id=18938>, accessed March 3, 2016. Executive Order B-30-15, issued on April 29, 2015, sets forth a target of reducing GHG emissions to 40 percent below 1990 levels by 2030 (estimated at 2.9 million MTCO₂e).

¹³² San Francisco's GHG reduction goals are codified in section 902 of the Environment Code and include: (i) by 2008, determine City GHG emissions for year 1990; (ii) by 2017, reduce GHG emissions by 25 percent below 1990 levels; (iii) by 2025, reduce GHG emissions by 40 percent below 1990 levels; and by 2050, reduce GHG emissions by 80 percent below 1990 levels.

¹³³ SB 32 amends California Health and Safety Code division 25.5 (also known as the California Global Warming Solutions Act of 2006) by adding section 38566, which directs that statewide GHG emissions are to be reduced by 40 percent below 1990 levels by 2030.

¹³⁴ SB 32 was paired with AB 197, which would modify the structure of the California Air Resources Board; institute requirements for the disclosure of emissions of criteria pollutants and TACs; and establish requirements for the review and adoption of rules, regulations, and measures for the reduction of GHG emissions.

delivery reception area. These regulations reduce GHG emissions from single-occupancy vehicles by promoting the use of sustainable transportation modes with zero or lower GHG emissions on a per-capita basis.

The proposed project would be required to comply with the energy efficiency requirements of the City's Green Building Code, Stormwater Management Ordinance, and Water Conservation and Irrigation ordinances. Such compliance would promote energy and water efficiency, thereby reducing the proposed project's energy-related GHG emissions. The proposed project may include solar panels and a partial green roof, which would meet the renewable energy criteria of the Green Building Code, further reducing the proposed project's energy-related GHG emissions.

The proposed project's waste-related emissions would be reduced through compliance with the City's Recycling and Compositing Ordinance, Construction and Demolition Debris Recovery Ordinance, and Green Building Code requirements. These regulations reduce the amount of materials sent to a landfill, reducing GHGs emitted by landfill operations. These regulations also promote the reuse of materials, conserving their *embodied energy*¹³⁵ and reducing the energy required to produce new materials.

Compliance with the City's street tree planting requirements would serve to increase *carbon sequestration*. Other regulations, including those limiting refrigerant emissions and the Wood Burning Fireplace Ordinance, would reduce emissions of GHGs and *black carbon*, respectively. Regulations requiring low-emitting finishes would reduce volatile organic compounds (VOCs).¹³⁶ Thus, the proposed project is determined to be consistent with San Francisco's GHG reduction strategy.¹³⁷

The project sponsor is required to comply with these regulations, which have proven effective, as San Francisco's GHG emissions have measurably decreased by 28 percent as of 2015¹³⁸ when compared to 1990 emissions levels, demonstrating that the City has met and exceeded Executive Order S-3-05, AB 32, and the Bay Area 2017 Clean Air Plan's GHG reduction goals for the year 2020. Other existing regulations, such as those implemented through AB 32, would continue to reduce the proposed project's contribution to climate change. In addition, San Francisco's local GHG reduction targets are consistent with the long-term GHG reduction goals of Executive Orders S-3-05 and B-30-15, AB 32, SB 32, and the 2017 Clean Air Plan. Because the proposed project is consistent with the City's GHG Reduction Strategy, it is also consistent with the GHG reduction goals of Executive Orders S-3-05 and B-30-15, AB 32, SB 32, and the 2017 Clean Air Plan; would not conflict with these plans; and would therefore not exceed San Francisco's applicable GHG threshold of significance. As such, the proposed project would result in a *less-than-significant* impact with respect to GHG emissions.

¹³⁵ Embodied energy is the total energy required for the extraction, processing, manufacture, and delivery of building materials to the building site.

¹³⁶ Although they are not GHGs, VOCs are precursor pollutants that form ground-level ozone. Increased ground-level ozone is an anticipated effect of future global warming that would result in added health effects locally. Reducing emissions of VOCs would reduce the anticipated local effects of global warming.

¹³⁷ San Francisco Planning Department, *Greenhouse Gas Analysis: Compliance Checklist for ZinZanni Hotel and Theater Project*, November 16, 2016.

¹³⁸ San Francisco Office of the Environment, San Francisco's Carbon Footprint, <https://sfenvironment.org/carbon-footprint>, accessed September 16, 2017.

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E.8. WIND AND SHADOW

Topics:	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact	Not Applicable
8. WIND AND SHADOW.—Would the project:					
a) Alter wind in a manner that substantially affects public areas?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Create new shadow in a manner that substantially affects outdoor recreation facilities or other public areas?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Impact WS-1: The proposed project would not alter wind in a manner that substantially affects public areas.
(*Less than Significant*)

A proposed project's wind impacts are directly related to its height, orientation, design, location, and surrounding development context. Based on wind analyses for other development projects in San Francisco, a building that does not exceed a height of 85 feet generally has little potential to cause substantial changes to ground-level wind conditions. At a height of 40 feet (with an additional 15 feet for rooftop appurtenances), the proposed project would be approximately the same height as existing nearby buildings, which are approximately 45–55 feet tall, except for the Gateway Apartments building, which is 65 feet tall, and the proposed 88 Broadway and 753 Davis Street project, which would be approximately 75 feet tall. Given its height, orientation, design, and location and the surrounding development context, the proposed 40-foot-tall building (plus 15 feet for mechanical equipment and elevator penthouse) has little potential to cause substantial changes to ground-level wind conditions in public areas adjacent to and near the project site. For these reasons, the proposed project would not alter wind in a manner that substantially affects public areas. This impact would be *less than significant*.

Impact WS-2: The proposed project would not create new shadow in a manner that substantially affects outdoor recreation facilities or other public areas. (*Less than Significant*)

Planning Code section 295 generally prohibits new structures taller than 40 feet that would cast additional shadows on open space that is under the jurisdiction of the San Francisco Recreation and Park Department (SFRPD) between 1 hour after sunrise and 1 hour before sunset, at any time of the year, unless that shadow would not result in a significant adverse effect on the use of the open space.

The threshold for determining the significance of impacts under CEQA is whether the proposed project would create new shadow in a manner that substantially affects outdoor recreation facilities or other public areas, regardless of whether those facilities or areas are protected by planning code section 295 (i.e., under jurisdiction of public entities other than the Recreation and Park Commission [Rec Park] or privately owned and publicly accessible open space). In addition, as under planning code section 295, the CEQA analysis of shadow impacts takes into account usage of the open space; the time of day and year of project shadow; the physical layout and facilities affected; the intensity, size, shape, and location of the shadow; and the proportion of open space affected.

Because the proposed building would be 40 feet tall as measured by the planning code, it would be exempt from the shadow protection requirements of planning code section 295. Additionally, there are no nearby parks under Rec Park jurisdiction that could be affected by the proposed project. Non-section 295 properties in the project vicinity include: Sydney G. Walton Square (approximately 0.1 mile south of the project site), The Embarcadero Promenade (promenade) (sidewalks adjacent to the project site) and Pier 7½ Open Space. However, Sydney G. Walton Square is too far from the project site to be effected by the proposed project. The proposed project is located adjacent to designated public open spaces within the Port jurisdiction including, promenade, Pier 7 and Pier 7½ public spaces; therefore, the potential for the project to shadow these areas was evaluated below. Figure 19 shows the location of the proposed project and The Embarcadero with the pier structures and public space along the promenade evaluated for shadow impacts.

The San Francisco Planning Department prepared a preliminary shadow fan analysis that determined that the proposed project would have the potential to cast new shadow on the promenade and Pier 7½ Open Space. Therefore, a technical memorandum was prepared detailing potential new shadow impacts on promenade and Pier 7½ Open Space.¹³⁹

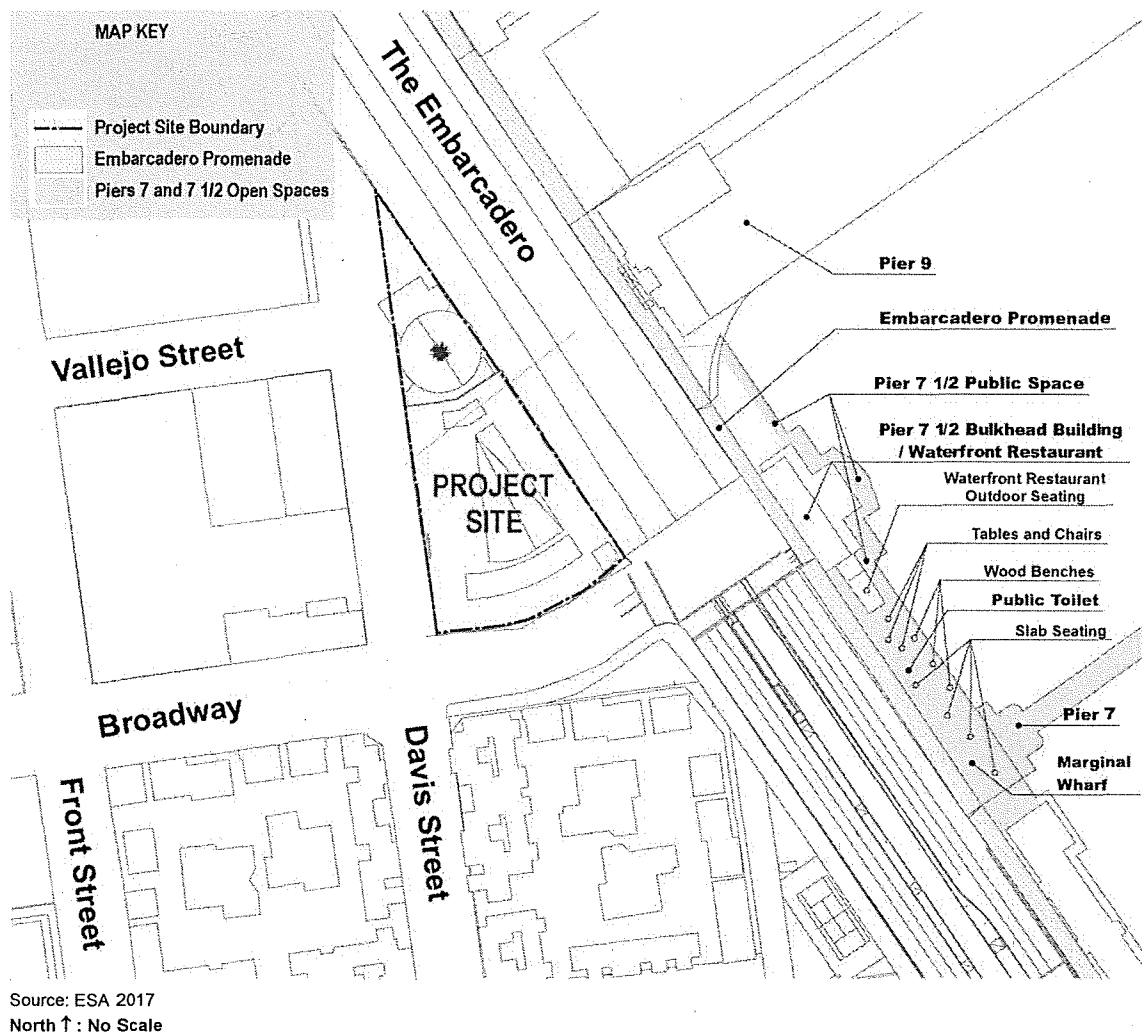


FIGURE 19 PROPOSED PROJECT WITH PROMENADE PIER STRUCTURES AND PUBLIC SPACE EVALUATED

Embarcadero Promenade

The Embarcadero Promenade (promenade) is a waterfront pedestrian promenade that runs along the eastern side of The Embarcadero. The promenade is more than 3 miles long and extends from Fisherman’s Wharf to China Basin. The promenade is identified as an “Open Space and Public Access” site in the Waterfront Land Use Plan and that plan’s Waterfront Design and Access Element.¹⁴⁰ It is a public open space resource that functions as both a pedestrian corridor and a waterfront open space destination, attracting downtown office workers, tourists, and residents. There are public art installations and seating areas at various locations along the promenade. Throughout the year, portions of the promenade near

¹³⁹ Environmental Science Associates, *Teatro ZinZanni and Hotel Shadow Study Technical Memorandum*, January 6, 2017.

¹⁴⁰ Port of San Francisco, *Waterfront Land Use Plan*, June 2004; Revised October 2009, <http://sfport.com/waterfront-land-use-plan-0>.

the project site are shadowed by the existing piers' bulkhead and shed buildings in the early morning and by existing buildings on the western side of The Embarcadero in the late afternoon.

The proposed project would cast net new shadow on a short section of the promenade in the late afternoon or evening each day of the year.¹⁴¹ The net new project shadow would begin at approximately 7:30 p.m. (Figure 21) during the summer and approximately 3 p.m. (Figure 22) during the winter. In the late afternoon or evening on any given day, the proposed project would shadow a segment of promenade measuring up to 250–300 feet long. Over the full year, the proposed project would affect an approximately 600-foot-long segment of the promenade. This 600-foot-long segment consists mostly of sidewalk with some seating areas and extends from just north of the Pier 7 Public Pier to the north end of the Pier 9 bulkhead building, which is less than 4 percent of the 3-mile-long promenade. Pier 7 Public Pier and the Pier 7½ - Waterfront Restaurant and Public Area are the two other designated public open spaces within Port jurisdiction nearby. Shadow from the proposed project would not reach other portions of the promenade. The shadow effect on the promenade would be seasonal, occurring on the southern part of the affected segment in late spring and early summer, primarily on the central part near the spring (March 20) and fall (September 20) equinoxes, and on the northern part only in fall and winter. The new project shadow on the promenade is not likely to adversely affect the late afternoon use of this primarily pedestrian area, because the activities of many pedestrians, runners, and bicyclists typically are not sensitive to shadow. Although those who wish to sit may prefer to sit in the sun, pedestrian walkways and open seating close to the water, such as those that exist east of the promenade at the Pier 7½ Public Space would be shadowed by the proposed project for a short time frame in winter after 3:30 p.m.. However, the project's net new shadow on the promenade would not be expected to affect its use or enjoyment.

Pier 7½ Public Space

The Pier 7½ Public Space is an open space area along The Embarcadero between Pier 7 and Pier 9 adjacent to San Francisco Bay and is divided into two segments southeast of the project site. The northern segment, between Pier 9 and the Waterfront Restaurant, includes a waterside walkway. There are no seating areas or amenities at the northern segment of the Pier 7½ public space. The southern segment, between the Waterfront Restaurant and Pier 7, includes a larger public space immediately adjacent to the restaurant's outdoor eating area and contains several public seating areas and amenities: three groups of wooden benches spaced along the eastern margin of the wharf that provide seating close to the bay; three small, fixed tables centrally located between the restaurant's outdoor seating and the public toilet; and eight large, low concrete blocks spaced throughout the area to provide added informal seating.

In addition to shadow on The Embarcadero promenade, the proposed project would cast late afternoon and evening shadow on the Pier 7½ public space that is located adjacent to and east of the promenade and between Pier 7 and Pier 9. New shadow would not reach Pier 7½ itself, because that area is already in the shadow of the Waterfront Restaurant at all times when project shadow could reach it.

New project shadow resulting from the project on the Pier 7½ public space would vary by season, but would occur only in late afternoon or evening, beginning within approximately one-half hour after the shadow reaches the promenade. The seasonal variations of new project shadow for the northern and the southern segments of this open space are described below.

On the summer solstice (June 20), new project shadow would not reach the northern segment of this public space, see Figures 20 and 21. New project shadow would reach the northern segment on the fall equinox (September 20) and the winter solstice (December 20), as well as through the fall and winter. On the fall equinox, project shadow would reach the bayfront pedestrian strip in the northern segment by approximately 6:09 p.m., and would cover it by 6:15 p.m. On the winter solstice, the new shadow from the project would reach the northern bayfront pedestrian strip shortly before 3:30 p.m. and would cover it by 4:00 p.m. as depicted in Figures 22 and 23.

¹⁴¹ Environmental Science Associates, *Teatro ZinZanni and Hotel Shadow Study Technical Memorandum*, January 6, 2017.

On the summer solstice (June 20), new project shadow would reach the promenade, but would not reach the southern segment of the public space as indicated in Figures 20 and 21, reflecting 7:00 p.m. and 7:30 p.m. time slots. In late spring and early summer, net new project shadow would reach only the western edge of the southern segment, and would not reach the public seating and amenities located farther east. On the equinox, net new project shadow would not reach the southern segment of the open space, between 1 hour after sunrise and 1 hour before sunset. Later that day, shortly after 6:15 p.m., net new project shadow would extend beyond the Waterfront Restaurant and would cover the immediately adjacent public space and the restaurant's outdoor seating area, and would reach into the bayfront open space, covering it by 6:30 p.m. This shadow would not reach the seating areas or other amenities in the southern segment of the Pier 7½ public space. On the winter solstice, net new shadow from the project would not reach as far south as the Waterfront Restaurant building or the southern segment of the Pier 7½ public space.

The new project shadow on the Promenade and 7½ public space is not likely to adversely affect the late afternoon use of this primarily pedestrian area, because the activities of many pedestrians, runners and bike riders typically are not sensitive to shadow. While those who wish to sit may prefer to sit in the sun, pedestrian walkways and open seating close to the water, such as those that exist east of the Promenade at the Pier 7 ½ public space, would remain in sunlight for up to approximately another half-hour after shadow first reaches the Promenade. Those users who do not need to walk or sit in the sun would not be adversely affected by the new shadow, therefore impacts would be *less than significant*.

Figures 22 through 24 below, depict the proposed project and existing shadow during the winter solstice on December 20, at 3:00 p.m., 3:30 p.m., and 4:00 p.m. New project shadow would not reach the Pier 7 Public Pier open space and therefore impacts would be less than significant.

Additionally, at times, the proposed project would shadow portions of other nearby streets and sidewalks and private property such as along Broadway and The Embarcadero, in the project vicinity. Shadows on streets and sidewalks would not exceed levels commonly expected in urban areas and would be considered a less-than-significant effect under CEQA.

Although occupants and visitors of nearby properties may regard the increase in shadow as undesirable, the limited increase in shading of public and private properties resulting from the proposed project would not be considered a significant impact under CEQA. For the reasons discussed above, shadow impacts would be *less than significant*.

Impact-C-WS-1: The proposed project, in combination with past, present, and reasonably foreseeable future projects in the vicinity of the project site, would result in less-than-significant cumulative impacts related to wind and shadow. (*Less than Significant*)

As discussed above under Impact WS-1, buildings shorter than 85 feet have little potential to cause substantial changes to ground-level wind conditions. Because the nearby cumulative development projects would be less than 85 feet tall, the cumulative project would not alter wind in a manner that substantially affects public areas. For these reasons, the proposed project with other cumulative projects would have a *less-than-significant* cumulative wind impact.

As described above under Impact WS-2, the proposed project would not cast net new shadow on any park protected by planning code section 295 or on Sydney G. Walton Square. Therefore, the proposed project has no potential to result in cumulative impacts on section 295, Rec Park open spaces. However, the proposed project would add new shadow to 4 percent of the Embarcadero sidewalks. General shadow in the immediate vicinity of the project site is prescribed by the existing buildings to the south and west of the vacant project site and pier bulkhead buildings along The Embarcadero to the east of the project site. Throughout the year, portions of the promenade near the project site are shadowed by the existing piers' bulkhead and shed buildings in the early morning and by existing buildings on the west side of The Embarcadero in the late afternoon. Similarly, the Pier 7½ public open space north of the Waterfront Restaurant and the larger Pier 7½ public open space on the wharf between the Waterfront Restaurant and Pier 7 are shadowed in early morning and in late afternoon

throughout the year by existing buildings. In contrast, Pier 7 and its marginal wharf remain in full sunlight from sunrise until late in the afternoon, and the Pier 7½ public open space east of the Waterfront Restaurant remains in sunlight from sunrise until after midday, when the shadow from the existing restaurant building covers that public space for the rest of the day. The proposed 88 Broadway and 735 Davis Street developments in the area adjacent to the project site could also increase shadows on The Embarcadero sidewalks.

A shadow analysis was performed for the proposed 88 Broadway and 735 Davis Street project. The analysis concluded that the project would cast a shadow on Sydney G. Walton Square and The Embarcadero promenade. However, this analysis also concluded that existing shadow already exists at Sydney G. Walton Square from existing surrounding buildings, and this cumulative project would not contribute to net new shadow any time of the year, given the distance and position from the park. As a result of this project, a minimal shadow impact is expected to occur on The Embarcadero. Based on the evidence provided above, the shadows created by the cumulative projects, listed in Section B.3, Cumulative Projects, would not exceed levels commonly expected in urban areas. As a result, the cumulative impact with respect to shadow from cumulative projects in combination with the proposed seawall lots 323 and 324 projects would be *less than significant*.

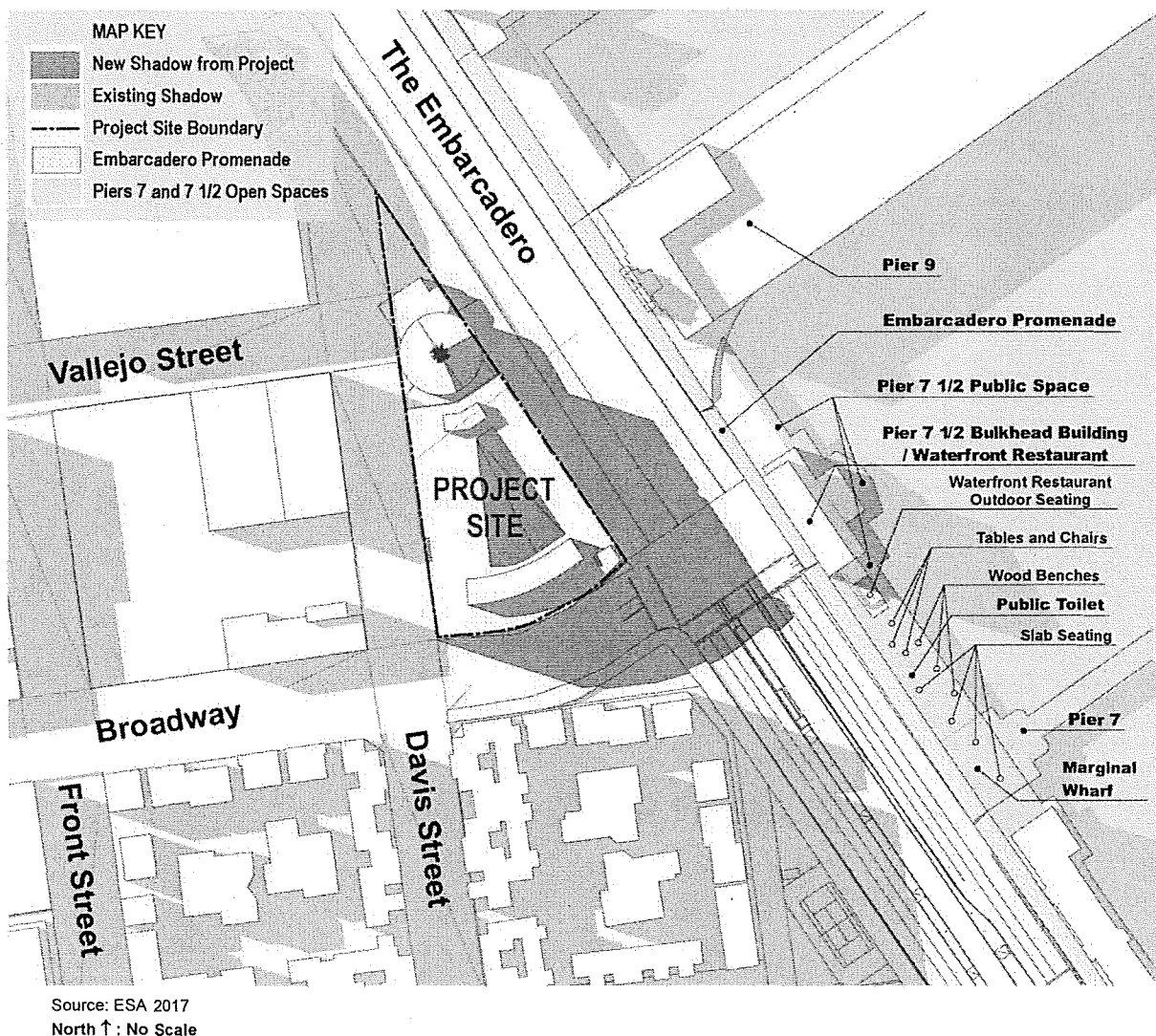


FIGURE 20 PROPOSED PROJECT AND EXISTING SHADOW, JUNE 20TH, 7:00 P.M.

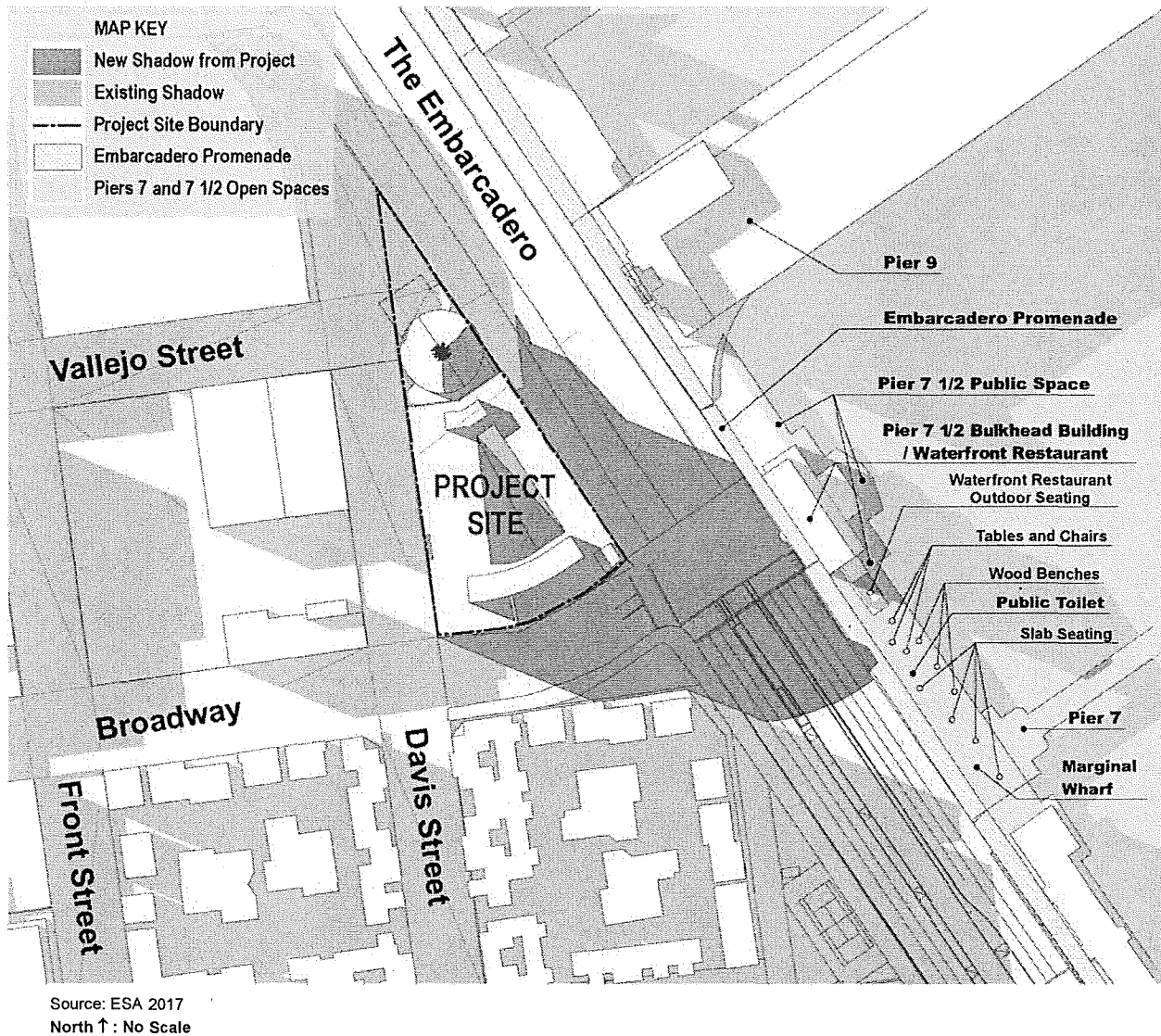


FIGURE 21 PROPOSED PROJECT AND EXISTING SHADOW, JUNE 20TH, 7:30 P.M.

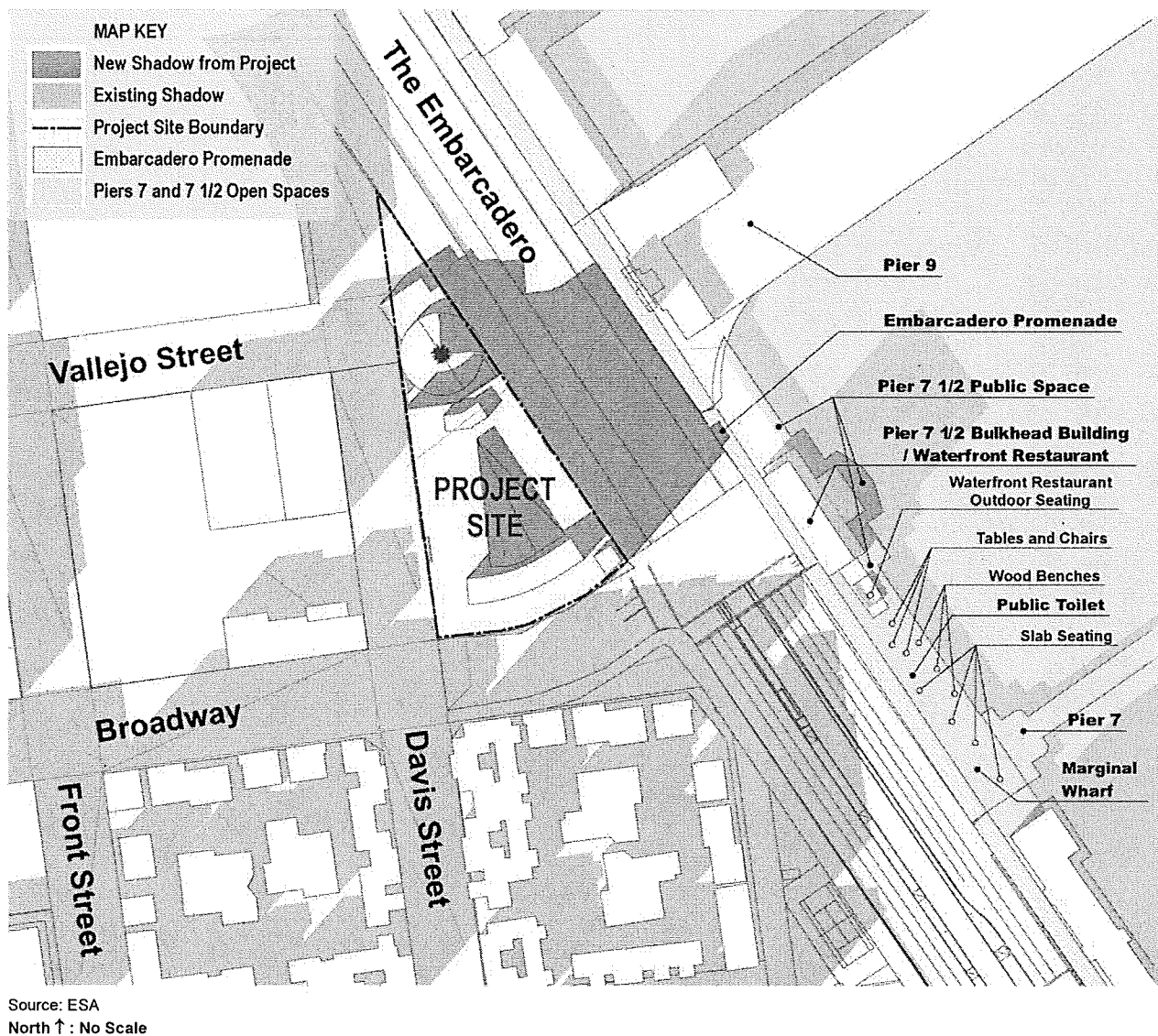


FIGURE 22 PROPOSED PROJECT AND EXISTING SHADOW, DECEMBER 20TH, 3:00 P.M.

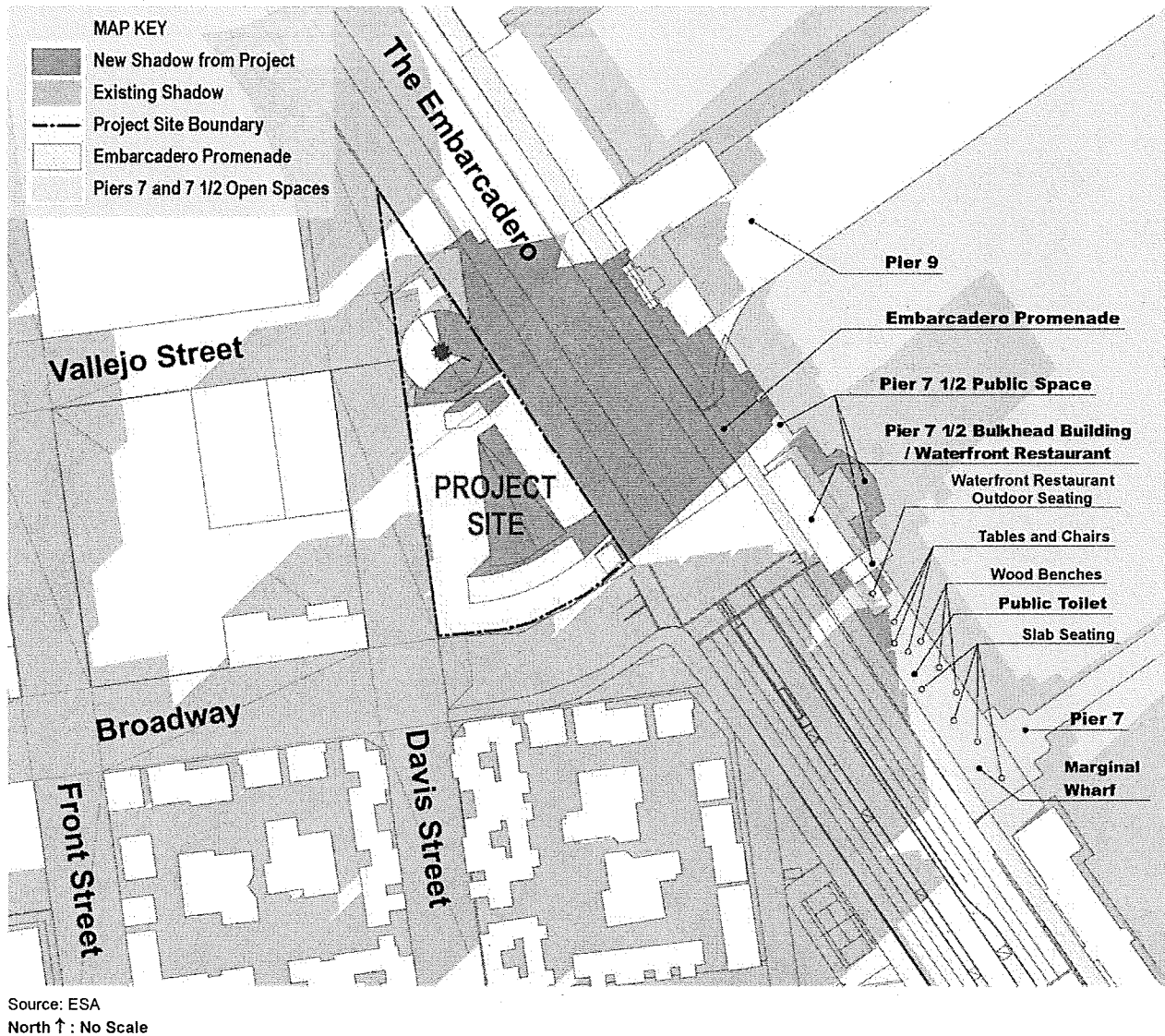


FIGURE 23 **PROPOSED PROJECT AND EXISTING SHADOW, DECEMBER 20TH, 3:30 P.M.**

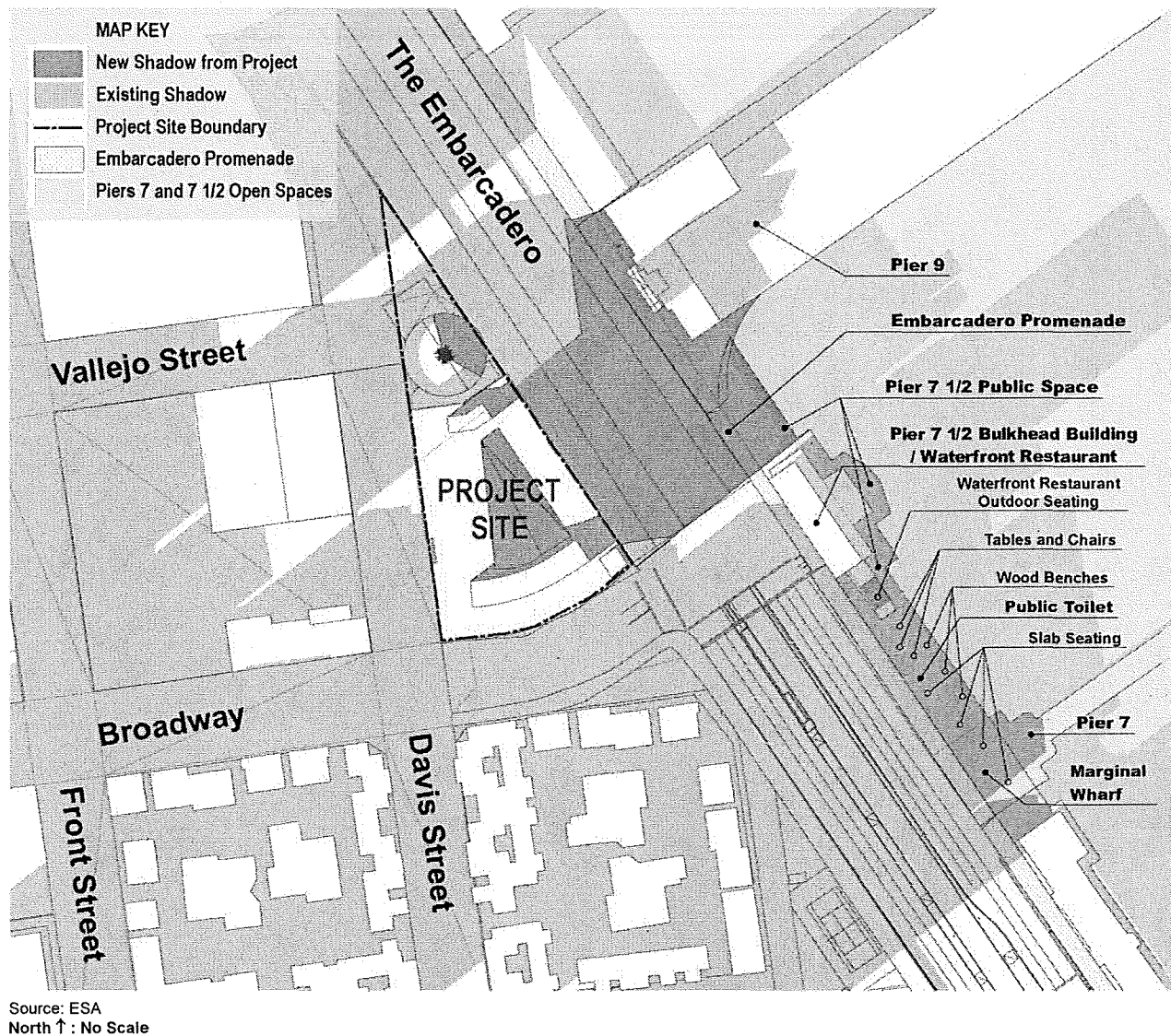


FIGURE 24 PROPOSED PROJECT AND EXISTING SHADOW, DECEMBER 20TH, 4:00 P.M.

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E.9. RECREATION

Topics:	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact	Not Applicable
RECREATION.					
a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facilities would occur or be accelerated?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Does the project include recreational facilities or require the construction or expansion of recreational facilities that might have an adverse physical effect on the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Impact RE-1: The proposed project would not result in a substantial increase in the use of existing parks and recreational facilities, the deterioration of such facilities, include recreational facilities, or require the expansion of recreation facilities the construction of which could affect the environment. (*Less than Significant*)

The new entertainment venue and hotel uses would be served by Rec Park, which administers more than 220 parks, playgrounds, and open spaces throughout the city, as well as recreational facilities, including recreation centers, swimming pools, golf courses, and athletic fields, tennis courts, and basketball courts.¹⁴² The project site is in an intensely developed urban neighborhood that does not contain large regional park facilities, but includes a number of neighborhood parks and open spaces, as well as other recreational facilities. The San Francisco General Plan's Recreation and Open Space Element identifies areas throughout the city that have a high need for open space. "High-need" areas are defined as those with high population densities, high concentrations of seniors and youth, and lower income populations that are located outside of existing parking service areas.¹⁴³ Although neighboring areas west of the project site are classified as high-need areas, the project site is located on parcels classified as having a lesser need for open space.

There are several Rec Park-managed recreation and open space facilities near the project site:

- **Maritime Plaza** (at 285 Washington Street): An approximately 2.01-acre landscaped plaza connected by pedestrian bridges to Golden Gateway and Embarcadero Center, located approximately 0.22 mile south of the project site.
- **Sue Bierman Park** (at the intersection of Washington and Drumm streets): An approximately 4.41-acre park containing a playground and reservable picnic areas, located approximately 0.30 mile southeast of the project site.
- **Justin Herman-Embarcadero Plaza** (at the intersection of Steuart and Market streets): An approximately 4.43-acre park containing a fountain, a winter ice skating rink, reservable picnic areas, and a bocce ball court, located approximately 0.37 mile southeast of the project site.
- **Portsmouth Square** (at the intersection of Washington Street and Walker Lum Place): An approximately 1.29-acre park containing benches and a children's play area, located approximately 0.43 mile southwest of the project site.
- **Washington Square** (at the intersection of Filbert and Stockton streets): An approximately 2.26-acre park containing benches, located approximately 0.58 mile northwest of the project site.

¹⁴² San Francisco Planning Department, *San Francisco General Plan, Recreation and Open Space Element*, April 2014, http://www.sf-planning.org/ftp/General_Plan/Recreation_OpenSpace_Element_ADOPTED.pdf, accessed January 18, 2017.

¹⁴³ Ibid.

- **Telegraph Hill–Pioneer Park** (at Telegraph Hill Boulevard): An approximately 4.89-acre park containing Coit Tower, located approximately 0.43 mile northwest of the project site.

In addition to these facilities, Sydney G. Walton Square is the nearest public open space to the project site that is not owned or managed by Rec Park. The park is located 0.1 mile southwest, occupying half of the block south from the project site, and is bounded by Front Street to the east, Jackson Street to the south, and Davis Street to the west. The approximately 2-acre park is known for its public art and is a popular lunchtime spot for nearby employees and residents. Project residents also have close access (one block to the east) to The Embarcadero sidewalks, which are waterfront sidewalks located alongside the eastern portion of the Port. The sidewalks are along a 3-mile stretch of seawall that features piers, sidewalks, restaurants, parks, and other attractions. Additionally, neighborhood residents have access to the Pier 7½ Public Space, which is located along The Embarcadero between Pier 7 and Pier 9 and contains many features such as outdoor seating at the Waterfront Restaurant, public benches and tables, a public toilet, and informal seating next to San Francisco Bay. The proposed entertainment venue and hotel uses would increase the number of employees, hotel guests, and theatergoers at the project site. Although some of the population associated with the site would be onsite for entertainment events only and would be unlikely to make regular use of recreational facilities, hotel guests, and employees may use local recreational facilities in the vicinity of the proposed project.

As discussed in Section A, Project Description, the proposed project includes a 14,000-gsf public park at the north end of the project site. The public park would include landscaped and hardscape areas with benches and pathways for pedestrian and bicycle use. The population associated with the proposed project would use the proposed public park, which is anticipated to alleviate use of other nearby recreational facilities. The population of the proposed project is also expected to use the promenade and facilities along the bay, both recreationally and as a means of connection to other parts of the city. The incremental increase in use associated with the proposed project is not anticipated to contribute to deterioration of the recreational facilities in the vicinity of the project site. Moreover, construction of a new public park onsite would create additional recreational resources in the project area. Therefore, the impact of the proposed project would be *less than significant*.

The proposed project would not result in direct physical alteration of recreational facilities. The closest recreational facilities to the project site are the promenade (approximately 100 feet east of the project site); Pier 7 (approximately 300 feet southeast of the project site); and Sydney Walton Park (0.1 mile southwest of the project site). Construction of the proposed project is not anticipated to affect access to these facilities. Therefore, the proposed project would have a *less-than-significant* impact on recreational facilities and resources.

Impact-C-RE-1: The proposed project, in combination with past, present, and reasonably foreseeable future projects in the vicinity of the project site, would result in less-than-significant cumulative impacts related to recreation. (*Less than Significant*)

Past, present, and reasonably foreseeable future projects located within approximately 0.25 mile of the project site are identified in Table 3 and mapped in Figure 17 in Section B.3, Cumulative Projects. These projects would add approximately 427 new residents in 189 dwelling units in the project vicinity. In addition, the cumulative projects would add an estimated 160 new employees (including the 129 net new employees associated with the proposed project) within 0.25 mile of the project site. Recreational facility use in the project area would most likely increase with development of the proposed project, as well as the past, present, and reasonably foreseeable future projects identified in Table 3.

The proposed project includes a new 14,000-gsf public park that would be available to the increased residential population in the area. Furthermore, it is not anticipated that the proposed project population would increase the use of existing neighborhood and regional parks or other recreational facilities to such an extent that substantial physical deterioration of those facilities would occur, given that not all residents would necessarily use local parks and that other recreational

opportunities are available citywide. The added residential population resulting from development of the cumulative projects also would not require the construction or expansion of recreational facilities, nor would it physically degrade existing recreational resources. Each project identified in Table 3 and mapped in Figure 17 in Section B.3, Cumulative Projects, would be subject to compliance with the City's open space requirements, as defined in section 135 of the planning code, regarding provision of public and/or private open space to partially meet the demand for recreational resources from future residents of those projects. Moreover, in June 2016, San Francisco voters approved Local Measure (Proposition) B, which extends until 2046 a funding set-aside in the City budget for SFRPD and provides for annual increases through 2026–2027 in General Fund monies provided to SFRPD, meaning that SFRPD would have additional funding for programming and park maintenance.¹⁴⁴ For these reasons, when considered in combination with other past, present, or reasonably foreseeable future projects, the proposed project would not result in a cumulative impact on recreational facilities or resources. The impact would be *less than significant*.

¹⁴⁴ San Francisco Department of Elections, June 7, 2016 Official Election Results, <http://www.sfelections.org/results/20160607/>, last updated June 24, 2016, accessed August 17, 2016.

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E.10. UTILITIES AND SERVICE SYSTEMS

Topics:	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact	Not Applicable
10. UTILITIES AND SERVICE SYSTEMS.— Would the project:					
a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Have sufficient water supply available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has inadequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g) Comply with federal, state, and local statutes and regulations related to solid waste?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The project site is in an urban area that is served by utility service systems, including water, wastewater and stormwater collection and treatment, and solid waste collection and disposal. The proposed project would add new daytime and nighttime populations to the project site that would increase the demand for utilities and service systems on the site. However, as discussed in Section E.2, Population and Housing, the growth associated with the proposed project would not be in excess of growth planned for the city.

Impact UT-1: The proposed project would not exceed wastewater treatment requirements of the applicable regional water quality control board; would not exceed the capacity of the wastewater treatment provider serving the project site; and would not require construction of new stormwater drainage facilities, wastewater treatment facilities, or expansion of existing facilities. (*Less than Significant*)

The project site is served by San Francisco's combined sewer system, which handles both sewage and stormwater runoff. The Southeast Water Pollution Control Plant provides wastewater and stormwater treatment and management for the eastern side of the city, including the project site. Stormwater Management Ordinance compliance approvals for this project would be conducted by the SFPUC and Port. As described in Impact PH-1 in Section E.2, Population and Housing, the proposed project would add approximately 129 employees of the theater, hotel, restaurant, and bar; patrons of the 285-seat entertainment venue, restaurant, and bar; and approximately 365 hotel guests to the project site, which would increase the amount of wastewater generated at the project site by approximately 54,250 gallons per day.¹⁴⁵ This increase would not be

¹⁴⁵ The 90 percent of water use (see Impact UT-2) assumed to be discharged to the combined sewer system is consistent with SFPUC's standard assumption for nonresidential buildings, "Wastewater Service Charge Appeal," <http://www.sfwater.org/index.aspx?page=132>, accessed January 2018. SFPUC assumes that nonresidential uses discharge 90 percent of water used to the combined sewer. The 90 percent figure is used in these calculations for a conservative assessment of combined

substantial and would represent only a 0.09 percent increase in the Southeast Water Pollution Control Plant's average daily treatment capacity of 60,000,000 gallons per day.¹⁴⁶ In addition, the proposed project would incorporate water-efficient fixtures, as required by CCR title 24 and the San Francisco Green Building Ordinance. Specifically, the project must comply with the following measures:

- Title 24, part 11 (2016 CALGreen Code), Residential Mandatory Measures, division 4.3, Water Efficiency and Conservation
- Title 24, part 11 (2016 CALGreen Code), Nonresidential Mandatory Measures, division 5.3, Water Efficiency and Conservation

Compliance with these regulations would reduce wastewater flows and the amount of potable water used for building functions. The incorporation of water-efficient fixtures into new development is also accounted for by SFPUC in its projections of water demand (i.e., 2015 Urban Water Management Plan [2015 UWMP]), because widespread adoption can lead to more efficient use of existing capacity. The proposed project would also meet SFPUC's wastewater pretreatment requirements, as required by the San Francisco Industrial Waste Ordinance to meet the requirements of the San Francisco Bay RWQCB (see discussion under Impact HYD-1 in Section E.14, Hydrology and Water Quality, for additional stormwater management requirements).¹⁴⁷ Although the proposed project would add new hotel and entertainment visitors and employees to the project site, which would increase wastewater generation, this additional population is not beyond the growth projections included in long-range plans. Therefore, the incremental increase in demand for wastewater would not require construction of new wastewater treatment facilities or expansion of existing facilities.

The project site is currently entirely covered by impervious surfaces and the proposed project would not create any additional impervious surfaces; therefore, the proposed project would not result in an increase in stormwater runoff. Compliance with the City's Stormwater Management Ordinance, adopted in 2010 and amended in 2016, and the 2016 Stormwater Management Requirements and Design Guidelines would require the proposed project to reduce the existing volume and rate of stormwater runoff discharged from the project site. The project site has more than 50 percent impervious surface at present, the proposed project would create or replace more than 5,000 square feet of impervious surface, and the site is served by the combined sewer system. Thus, the stormwater management approach for the proposed project must reduce the existing runoff flow rate and volume by 25 percent for a 2-year, 24-hour design storm. The Stormwater Management Requirements set forth a hierarchy of BMPs to meet the stormwater runoff requirements. First-priority BMPs involve reducing stormwater runoff through approaches such as rainwater harvesting and reuse (e.g., for toilets and urinals and/or irrigation); infiltration through a rain garden, swale, trench, or basin; or the use of permeable pavement or a green roof. Second-priority BMPs include using biotreatment approaches such as flow-through planters or, for large sites, constructed wetlands. Third-priority BMPs, permitted only under special circumstances, involve using a filter to treat stormwater.

To achieve compliance with the Stormwater Management Requirements, the proposed project would implement and install appropriate stormwater management systems, such as low impact design approaches, rainwater reuse systems, cisterns, and green roofs that would manage stormwater onsite and limit demand on both the collection system and wastewater facilities resulting from stormwater discharges. A stormwater control plan would be designed for review and approval by SFPUC. The stormwater control plan would also include a maintenance agreement that must be signed by the project sponsor to guarantee

sewer system demand. 60,279 gallons per day x 90 percent = 54,251 gallons per day. The calculation for the project's water demand is shown in Impact UT-2.

¹⁴⁶ San Francisco Public Utilities Commission, *San Francisco's Wastewater Treatment Facilities*, June 2014, <http://sfwater.org/modules/showdocument.aspx?documentid=5801>, accessed January 2018
54,251 gallons per day/60,000,000 gallons per day = 0.090%

¹⁴⁷ City and County of San Francisco, Ordinance No. 19-92, San Francisco Municipal Code (Public Works), part II, chapter X, article 4.1 (amended), January 13, 1992.

proper care of the necessary stormwater controls. Therefore, the proposed project would not substantially increase the amount of stormwater runoff to the extent that existing facilities would need to be expanded or new facilities would need to be constructed; as such, the impact on the stormwater system would be less than significant.

Overall, although the proposed project would add to wastewater flows in the area, it would not cause the collection treatment capacity of the City's sewer system to be exceeded. The proposed project also would not exceed wastewater treatment requirements of the San Francisco Bay RWQCB, and would not require the construction of new wastewater/stormwater treatment facilities or expansion of existing ones. Therefore, because the proposed project would not require the construction of new or expanded wastewater or stormwater collection, conveyance, or treatment facilities that could have a significant impact on the environment, the impact would be *less than significant*.

Impact UT-2: SFPUC has sufficient water supply available to serve the project from existing entitlements and resources, and the proposed project would not require expansion or construction of new water supply resources or facilities. (*Less than Significant*)

As noted above under Impact UT-1, the proposed project would add hotel, entertainment, and public park uses to the project site, which would increase the demand for water on the site, but not in excess of amounts planned and provided for in the project area. SFPUC currently serves approximately 2.7 million customers in the Bay Area. Existing gross (all-sector) water use and residential-only water use by in-city retail customers are 77 and 44 gallons per capita per day, respectively.¹⁴⁸ Conservatively assuming that future project employees, patrons of the entertainment venue, restaurant, and bar, and hotel guests use the same amount of water, the proposed project would use an estimated 63,5829 gallons of water per day or 0.0635 million gallons per day.¹⁴⁹

As the water provider for San Francisco, SFPUC prepares an urban water management plan every 5 years to project future demand and evaluate the adequacy of existing and projected supply. Demands that are not met by local runoff are met with water diverted from the Tuolumne River through the Hetch Hetchy System. SFPUC's 2015 plan estimates that current and planned future supplies will be sufficient to meet future retail demands through 2035 under normal, dry, and multiple dry years; however, for 2040, a water shortfall of 1.1 million gallons per day is estimated for the city during the second and third years of multiple-dry-year conditions. The 2015 plan estimates a projected in-city water demand of 84.9 million gallons per day for 2040. The population generated by the proposed project would account for less than 0.02 percent of this projected demand. Therefore, although the proposed project would incrementally increase the demand for water in San Francisco, the estimated increase would not exceed the amounts expected and provided for in the project area, and the increase in demand is not significant compared to the demand projected for 2040.

The proposed project would be designed to incorporate water-conserving measures, such as low-flush toilets and urinals, as required by the San Francisco Green Building Ordinance. The project site is located in a designated recycled-water-use area, as defined in the Recycled Water Ordinance (sections 390-91 and 393-94). The ordinance requires projects of new construction totaling 40,000 square feet or more, such as the proposed project, to install recycled-water systems for all uses authorized by the State of California, including landscape irrigation and toilet and urinal flushing. Additionally, because the

¹⁴⁸ San Francisco Public Utilities Commission, *2015 Urban Water Management Plan for the City and County of San Francisco*, June 2016, p. 4-2, <https://sfwater.org/modules/showdocument.aspx?documentid=9300>, accessed September 2018.

¹⁴⁹ *Ibid.*, p. 4-2 and Appendix D, <http://sfwater.org/modules/showdocument.aspx?documentid=9301>, The proposed project would employ 129 workers, the theater would accommodate 285 patrons, and the hotel would accommodate 365 guests (779 total). This total (779), multiplied by 77 gallons per capita per day yields a total of 59,983 gallons per day. A 6.0 percent water loss factor is also included in the total water usage per the 2015 UWMP's projected water loss rate for 2040 (see 2015 UWMP Table 4-1). Therefore, the anticipated total gallons per day usage for the proposed project would be 59,983 plus 3,599 (6.0 percent of 59,983) equals 63,582 gallons per day or 0.0635 million gallons per day.

project contains 500 square feet or more of landscape area through the community open space, street trees, and partial green roof, the project sponsor would be required to comply with San Francisco's Water Efficient Irrigation Ordinance, adopted as chapter 63 of the San Francisco Administrative Code, and the SFPUC Rules & Regulations Regarding Water Service to Customers. This ordinance requires projects to design, install, and maintain efficient irrigation systems, utilize low-water-use plantings, and set a maximum applied water allowance that is part of the annual water budget. The project's landscape and irrigation plans must be reviewed and approved by SFPUC before installation.

During project construction, the project sponsor and project building contractor must comply with article 21 of the San Francisco Public Works Code, which requires that nonpotable water be used for dust-control activities. City Ordinance 175-91 restricts the use of potable water for soil compaction and dust control activities undertaken in conjunction with any construction or demolition project occurring within the boundaries of San Francisco, unless permission is obtained from SFPUC. Furthermore, to guarantee the welfare and safety of people and structures in the city, the project sponsor would be required to design all applicable water facilities, including potable water, fire suppression, and nonpotable water systems, to conform to the current standards and practices of SFPUC's City Distribution Division and SFFD.

In addition, a hydraulic analysis would be required to confirm the adequacy of the water distribution system for potable, nonpotable, and fire suppression use at the time of building permit review. If the current distribution system's pressures and flows are inadequate, the project sponsor would be responsible for any capital improvements required to meet the proposed project's water demands.

Because the proposed project's water demand could be accommodated by the existing and planned water supply and conveyance infrastructure anticipated under the 2015 UWMP, no expansion or construction of new water supply resources or facilities would be required. The proposed project would result in *less-than-significant* water supply impacts.

Impact UT-3: The proposed project would be served by a landfill with sufficient permitted capacity to accommodate the proposed project's solid waste disposal needs. (*Less than Significant*)

In September 2015, the City entered into a landfill disposal agreement with Recology Incorporated for disposal of all solid waste collected in San Francisco at the Recology Hay Road Landfill in Solano County for 9 years, or until 3.4 million tons have been disposed, whichever occurs first. The City would have an option to renew the agreement for a period of 6 years, or until an additional 1.6 million tons have been disposed, whichever occurs first.¹⁵⁰ The Recology Hay Road Landfill is permitted to accept up to 2,400 tons per day of solid waste; at that maximum rate, the landfill would have capacity to accommodate solid waste until approximately 2034. At present, the landfill receives an average of approximately 1,850 tons per day from all sources, with approximately 1,200 tons per day from San Francisco; at this rate, landfill closure would occur in 2041.¹⁵¹ The proposed project would be required to comply with the City's mandatory recycling and composting ordinance requiring separation of compost and recyclables from landfill waste (see Section E.7, Greenhouse Gas Emissions). The proposed project would be served by landfills with sufficient permitted capacity to accommodate its solid waste disposal needs. Therefore, solid waste disposal impacts would be *less than significant*.

¹⁵⁰ San Francisco Planning Department, *Agreement for Disposal of San Francisco Municipal Solid Waste at Recology Hay Road Landfill in Solano County Final Negative Declaration*, Planning Department Case No. 2014.0653, May 21, 2015, http://sfmea.sfplanning.org/2014.0653E_Revised_FND.pdf, accessed February 10, 2017.

¹⁵¹ Ibid.

Impact UT-4: Construction and operation of the proposed project would comply with all applicable statutes and regulations related to solid waste. (*Less than Significant*)

The California Integrated Waste Management Act of 1989 requires municipalities to adopt an integrated waste management plan to establish objectives, policies, and programs relative to waste disposal, management, source reduction, and recycling. Reports filed by the San Francisco Department of the Environment show the City generated approximately 476,424 tons of waste material in 2013.¹⁵² Waste diverted from landfills is defined as recycled or composted. San Francisco has a goal of 100 percent of waste diverted from landfills by 2020. As of 2011, 80 percent of San Francisco's solid waste was being diverted from landfills, having met the 2010 diversion target of 75 percent, and a target of zero waste by 2020 was established.

San Francisco Ordinance No. 27-06 requires that a minimum of 65 percent of all construction and demolition debris be recycled and diverted from landfills. The San Francisco Green Building Code also requires certain projects to submit a recovery plan to the Department of the Environment demonstrating recovery or diversion of at least 75 percent of all demolition debris. Furthermore, the proposed project would be required to comply with City Ordinance 100-09, the Mandatory Recycling and Composting Ordinance, which requires everyone in San Francisco to separate their refuse into recyclables, compostables, and trash. The Recology Hay Road Landfill is required to meet federal, state, and local solid waste regulations. The proposed project would comply with the solid waste disposal policies and regulations identified above and would have a *less-than-significant* impact with respect to solid waste statutes and regulations.

Impact-C-UT-1: The proposed project, in combination with past, present, and reasonably foreseeable future projects in the vicinity of the project site, would not result cumulative significant impacts related to utilities or service systems. (*Less than Significant*)

Past, present, and reasonably foreseeable projects in the vicinity of the project site would incrementally increase utilities demand in the city, such as water supply, water and wastewater conveyance and treatment facilities, and solid waste services. As noted above, SFPUC has accounted for such growth in its water demand and wastewater service projections, and the City has implemented various programs with a goal to achieve 100 percent landfill diversion by 2020. Cumulative development projects would be subject to water conservation, wastewater discharge, recycling and composting, and construction demolition and debris ordinances. Compliance with these City ordinances would reduce the effects of cumulative development projects in the city. None of the projects would result in substantial population growth beyond what has been planned by the City and ABAG, which the service providers have used to determine demand projections for the construction timelines of the reasonably foreseeable projects. Moreover, these projects would also be required to comply with the requirements of the City, SFPUC, and the San Francisco Bay Regional Water Quality Control Board related to the sustainable use of utilities.

None of the cumulative projects are expected to result in unusual quantities or types of discharge that would cause the local wastewater treatment facilities to exceed the applicable standards of the San Francisco Bay RWQCB. Projects would be required to comply with City ordinances related to water conservation. Projects creating or replacing at least 5,000 square feet of impervious surface would be required to prepare a stormwater control plan describing the postconstruction stormwater controls that would be implemented onsite to prevent pollutant runoff during project operation. Compliance with waste diversion ordinances to meet the City's goal for 100 percent diversion from landfills would be required for all projects. Therefore, the proposed project, in combination with past, present, and reasonably foreseeable future projects, would result in a *less-than-significant* cumulative impact.

¹⁵² San Francisco Indicator Project, <http://www.sfindicatorproject.org/indicators/view/4>, accessed February 10, 2017.

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E.11. PUBLIC SERVICES

Topics:	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact	Not Applicable
11. PUBLIC SERVICES.					
a) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered government facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times, or other performance objectives for any of the public services such as fire protection, police protection, schools, parks, or other public facilities?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The proposed project's impacts on parks and open spaces are discussed in Section E.9, Recreation. Impacts on other public services are discussed below.

Impact PS-1: The proposed project would not increase demand for police protection, fire protection, schools, or other services to an extent that would result in substantial adverse physical impacts associated with the construction or alteration of government facilities. (*Less than Significant*)

Police Protection

The project site currently receives police services from the San Francisco Police Department's Central Police Station, located at 766 Vallejo Street, approximately 0.6 mile from the project site. The proposed project, involving the demolition of an existing surface parking lot and construction of a hotel, entertainment venue, and public park, would result in more intensive use of the project site than currently exists, and thus, would likely incrementally increase police service calls in the project area. Most of the population associated with the uses onsite would be temporary. Although the proposed project could increase the number of calls received from the area, the increase in responsibilities would not be substantial in light of the existing demand for police protection services. In addition, security for the proposed public park would be provided by a private security service. The Central Station would be able to provide the necessary police services and crime prevention in the area.¹⁵³ Meeting the project's additional service demand would not require the construction of new police facilities that could cause significant environmental impacts. Hence, the proposed project would have a *less-than-significant* impact related to the provision of police services.

Fire Protection

SFFD currently provides fire protection to the project site. The two closest fire stations are Station 13, at 530 Sansome Street approximately 0.4 mile from the project site, and Station 2, at 1340 Powell Street approximately 0.65 mile from the project site. The proposed project, involving the demolition of an existing surface parking lot and construction of a hotel, entertainment venue, and public park, would result in more intensive use of the project site than currently exists. The project is expected to support approximately 129 employees of the theater, hotel, restaurant, and bar; patrons of the 285-seat entertainment venue, restaurant, and bar; and approximately 365 hotel guests. This increase in population associated with the proposed project would incrementally increase fire service calls in the project area. Although the proposed project would likely increase the number of calls received from the area, the increase in responsibilities would not be so substantial in light of existing demand for fire protection services that new or altered fire stations would be required to serve the proposed project. Furthermore, construction of the proposed project would be required to comply with all applicable building and fire

¹⁵³ San Francisco Police Department, 2014 Annual Report, p. 112, <http://sanfranciscopolice.org/annual-reports>, accessed January 18, 2017.

code requirements, including the California Fire Code, which establishes requirements for fire protection systems, including providing state-mandated fire alarms, fire extinguishers, appropriate building access and egress, and emergency response notification systems. Compliance with all applicable building and fire codes would further reduce the demand for SFFD service and oversight. For these reasons, the impact of the proposed project on fire protection services would be *less than significant*.

Schools

San Francisco Unified School District provides public and secondary education throughout the city. The proposed project would not include any residential units that would generate new students. The approximately 129 additional employees at the project site are likely to be residents of San Francisco or the Bay Area, and the number of additional school-aged children associated with them would be very small compared to the total school district enrollment. Therefore, the project would have a *less-than-significant impact* on schools.

Other Government Services

The proposed project would not add any permanent residents to the area. The population associated with the proposed project could result in a minor increase in demand for government services, including libraries, but the increase would be small compared to existing demand and projected capacity. The proposed project would not result in a demand for government services that would result in the need to construct or alter facilities. The proposed project would have a *less-than-significant impact* on government services.

Impact-C-PS-1: The proposed project, in combination with past, present, and reasonably foreseeable future projects in the vicinity of the project site, would result in less-than-significant cumulative impacts related to public services. (Less than Significant)

Development of the proposed project in conjunction with the cumulative projects identified within a 0.25-mile radius of the project site listed in Table 3 and mapped in Figure 17 in Section B.3, Cumulative Projects and projected population growth in the in the project area and within the city would incrementally increase demand for public services in the city for police protection, fire protection, schools, and other government services, such as public libraries. Only one of the projects listed in Table 3 propose a large residential component the 88 Broadway and 753 Davis Street project, which would construct an additional 178 affordable residential units in the project vicinity. Because demand for public services is typically higher at projects with residential uses, because of their permanent occupants and the presence of school-aged children, it is not anticipated that cumulative development within 0.25 mile of the project site would contribute to a cumulative impact on public services.

In addition, as discussed in Section E.2, Population and Housing, the projects listed in Table 3 would not result in population growth beyond what has been projected by the City and ABAG, which have accounted and planned for such growth to continue to provide public services to San Francisco residents. This increase would not be considerable because this growth would not exceed growth projections for the area or the region. Further, the proposed project and cumulative projects in the vicinity would contribute to an increased demand for police services provided by the Central Station and fire services provided by Fire Stations 2 and 13, but the increased demand would not require the construction of new facilities or the expansion of existing facilities.

For these reasons, the proposed project would not combine with cumulative development projects to create or contribute to a cumulative impact on public services such that new or expanded facilities would be required. This impact would be *less than significant*.

E.12. BIOLOGICAL RESOURCES

Topics:	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact	Not Applicable
12. BIOLOGICAL RESOURCES:— Would the project:					
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

The project site is in a developed urban area completely covered by impervious surfaces. The project site does not support riparian habitat or other sensitive natural communities, as defined by the California Department of Fish and Wildlife and the U.S. Fish and Wildlife Service. The project site's eastern boundary is located approximately 165 feet from San Francisco Bay. Because the proposed project would be physically separated by The Embarcadero from riparian and aquatic communities in the bay, the proposed project would not involve any changes to riparian habitat. Therefore, question 12b is not applicable to the proposed project. In addition, the project vicinity does not contain wetlands, as defined by section 404 of the Clean Water Act; therefore, question 12c is not applicable to the proposed project. Moreover, the project site is not located within the jurisdiction of an adopted habitat conservation plan, natural community conservation plan, or other approved local, regional, or state habitat conservation plan; therefore, question 12f is not applicable to the proposed project.

Impact BI-1: The proposed project would not have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species, riparian habitat or sensitive natural communities, and would not interfere substantially with any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites. (Less than Significant)

The project site and surrounding area are entirely covered with impervious surfaces and do not include riparian habitat or other sensitive natural communities as defined by the California Department of Fish and Wildlife and the U.S. Fish and Wildlife Service. Migrating birds do pass through San Francisco. Nesting birds, their nests, and their eggs are fully protected by California Fish and Game Code sections 3503 and 3503.5 and the federal Migratory Bird Treaty Act. The proposed

project would be subject to the Migratory Bird Treaty Act, which would prevent impacts on nesting birds from occurring as a result of the proposed project, as discussed further below under Impact BI-2.

The project site is located within an urban bird refuge. The location, height, and material of buildings, particularly transparent or reflective glass, may present risks for birds as they travel along their migratory paths. The City has adopted guidelines to address this issue and provided regulations for bird-safe design in the city. Planning code section 139, Standards for Bird-Safe Buildings, establishes building design standards to reduce avian mortality rates associated with bird strikes.¹⁵⁴ Section 139 identifies two types of bird hazards: location-related hazards, where the siting of a structure creates a high risk to birds, and feature-related hazards, which include building design features that create a high risk to birds, such as freestanding glass walls, wind barriers, skywalks, balconies, and greenhouses on rooftops that have unbroken glazed segments 24 square feet and larger in size.

Projects located less than 300 feet from an urban bird refuge that are located in an unobstructed line to the refuge are considered to pose location-related hazards. San Francisco Bay and its shoreline are considered an urban bird refuge because of the presence of open water. The project site is located approximately 165 feet from the bay and may be located in an unobstructed line to the bay. The proposed project would also include feature-related hazards, including freestanding glass walls enclosing the tent. As such, the proposed project is required to include bird-safe glazing treatment. Treatment may include fritting, netting, permanent stencils, frosted glass, exterior screens, physical grids placed on the exterior of the glazing, or ultraviolet patterns visible to birds. The treatment would be applied to the walls of the glass enclosing the tent. Section 139 also requires that exterior lighting be minimized and shielded. The proposed project would shield exterior lighting where included.

Overall, the proposed project would be subject to, and would comply with, City-adopted regulations for bird-safe buildings and federal and state migratory bird regulations; therefore, the proposed project would not interfere with the movement of native resident or wildlife species or with established native resident or migratory wildlife corridors. This impact would be *less than significant*.

Impact BI-2: The proposed project would not conflict with the City's local tree ordinance. (*Less than Significant*)

The City's Urban Forestry Ordinance (Public Works Code section 801 et seq.) requires a permit from SFPW to remove any protected trees. Protected trees include landmark trees, significant trees, or street trees located on private or public property anywhere within the territorial limits of the City and County of San Francisco.

There are 28 existing street trees along The Embarcadero, Broadway, and Davis Street adjacent to the project site. As part of the proposed project, all 28 existing street trees would be retained. Therefore, no impact on protected trees would occur, and no mitigation measures are required.

In addition, Public Works Code section 806(d)(2) requires that one 24-inch box tree be planted for every 20 feet of property frontage along each street, with any remaining fraction of 10 feet or more of frontage requiring an additional tree. The proposed project would consist of approximately 600 feet of frontage on The Embarcadero, 290 feet of frontage on Davis Street, and 210 feet of frontage on Broadway. Therefore, street frontage for the project site would total approximately 1,100 feet, which would require a total of 55 street trees. The proposed project would comply with planning code section 138.1(c)(1) by retaining the 28 existing trees along The Embarcadero, Broadway, and Davis Street, and by planting an additional 28 trees, for a total of 56 street trees. The locations of the new street trees would be subject to constraints

¹⁵⁴ San Francisco Planning Department, *Standards for Bird-Safe Buildings*, July 14, 2001, http://208.121.200.84/fjp/files/publications_reports/bird_safe_bldgs/Standards%20for%20Bird%20Safe%20Buildings%20-%2011-30-11.pdf, accessed August 18, 2016.

regarding the location of underground utilities. Public Works Code section 806(d)(4) includes a provision that the director may waive street tree requirements if planting a street tree would interfere with preexisting subsurface features. However, for each required street tree the director waives, the project sponsor must pay an in-lieu fee to fulfill all or a portion of the street tree requirement, or provide alternative landscaping comparable to or greater than the number of street trees waived. The proposed project would comply with the San Francisco Planning and Public Works codes. Because the proposed project would not conflict with the City's local tree ordinance, this impact would be *less than significant*.

Impact C-BI-1: The proposed project in combination with other past, present, and reasonably foreseeable future projects would not result in cumulative impacts on biological resources. (*Less than Significant*)

The cumulative development projects shown in Table 3 and mapped in Figure 17 in Section B.3, Cumulative Projects, would result in an overall intensification of land uses typical of infill development in the project vicinity. The project site and the surrounding area do not currently support any candidate, sensitive, or special-status species, any riparian habitat, or any other sensitive natural community identified in local or regional plans, policies, or regulations or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service. The cumulative project sites do not contain habitat that supports any candidate, sensitive, or special-status species; does not include riparian habitat or other sensitive natural communities as defined by the California Department of Fish and Wildlife and U.S. Fish and Wildlife Service, including onsite or street trees that could provide habitat for birds protected under the Migratory Bird Treaty Act; does not contain any wetlands as defined by section 404 of the Clean Water Act; and does not fall within any local, regional, or state habitat conservation plans. Therefore, the development of these projects would not have the potential to result in a cumulative impact on these resources.

The cumulative development projects could add a number of buildings that could potentially injure or kill birds in the event of a bird-strike collision. However, like the proposed project, nearby cumulative development projects would be subject to the City's bird-safe building regulations. Compliance with these regulations would reduce the effects of cumulative development projects to less-than-significant levels. Similarly, cumulative development projects would be required to comply with the Urban Forestry Ordinance. For these reasons, the proposed project would not combine with cumulative development projects to create or contribute to a cumulative impact on biological resources, and cumulative impacts would be *less than significant*.

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E.13. GEOLOGY AND SOILS

Topics:	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact	Not Applicable
13. GEOLOGY AND SOILS.— Would the project:					
a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:					
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ii) Strong seismic ground shaking?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
iii) Seismic-related ground failure, including liquefaction?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
iv) Landslides?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Result in substantial soil erosion or the loss of topsoil?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Be located on geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction, or collapse?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Be located on expansive soil, as defined in Table-18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of waste water?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

The proposed project would connect to the combined municipal sewer system, which is the conveyance system for San Francisco, and would not use septic tanks or alternative wastewater disposal systems. Therefore, question 13e is not applicable to the proposed project.

In the *California Building Industry Association v. Bay Area Air Quality Management District* case decided in 2015,¹⁵⁵ the California Supreme Court held that CEQA does not generally require lead agencies to consider how existing hazards or conditions might impact a project's users or residents, except where the project would significantly exacerbate an existing environmental hazard. Accordingly, hazards resulting from a project that places development in an existing seismic hazard area or an area with unstable soils are not considered impacts under CEQA unless the project would significantly exacerbate the seismic hazard or unstable soil conditions. Thus, the following analysis evaluates whether the proposed project would exacerbate future seismic hazards or unstable soils at the project site and result in a substantial risk of loss, injury, or death. The impact is considered significant if the proposed project would exacerbate existing or future seismic hazards or unstable soils by increasing the severity of these hazards that would occur or be present without the project.

Regulatory Setting

Existing laws and regulations that stipulate a regulatory process to address seismic and geologic safety of new construction are described below.

¹⁵⁵ *California Building Industry Association v. Bay Area Air Quality Management District*, December 17, 2015.

Federal Regulations to Address Seismic Hazards

Earthquake Hazard Reduction Act of 1977. Federal laws codified in United States Code Title 42, Chapter 86, were enacted to reduce risks to life and property from earthquakes in the United States through the establishment and maintenance of an effective earthquake hazards reduction program. Implementation of these requirements are regulated, monitored, and enforced at the state and local levels. Key regulations and standards applicable to the proposed project are summarized below.

California Regulations to Address Seismic Hazards

The Alquist-Priolo Earthquake Fault Zoning Act of 1972 (Alquist-Priolo Act). The Alquist-Priolo Act (Public Resources Code section 2621 et seq.) is intended to reduce the risk to life and property from surface fault rupture during earthquakes. The Alquist-Priolo Act prohibits the location and construction of most types of structures intended for human occupancy¹⁵⁶ over active fault traces and strictly regulates construction in the corridors along active faults (i.e., earthquake fault zones).

The Seismic Hazards Mapping Act of 1990. Similar to the Alquist-Priolo Act, the Seismic Hazards Mapping Act of 1990 (seismic hazards act, located in Public Resources Code section 2690 et seq.) is intended to reduce damage resulting from earthquakes. Although the Alquist-Priolo Act addresses surface fault rupture, the seismic hazards act addresses other earthquake-related hazards, including strong ground shaking, liquefaction, and seismically induced landslides. Its provisions are similar in concept to those of the Alquist-Priolo Act (i.e., the state is charged with identifying and mapping areas at risk of strong ground shaking, liquefaction, landslides, and other corollary hazards, and cities and counties are required to regulate development within mapped seismic hazard zones).

A primary purpose of the seismic hazards act is to assist cities and counties in preparing the safety elements of their general plans and encourage land use management policies and regulations that reduce seismic hazards. The intent of this act is to protect the public from the effects of strong ground shaking, liquefaction, landslides, ground failure, or other hazards caused by earthquakes. Under the act, permit review is the primary mechanism for local regulation of development. Specifically, cities and counties are prohibited from issuing development permits for sites within seismic hazard zones until appropriate site-specific geologic and/or geotechnical investigations have been carried out and measures to reduce potential damage have been incorporated into the development plans. In addition, the California Geologic Survey's Special Publication 117A, *Guidelines for Evaluating and Mitigating Seismic Hazards in California*, provides guidance for evaluating earthquake-related hazards for projects in the designated zones and includes a description of required investigations and recommends mitigation measures, as required by Public Resources Code section 2695(a).

The project site is within an area that may be prone to earthquake-induced ground failure during a major earthquake due to liquefaction hazard as mapped by the California Geological Survey. Because of this, site design and construction must comply with the seismic hazards act, its implementing regulations, and the California Department of Conservation's guidelines for evaluating and mitigating seismic hazards.

California Building Standards Code. The California Building Standards Code, or state building code, is codified in title 24 of the California Code of Regulations. The state building code provides standards that must be met to safeguard life or limb, health, property, and public welfare by regulating and controlling the design, construction, quality of materials, use and occupancy, location, and maintenance of all buildings and structures within the state. The state building code generally applies to all occupancies in California, with modifications adopted in some instances by state agencies or local governing

¹⁵⁶ With reference to the Alquist-Priolo Act, a *structure for human occupancy* is defined as one "used or intended for supporting or sheltering any use or occupancy, which is expected to have a human occupancy rate of more than 2,000 person-hours per year" (California Code of Regulations, title 14, division 2, section 3601[e]).

bodies. The current state building code incorporates, by adoption, the 2016 edition of the International Building Code of the International Code Council with the California amendments. These amendments include significant building design and construction criteria that have been tailored for California earthquake conditions.

Chapter 16 of the state building code deals with structural design requirements governing seismically resistant construction (section 1604), including, but not limited to, factors and coefficients used to establish a seismic site class and seismic occupancy category appropriate for the soil/rock at the building location and the proposed building design (sections 1613.5 through 1613.7). Chapter 18 includes, but is not limited to, the requirements for foundation and soil investigations (section 1803); excavation, grading, and fill (section 1804); allowable load-bearing values of soils (section 1806); foundation and retaining walls, (section 1807); and foundation support systems (sections 1808 through 1810). Chapter 33 includes, but is not limited to, requirements for safeguards at work sites to ensure stable excavations and cut-or-fill slopes (section 3304) and the protection of adjacent properties including requirements for noticing (section 3307). Appendix J of the state building code includes, but is not limited to, grading requirements for the design of excavations and fills (sections J106 and J107) specifying maximum limits on the slope of cut and fill surfaces and other criteria, required setbacks and slope protection for cut and fill slopes (J108), and erosion control in general and regarding the provision of drainage facilities and terracing (sections J109 and J110). San Francisco has adopted Appendix J of the state building code with amendments to J103, J104, J106, and J109 as articulated in the local building code.

California Division of Occupational Safety and Health Regulations. Construction activities are subject to occupational safety standards for excavation, shoring, and trenching, as specified in California Division of Occupational Safety and Health (Cal/OSHA) regulations (title 8).

San Francisco Building Code and Review

San Francisco Building Code. The City's building construction standards are based on the state building code, and include local amendments to reflect local conditions. These amendments are found in the Building Code of the San Francisco Building Inspection Commission Codes (local building code) including administrative bulletins. In addition, the building department clarifies implementing procedures within information sheets.¹⁵⁷

This section describes the geology, soils, and seismicity characteristics of the project area as they relate to the proposed project. Responses in this section rely on the information and findings provided in geotechnical investigations for the project site prepared by ENGEO Incorporated.^{158, 159} The geotechnical studies relied on available literature, geologic maps, and geotechnical reports pertinent to the site to develop conclusions and recommendations, including performing a field exploration. The field exploration at the subject site generally consisted of three mud-rotary borings to depths ranging from 121 to 132 feet below ground surface (bgs), and four cone penetrometer test soundings that were advanced to a maximum depth of approximately 130½ feet bgs.¹⁶⁰ The majority of the project site's subsurface material is undocumented fill composed of loose to medium dense sand and gravels intermixed with layers of medium stiff clays ranging from approximately 20 to 50 feet bgs. Below the undocumented fill lies a layer of soft to medium stiff, highly compressible Young Bay Mud, which varies in thickness from approximately 40 to 70 feet bgs at the site. Beneath the Young Bay Mud, there are stiff to hard clays and medium dense to dense sands that are approximately 40 feet thick. The Franciscan complex is anticipated to be at lower depths in the range of 50–80 feet bgs. Bedrock was found sloping down toward the northeast with approximate depths

¹⁵⁷ Available at <http://sfdbi.org/administrative-bulletins> and <http://sfdbi.org/information-sheets>.

¹⁵⁸ ENGEO Incorporated, *Geotechnical Feasibility Assessment for the Hotel and Teatro ZinZanni Project*, December 8, 2015.

¹⁵⁹ ENGEO Incorporated, *Geotechnical Exploration for the Hotel and Teatro ZinZanni Project*, September 13, 2016.

¹⁶⁰ ENGEO Incorporated, *Summary of Geotechnical and Environmental Studies and Summary of Project Construction Methodologies*, April 6, 2018.

ranging from 100 to 130 feet bgs. The presence of a buried seawall along the eastern boundary of the site has been identified in historic maps. Groundwater occurs between 6 and 10 feet bgs. However, because groundwater levels can fluctuate over time as a result of variations in temperature, precipitation, irrigation, or other factors such as proximity to San Francisco Bay, a design water level of elevation 5 feet bgs is recommended. The artificial fill material below the groundwater table is potentially liquefiable and the project site is mapped in a California Geological Survey (CGS) seismic hazard zone map for the area titled *State of California Seismic Hazard Zones, City and County of San Francisco, Official Map*, dated November 17, 2000.¹⁶¹

The geotechnical investigation recommended soil improvement to stabilize undocumented fill and address and mitigate liquefaction and lateral spreading risks.¹⁶² Approximately 11,100 cubic yards of existing fill would be removed, amended, and reused onsite as engineered fill to the extent possible; the remainder of the existing fill would be exported offsite to an appropriate disposal facility. The soil improvement is anticipated to involve in-place cement mixing of fill soils, which is a process to improve the strength of the underlying existing artificial fill. The depth of the treatment below excavation bottom would vary up to 39 feet.

The proposed building would be founded on a stiff reinforced structural mat foundation, shallow continuous footings, with interconnecting grade beams, or a combination of both of these systems to support anticipated structural loads. The uppermost 6 feet of the building pad area would be excavated, and approximately 5 feet of lightweight cellular concrete would be placed up to the bottom of the 1-foot-thick shallow mat foundation to reduce loads and potential settlement of the underlying Young Bay Mud.

Approach to Analysis

The preceding Regulatory Setting section presented the state and local laws that are currently in effect to ensure that proposed development sites are adequately investigated and that potential seismic hazards are evaluated and mitigated during the project design and construction phases of the project. This section discusses the roles and responsibilities of the engineers and building officials, and processes that ensure site investigations, grading, and construction is completed in accordance with the state and local laws developed to protect the public and property from adverse effects of earthquake-induced ground-shaking and ground failure.

The Building Department Role and Permit Review Process

In San Francisco, the building department implements and enforces the regulatory requirements of the state and local building code described above, and the project engineer as the registered design professional for the project is responsible for ensuring that a building is constructed in compliance with these standards.

The geotechnical engineer¹⁶³ is responsible for investigating the underlying soils and bedrock on a site and, if necessary, developing remedies to improve soil conditions based on standard, accepted, and proven engineering practices. The geotechnical investigation must characterize, log, and test soils and bedrock conditions, and determine the anticipated response of those underlying materials to ground shaking generated during an earthquake. Further, the geotechnical

¹⁶¹ California Geological Survey, *Seismic Hazard Zones, City and County of San Francisco, Official Map*, scale 1:24,000, released November 17, 2000.

¹⁶² ENGEO Incorporated, *Geotechnical Exploration for the Hotel and Teatro ZinZanni Project*, September 13, 2016.

¹⁶³ The geotechnical engineer, as a registered professional with the state, is required to comply with the California Building Standards Commission and local codes while applying standard engineering practice and the appropriate standard of care for the particular region in California. The California Professional Engineers Act (Business and Professions Code sections 6700-6799), and the Codes of Professional Conduct, as administered by the California Board of Professional Engineers and Land Surveyors, provide the basis for regulating and enforcing engineering practice in California.

investigation would result in a report that may include recommended methods and materials for all aspects of the site development, including the site preparation, building foundations, structural design, utilities, sidewalks and roadways, to remedy any geotechnical conditions related to potential seismic impacts. The geotechnical report must be reviewed, signed, and stamped by a qualified engineer and in some cases also a geologist.

Once finalized, the geotechnical report is submitted to building department for review and comment. The building department works with the applicant and the geotechnical engineer to resolve inconsistencies and ensure that the investigation complies with the state and local building codes, local administrative bulletins and implementing procedures. The building department reviews the permit including the construction plans for conformance with the recommendations provided in the geotechnical report and ensures permit requirements for grading, foundation, building, and other site development permits are based on the recommendations in the project-specific geotechnical report and state building code provisions. On large scale developments, the City may rely on expertise of outside professionals to peer review geotechnical studies, conclusions, and recommendations.

The following list outlines the typical geotechnical investigation and review process in the city.

1. The applicant prepares a preliminary geotechnical investigation (or a master plan geotechnical investigation for larger project sites).
2. The city fulfills environmental review requirements under the California Environmental Quality Act (CEQA), including the application of any relevant mitigation measures as part of the conditions of project approval.
3. The city approves project entitlements and issues a site permit.
4. The applicant prepares site-specific geotechnical investigations, which entail the following:
 - a. Conduct subsurface exploration of project site;
 - b. Submit soil samples for laboratory analysis;
 - c. Review results of soil sample engineering properties;
 - d. Conduct seismic hazards evaluation based on site location and engineering properties of site soils;
 - e. Assess effects of seismic hazards; and
 - f. Identify appropriate strategies to address seismic hazards.
5. The applicant submits site-specific, design-level geotechnical investigation report and construction plans to the building department.
6. The building department reviews the site-specific, design-level geotechnical investigation report and plans and recommendations for adherence to the local and state building code requirements and conformance with recommendations in the geotechnical investigation.
7. The applicant addresses the building department's comments.
8. The applicant resubmits modified construction plans based on the building department's comments.
9. The building department approves grading and foundation permits.

Impact GE-1: The proposed project would not expose people or structures to potential substantial adverse effects, including the rupture of a known earthquake fault, strong seismic ground shaking, seismic-related ground failure, including liquefaction, and landslides. (*Less than Significant*)

Fault Rupture

With respect to potential rupture of a known earthquake fault, no known active faults cross the project site and the site is not within an earthquake fault special zone. Therefore, the potential of surface rupture to occur at the site is very low. The proposed project would not exacerbate the potential for surface rupture. Therefore, the proposed project would have *no impact* on fault ruptures.

Strong Seismic Ground Shaking

In terms of the potential for strong seismic ground shaking, the project site is located 9 miles from the San Andreas Fault. According to the U.S. Geological Survey, the overall probability of a magnitude 6.7 or greater earthquake to occur in the San Francisco Bay region during the next 30 years is 63 percent. Therefore, it is possible that a strong to very strong earthquake would affect the project site during the lifetime of the proposed project. The severity of the event would depend on a number of conditions including distance to the epicenter, depth of movement, length of shaking, and the properties of underlying materials.

The proposed project would be designed in accordance with the 2016 California Building Code and therefore would not have the potential to exacerbate seismic-related ground shaking. Therefore, the proposed project would have a *less-than-significant impact* related to strong seismic ground shaking.

Landslides, Liquefaction, Lateral Spreading, and Seismic Settlement

Landslides

With respect to landslides, based on the San Francisco General Plan, the project site is relatively level and is not located within a mapped landslide zone.¹⁶⁴ The site is not within a designated earthquake-induced landslide zone as shown on the CGS seismic hazard zone map for the area. Therefore, the proposed project would have a no impact with respect to potential for landslides, and this topic is not discussed further.

Liquefaction and Lateral Spreading

Lateral spreading typically forms on gentle slopes that have rapid fluid-like flow movement and can occur when there is potential for liquefaction in underlying, saturated soils. Liquefaction occurs when saturated soils lose strength and stiffness when there is an applied stress such as an earthquake which causes solid soils to behave like a liquid when there is no cohesion, resulting in ground deformations. Ground deformations can take on many forms, including, but not limited to, flow failure, lateral spreading, lowering of the ground surface, or ground settlement, loss of bearing, ground fissures, and sand boils. Liquefaction of subsurface layers, which could occur during ground-shaking associated with an earthquake, could potentially result in ground settlement. In terms of seismic-related ground failure, including liquefaction, the site is within a designated liquefaction hazard zone as shown on the CGS seismic hazard zone map for San Francisco.¹⁶⁵ This means that there is a potential for permanent ground displacement onsite, such as liquefaction.¹⁶⁶ CGS provided recommendations for the content of site investigation reports within seismic hazard zones in Special Publication 117A, *Guidelines for Evaluating*

¹⁶⁴ San Francisco Planning Department, *San Francisco General Plan*, Community Safety Element, Map 4, http://www.sf-planning.org/fip/General_Plan/Community_Safety_Element_2012.pdf, accessed June 22, 2017.

¹⁶⁵ California Geological Survey, *Seismic Hazard Zones, City and County of San Francisco, Official Map*, scale 1:24,000, released November 17, 2000.

¹⁶⁶ Ibid.

and *Mitigating Seismic Hazards in California*, which recommends that at least one exploration point extend to a depth of at least 50 feet to evaluate liquefaction potential.

Review of borings from the geotechnical investigations indicates that loose to medium dense sand is likely present both above and below the natural groundwater table in the site area. The site-specific explorations encountered fill that is potentially liquefiable based on the cone penetration test results and standard penetration test blow counts. The estimated liquefaction-induced settlement ranges between 3.6 and 10.5 inches because of thick layers of artificial fill extending up to 40 feet bgs. Loose sand above the groundwater table may densify and loose to medium dense sand below the groundwater table may liquefy during strong ground shaking associated with a seismic event on a nearby fault. The preliminary geotechnical reports also determined that the lateral displacement would not affect the foundation of the proposed building.

Based on the geotechnical investigation borings, the potential for liquefaction was analyzed. The analysis as discussed above determined that soils consisted of undocumented fill composed of loose to medium dense sand and gravels intermixed with layers of medium stiff clays ranging from approximately 20 to 50 feet bgs. Below the undocumented fill lies a layer of soft to medium stiff, highly compressible Young Bay Mud, which varies in thickness from approximately 40 to 70 feet bgs at the site. Beneath the Young Bay Mud, there are stiff to hard clays and medium dense to dense sands that are approximately 40 feet thick. The soil improvement is anticipated to involve in-place cement mixing of fill soils, which is a process to improve the strength of the underlying existing artificial fill. The depth of the treatment below excavation bottom would vary up to 39 feet. The Franciscan complex is anticipated to be at lower depths in the range of 50–80 feet bgs with a lower likelihood to liquefy or settle. Some of the on-site sand could generally be re-used and combined to make engineered fill around the foundation including use of crushed rock or other controlled density fill to strengthen the existing soil. Where the marsh deposit and/or loose sands are present and thicker than 2 feet, the soil may have to be improved in situ using a soil-cement mixing method to create columns of soil-cement. These soil improvements would secure the foundation reducing the potential for the proposed project to exacerbate the potential for seismic-related ground failure, including liquefaction and lateral spreading.

As discussed above under “Regulatory Framework,” to ensure that the potential for adverse geologic, soils, and seismic hazards is adequately addressed, San Francisco relies on the state and local regulatory process for review and approval of building permits pursuant to the California Building Standards Code (state building code, California Code of Regulations, title 24); the San Francisco Building Code (local building code), which is the state building code plus local amendments that supplement the state code; the building department’s implementing procedures including Administrative Bulletins and Information Sheets, and the state seismic hazards act (Public Resources Code sections 2690 to 2699.6).

As discussed previously, the preliminary geotechnical reports recommended that the proposed project seismic design comply with the provisions of the 2016 California Building Code and Special Publication 117A.. Additionally, the building department permit review process would ensure that the project’s structural and foundation plans comply with applicable building code provisions and are in conformance with the measures recommended in the project-specific geotechnical reports and recommendations made by the engineering design review team as required by IS S-18, AB-082, and AB-083; ensuring that the proposed project would not exacerbate the potential for seismic-related ground failure, including liquefaction and lateral spreading. Therefore, this impact would be *less than significant*.

Impact GE-2: The proposed project would not result in substantial erosion or loss of topsoil, nor would the project change substantially the topography of any unique geologic or physical features of the site. (*Less than Significant*)

The project site is generally flat and covered entirely with impervious surfaces. The proposed project would require grading but would not substantially change the general topography of the site or any unique geologic or physical features of the proposed project. Therefore, the proposed project would result in *less-than-significant* impact with respect to topography, or unique geologic or physical features.

However, construction-related activities would be required to comply with the Construction Site Runoff Ordinance (Ordinance No. 260-13), which requires all construction sites, regardless of size, to implement best management practices to prevent construction site runoff discharges into the City's combined stormwater/sewer system. Furthermore, construction sites that disturb 5,000 square feet or more of ground surface are required to apply for a construction site runoff control permit from the SFPUC, and submit an erosion and sediment control plan that includes best management practices to prevent stormwater runoff and soil erosion during construction. Compliance with the Construction Site Runoff Ordinance would ensure that the project would not result in the loss of topsoil or erosion, and no mitigation is required.

As discussed previously in Section A.4, Construction Activities and Schedule, the proposed project would involve excavation to a depth of 6 feet bgs and removal of approximately 11,100 cubic yards of soil and debris, and soil mixing and construction of a mat foundation for the proposed building. Because the project site occupies more than 1 acre (it is 1.37 acres), the project sponsor would be required to obtain a National Pollutant Discharge Elimination System (NPDES) general construction permit. The NPDES permit would require the project sponsor and its contractor to implement BMPs that include erosion and sedimentation control measures, as required by the City and/or resource agencies. Implementing these measures would reduce short-term construction-related erosion impacts to *less-than-significant* levels.

Impact GE-3: The project site is not located on a geologic unit or soil that is unstable, or that could become unstable as a result of the proposed project. (*Less than Significant*)

The area around the project site is a flat urban area and does not include hills or cut slopes that could be subject to landslide; however, as discussed under Impact GE-1, the project site is within a state-designated seismic hazard zone for liquefaction. Recommendations in the preliminary geotechnical reports for the proposed project include a stiff reinforced structural mat foundation, shallow continuous footings, with interconnecting grade beams, or a combination of both of these systems. The reports also include earthwork recommendations for demolition and site preparation, and excavation and underpinning, use of appropriate fill, surface drainage, and stormwater infiltration and bioretention areas.

The proposed project would be constructed on a mat foundation with a depth of approximately 1 foot bgs on top of 5 feet of lightweight cellular concrete to support anticipated structural loads. The geotechnical investigation recommends soil improvement to stabilize undocumented fill and address and mitigate liquefaction and lateral spreading risks. The final design of the foundation system would be included in a design-level geotechnical investigation based on the site-specific data to be prepared in accordance with San Francisco Building Code requirements.

The California Seismic Hazards Mapping Act of 1990, PRC sections 2690 to 2699.6, was enacted to identify and map seismic hazard zones for cities and counties to encourage land use management policies and regulations to reduce and address seismic hazards to protect public safety. Section 2697 states that before approval of a project within a seismic hazard zone, cities and counties must require preparation of a geotechnical report defining and delineating the seismic hazard on the site (i.e., a design-level geotechnical investigation). In conjunction with these provisions in the Public Resources Code, CCR title 14, section 3724 specifies that a project located in a state seismic hazard zone shall be approved only when the nature and severity of the seismic hazards at the site have been evaluated in a geotechnical report and appropriate measures have been proposed. CGS Special Publication 117A provides considerations to address earthquake hazards.

Pursuant to the Seismic Hazards Mapping Act, DBI, the local permitting authority, must regulate certain development projects within the mapped hazard zones. For projects in a hazard zone, such as the proposed project, DBI requires that appropriate measures, if any, be incorporated into the development plans and made conditions of the building permit. DBI would review the design-level geotechnical report prepared for the proposed project to confirm that the potential settlement and subsidence impacts of excavation and dewatering are addressed appropriately in accordance with section 1704.15 of the San Francisco Building Code. DBI would also require that the report include a determination as to whether a lateral movement and settlement survey should be done to monitor any movement or settlement of surrounding buildings and

adjacent streets during construction. If a monitoring survey were recommended, DBI would require that a special inspector be retained by the project sponsor to perform this monitoring.

With adherence to San Francisco Building Code requirements, the project sponsor would address the potential impacts related to unstable soils as part of the design-level geotechnical investigation prepared for the proposed project. Therefore, any potential impacts related to unstable soils would be *less than significant*.

Impact GE-4: The proposed project would not create substantial risks to life or property as a result of being located on expansive soil. (*Less than Significant*)

Expansive soils expand and contract in response to changes in soil moisture and are characterized by their ability to undergo significant volume change (i.e., to shrink and swell), particularly when near-surface soils fluctuate from saturated to low-moisture-content conditions and back again. Expansive soils are typically very fine grained and have a high to very high percentage of clay. They can damage structures and buried utilities and increase maintenance requirements. The presence of expansive soils is typically associated with high clay content and determined based on site-specific data. As outlined in the preliminary geotechnical investigation, the site is underlain by a 20- to 50-foot-thick layer of undocumented fill. The undocumented fill contains loose to medium dense sand and gravels intermixed with layers of medium stiff clays, and these clays have the potential to create expansive soil conditions.¹⁶⁷ Section 1803 of the state building code states that in areas likely to have expansive soil, the building official shall require soil tests to determine where such soils do exist, and if so, the geotechnical report must include recommendations and special design and construction provisions for foundations of structures on expansive soils, as necessary. However, through the DBI review and approval of this project, the design-level geotechnical investigation would address the potential impacts of expansive soil, if present, and incorporate measures into the design of the project. Any foundation fortification would be included in the design phase of this project. Compliance with San Francisco Building Code requirements would ensure that potential impacts related to expansive soils would be *less than significant*.

Impact GE-5: The proposed project would not directly or indirectly destroy a unique paleontological resource or site. (*Less than Significant*)

Paleontological resources include fossilized remains or traces of mammals, plants, and invertebrates, as well as their imprints. Such fossil remains and the geological formations that contain them are also considered a paleontological resource. Together, they represent a limited, nonrenewable scientific and educational resource. Paleontological resources are lithologically dependent; that is, deposition and preservation of paleontological resources are related to the lithologic unit in which they occur. If the rock types representing a deposition environment conducive to deposition and preservation of fossils are not favorable, fossils would not be present. Lithological units that may be fossiliferous include sedimentary formations. Artificial fills do not contain paleontological resources. There is a 20- to 50-foot-thick layer of undocumented fill underneath the project site. Typically, undocumented fill does not contain paleontological resources. Based on the type of soil underlying the project site, it is unlikely that paleontological resources would be discovered during ground-disturbing activities.

The potential to affect fossils varies with the depth of disturbance, construction activities, and previous disturbance. The logistics of excavation also affect the possibility of recovering scientifically significant fossils because information regarding location, vertical elevation, geologic unit of origin, and other aspects of context is critical to the significance of any paleontological discovery. The Franciscan complex that is located at lower depths of 50–80 feet bgs is anticipated to be under the project site, and if so, it may be fossiliferous. However, the proposed project would not involve grading or ground

¹⁶⁷ ENGEO Incorporated, *Geotechnical Feasibility Assessment for the Hotel and Teatro ZinZanni Project*, December 8, 2015.

disturbance at these depths. Accordingly, impacts on paleontological resources during ground-disturbing activities would be *less than significant*.

Impact-C-GE-1: The proposed project, in combination with past, present, and reasonably foreseeable future projects in the vicinity of the project site, would not result in cumulative impacts related to geology, seismicity, or soils. (*Less than Significant*)

Geology and soils impacts are generally site-specific. Past, present, and foreseeable cumulative projects could require various levels of excavation or cut and fill, which could affect local geologic conditions. The San Francisco Building Code regulates construction in the City and County of San Francisco, and all development projects would be required to comply with its requirements for maximum feasible seismic safety and reduction of geologic impacts. Site-specific geotechnical measures would also be implemented as site conditions warrant to reduce potential impacts from unstable soils, ground shaking, liquefaction, or lateral spreading. The cumulative development projects located within an approximate 0.25-mile radius of the project site identified in Table 3 and mapped in Figure 17 in Section B.3, Cumulative Projects, would be subject to the same seismic safety standards and design review procedures applicable to the proposed project. Compliance with the seismic safety standards and the design review procedures would reduce potential cumulative seismic and geotechnical hazard impacts to *less than significant*.

E.14. HYDROLOGY AND WATER QUALITY

Topics:	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact	Not Applicable
14. HYDROLOGY AND WATER QUALITY.— Would the project:					
a) Violate any water quality standards or waste discharge requirements?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner that would result in substantial erosion or siltation on- or off-site?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner that would result in flooding on- or off-site?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f) Otherwise substantially degrade water quality?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other authoritative flood hazard delineation map?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h) Place within a 100-year flood hazard area structures that would impede or redirect flood flows?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
j) Expose people or structures to a significant risk of loss, injury or death involving inundation by seiche, tsunami, or mudflow?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The project site is not within a 100-year flood hazard area designated on the City's interim floodplain map, and would not place housing or structures within a 100-year flood hazard area that would impede or redirect flood flows as shown on the Federal Emergency Management Agency's Preliminary Flood Insurance Rate Map for the northeast quadrant of San Francisco.¹⁶⁸ Therefore, questions 14g and 14h are not applicable to the proposed project. The site also is not within a dam inundation zone or subject to flooding from levee failure.¹⁶⁹ In addition, the project site would not be subject to mudflows because the project site is not near any landslide-prone areas.¹⁷⁰ Thus, question 14i is not applicable.

¹⁶⁸ Federal Emergency Management Agency, *San Francisco Interim Floodplain Map: NE San Francisco*, Preliminary, 2015, http://sfgsa.org/sites/default/files/Document/SF_NE.pdf, accessed May 16, 2016.

¹⁶⁹ San Francisco Planning Department, Map 06 – Potential Inundation Areas Due to Reservoir Failure, *San Francisco General Plan Community Safety Element*, October 2012.

¹⁷⁰ San Francisco Planning Department, Map 04 – Seismic Hazard Zones (Landslide Zones), *San Francisco General Plan Community Safety Element*, October 2012.

Impact HY-1: The proposed project would not violate water quality standards or waste discharge requirements. (*Less than Significant*)

The project site is in an area of the city served by a combined stormwater and sewer system. With the proposed development, stormwater and wastewater from the site would continue to be discharged to an underground piping network, which conveys the waters to the Southeast Water Pollution Control Plant for treatment. The City currently holds a National Pollutant Discharge Elimination System permit (San Francisco Bay Regional Water Quality Control Board Order No. R2-2013-0029) that covers the Southeast Water Pollution Control Plant, the North Point Wet Weather Facility, and all of the Bayside wet-weather facilities, including combined sewer discharge structures along the bayside waterfront from Marina Green to Candlestick Point. Collected wastewater and stormwater flows in the combined sewer system are directed first to the Southeast Water Pollution Control Plant and North Point Wet Weather Facility for primary or secondary treatment and disinfection. Flows in excess of the capacity of these facilities are diverted to combined sewer discharge structures throughout the city and receive the equivalent of primary treatment before being discharged into San Francisco Bay.

New development projects must comply with article 4.2, section 147 of the San Francisco Public Works Code, which was last updated on April 2, 2016. The intent of this San Francisco Stormwater Management Ordinance (No. 64-16) is to reduce the volume of stormwater entering the City's combined and separate sewer systems. Stormwater Management Ordinance compliance approvals for this project will be conducted by the SFPUC and Port. SFPUC has developed the 2016 Stormwater Management Requirements and Design Guidelines in accordance with the requirements of this ordinance.

Construction Impacts

Construction activities have the potential to result in runoff of surface water that contains sediments and other pollutants from the site, which could drain into the combined sewer and stormwater system. Stormwater runoff from temporary onsite use and storage of vehicles, fuels, wastes, and building materials could also carry pollutants into the Southeast Water Pollution Control Plant or receiving water if improperly handled. Construction-related stormwater discharges to the combined sewer system would occur in accordance with the Bayside NPDES permit and site runoff would be subject to the Construction Site Runoff requirements of article 4.2 of the Public Works Code. This requires any construction activity that disturbs 5,000 square feet or more of ground surface to obtain a construction site runoff control permit and to implement and maintain BMPs to minimize surface runoff, erosion, and sedimentation. The application for the permit must also include an erosion and sediment control plan that contains a vicinity map; a site survey; depictions of existing and proposed topography and area drainage; proposed construction sequencing; proposed drainage channels; erosion and sediment controls; dewatering controls, if applicable; sampling, monitoring, and reporting schedules; and other information deemed necessary by SFPUC. Improvements to any existing grading, ground surface or site drainage must also meet the requirements of article 4.2 for new grading, drainage, and erosion control. A building permit would not be issued until a construction site runoff control permit has been submitted and approved. In addition, the proposed project would be required to comply with the Maher Ordinance (article 22A of the San Francisco Health Code), which requires further site management and reporting requirements for potential hazardous soils (see Impact HY-2 for discussion of the Maher Ordinance).

The provisions of the construction site runoff control permit would require the project sponsor to conduct daily inspections and maintenance of all erosion and sediment controls and to provide inspection and maintenance information to SFPUC. SFPUC may also inspect the site periodically to confirm compliance with the erosion and sediment control plan. The project sponsor must notify SFPUC at least 2 days before the start of construction, when the erosion and sediment control measures have been installed, and upon completion of final grading. SFPUC has the discretion to require sampling, metering, and monitoring, if necessary. Compliance with these regulatory requirements, implementation of the erosion and sediment control plan and BMPs during construction activities, and the fact that site runoff would be treated pursuant to the City's National Pollutant Discharge Elimination System permit before discharge to receiving waters would reduce construction impacts on water quality to *less than significant*.

Operational Impacts

Runoff from mixed-use properties and parking lots can contain oil and grease; dissolved metals such as lead, zinc, cadmium, copper, chromium, and nickel; nutrients from fertilizers; sediments and trash; and organic compounds. Pollutants at the beginning of the rainy season may result in an initial stormwater runoff (first flush) with high pollutant concentrations. Stormwater runoff is regulated locally by the San Francisco Stormwater Management Ordinance, which provides implementation guidance with the San Francisco Stormwater Management Requirements and Design Guidelines. In accordance with these guidelines, project developers that create and/or replace 5,000 square feet of impervious surface and discharge to the combined sewer system must implement low impact design and best management practices to manage the flow rate and volume of stormwater that enters the combined sewer system.

Because more than 50 percent of the project site is covered with existing impervious surfaces, the proposed project's stormwater management approach must reduce the existing runoff flow rate and volume by 25 percent for a 2-year, 24-hour design storm, using a hierarchy of best management practices set forth in the Stormwater Management Requirements. Examples of BMPs that may be implemented for mixed-use projects include rainwater harvesting, vegetated roofs, permeable paving, and bioretention planters. Alternatively, if site conditions limit the potential for stormwater infiltration, the project sponsor may apply for modified compliance in accordance with the Stormwater Management Ordinance and Stormwater Management Requirements and Design Guidelines to adjust the amount by which the proposed project must reduce stormwater runoff volume and flow rates as compared to existing conditions. Stormwater Management Ordinance compliance approvals for this project will be conducted by the SFPUC and Port. Additionally, a maintenance agreement also must be signed by the project sponsor so that the stormwater controls are maintained in perpetuity.

In summary, the proposed project would be required to comply with state and City regulations requiring the preparation of an erosion and sediment control plan for construction activities, a stormwater control plan for postconstruction activities, and the implementation of low impact design and best management practice features. Additionally, through the development review process, the City would confirm that the proposed project complies with various statutory requirements necessary to minimize stormwater pollutants. Site runoff would also be treated pursuant to the City's National Pollutant Discharge Elimination System permit before discharge to receiving waters. Therefore, impacts related to water quality from development of the proposed project would be *less than significant*.

Impact HY-2: The proposed project would not deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level. (*Less than Significant*)

The project site is currently entirely covered in impervious surfaces; therefore, the proposed project would not increase the amount of impervious surface and would not result in any substantial change in infiltration or runoff on the project site. As noted above in Section E.13, Geology and Soils, groundwater was encountered between 6 and 10 feet bgs during the geotechnical investigation. The proposed project would necessitate excavation to a maximum depth of approximately 6 feet for construction of the foundation. If groundwater were encountered onsite, then temporary dewatering activities would be necessary. SFPUC's Bureau of Systems Planning, Environment, and Compliance must be notified regarding projects necessitating dewatering. SFPUC may require a water analysis before discharge. The proposed project would be required to obtain a batch wastewater discharge permit from SFPUC's Wastewater Enterprise Collection System Division before any dewatering activities. Groundwater encountered during construction of the proposed project would be subject to requirements of Public Works Code article 4.1, Industrial Waste, requiring that groundwater meet specified water quality standards before it may be discharged into the sewer system. These measures would protect water quality during construction of the proposed project. In addition, the proposed project would not extract any underlying groundwater supplies. Therefore, groundwater resources would not be substantially degraded or depleted, and the proposed project would not substantially interfere with groundwater recharge. Thus, the proposed project would have a *less-than-significant* impact on groundwater.

Impact HY-3: The proposed project would not alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner that would result in substantial erosion, siltation, or flooding onsite or offsite. (*Less than Significant*)

The project site is currently covered by impervious surfaces and no streams or creeks occur on the project site. Impervious surfaces at the site would not substantially change as part of the proposed project and drainage patterns would remain generally the same. The project would incrementally reduce the amount of impervious surface on the project site through implementation of low impact development and other measures identified in the Stormwater Management Ordinance, which also requires that the project decrease stormwater runoff. In particular, because the project site is within the combined sewer area and is more than 50 percent impervious, the proposed project would be required to decrease the stormwater runoff rate and volume by 25 percent from predevelopment conditions for the 2-year, 24-hour design storm. Therefore, the proposed project would not be expected to result in substantial erosion or flooding associated with changes in drainage patterns. The impact of the proposed project related to potential erosion or flooding would be *less than significant* through compliance with the City's regulatory requirements.

Impact HY-4: The proposed project would not create or contribute runoff water that would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff. (*Less than Significant*)

The proposed project involves the construction of mixed-use development, including a hotel, entertainment venue, and public park, on an existing developed parking lot that is currently connected to the City's combined sewer system. The proposed project would not result in an increase in impervious surfaces that would increase the amount of stormwater runoff from the property. In addition, during construction and operation, the proposed project would be required to comply with local wastewater discharge, stormwater runoff, and water quality requirements, including the 2016 San Francisco Stormwater Management Requirements and Design Guidelines, and the Stormwater Management Ordinance (No. 64-16). Stormwater Management Ordinance compliance approvals for this project will be conducted by the SFPUC and Port. Compliance with these guidelines requires that specified quantity of stormwater generated by the proposed project be managed onsite, resulting in a reduction in the existing runoff flow rate and volume by 25 percent for a 2-year, 24-hour design storm. Therefore, the proposed project would not result in an exceedance of existing storm drainage system capacity and impacts would be *less than significant*.

The project site is located in an area that was previously part of San Francisco Bay and was filled with material of unknown origin in the 1860s.¹⁷¹ Areas located on fill or Bay Mud can subside to a point at which the combined sewers do not drain freely during a storm event, and backups or flooding can occur near these streets and sewers.¹⁷² Additionally, the project site is in an area identified as being prone to flooding hazards as a result of the underlying fill and close proximity to San Francisco Bay. The proposed project would be referred to SFPUC at the beginning of the building permit process to determine whether the project would result in ground-level flooding during storms. If SFPUC determines that the proposed project would result in ground-level flooding, the side sewer connection permits would be reviewed and approved by SFPUC at the beginning of the review process for all permit applications submitted to the San Francisco Planning Department or DBI. The project sponsor must then comply with SFPUC requirements for projects in flood-prone areas. Such requirements may include providing a pump station for sewage flow, raising the elevations of entryways, and constructing special sidewalks and deep gutters.

¹⁷¹ ENGEO Incorporated, *Environmental Site Characterization Work Plan*, August 2016.

¹⁷² San Francisco Planning Department, 2007. *Planning Director Bulletin No. 4: Review of Projects in Areas Prone to Flooding*, April 2007, http://www.sf-planning.org/fip/files/publications_reports/DB_04_Flood_Zones.pdf, accessed on February 16, 2018.

With the implementation of site design, source control, treatment control, low impact design, and best management practice features, and with compliance with SFPUC requirements for projects in flood-prone areas, the proposed project would not contribute additional volumes of polluted runoff to the City's combined sewer system. In addition, the proposed project would be required to comply with local wastewater discharge, stormwater runoff, and water quality requirements, pursuant to the effluent discharge standards of the City's National Pollutant Discharge Elimination System permit for the Southeast Water Pollution Control Plant. Therefore, the proposed project would not create or contribute runoff water that would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff, and impacts would be *less than significant*. No mitigation measures are required.

Impact HY-5: The proposed project would not expose people or structures to a significant risk of loss, injury, or death involving flooding, including flooding as a result of the failure of a levee or dam, or inundation by seiche, tsunami, or mudflow. (*Less than Significant*)

No levees or dams are located in the area.

The project site is located approximately 100 feet from San Francisco Bay, within a tsunami inundation zone.¹⁷³ A tsunami is an ocean wave originating from an underwater disturbance, such as earth movement caused by an earthquake, volcanic eruption, landslide, or explosion. San Francisco's Emergency Response Plan reports that a 100-year return period tsunami wave could have a runup elevation of 8.2 feet (National Geodetic Vertical Datum of 1929) at the Golden Gate Bridge, but this wave runup would dissipate as it moved eastward.¹⁷⁴

A seiche is an oscillation wave generated in an enclosed or partially enclosed body of water, such as San Francisco Bay. Because the project site is within the tsunami inundation zone, it would also be subject to seiches and could expose people or structures to a significant risk of loss, injury, or death involving inundation by seiche and tsunami.¹⁷⁵ Tidal records of San Francisco Bay, maintained for more than a century, indicate that no damaging seiche has occurred during this period.¹⁷⁶ The 1906 earthquake, which caused a seiche of approximately 4 inches, had a magnitude of about 8.3 on the Richter scale. It is likely that an earthquake of the same magnitude as the 1906 earthquake would be the largest to occur in the Bay Area.¹⁷⁷ Therefore, a seiche larger than 4 inches is considered unlikely.

The National Warning System would notify San Francisco if an earthquake occurred with the potential to cause a tsunami or seiche. San Francisco has an established outdoor warning system for tsunamis or similar natural events, in which sirens and loudspeakers are initiated to sound an alarm alerting the public to tune into local TV, cable TV, or radio stations, which would carry instructions for appropriate actions to be taken as part of the Emergency Alert System. Police would also canvass the neighborhoods sounding sirens and bullhorns, and knocking on doors as needed, to provide emergency instructions. Evacuation centers would be set up if required. The advance warning system would allow people to evacuate before a seiche and would provide a level of protection for public safety. Therefore, the impact would be *less than significant*.

¹⁷³ California Emergency Management Agency, *Tsunami Inundation Map for Emergency Planning, State of California – City and County of San Francisco, San Francisco North Quadrangle, San Francisco South Quadrangle (San Francisco Bay)*, June 15, 2009.

¹⁷⁴ City and County of San Francisco, *Emergency Response Plan: An Element of the CCSF Emergency Management Program, Tsunami Response Annex*, September 2008, p. 24, <http://www.sfdem.org/ftp/uploadedfiles/DEM/PlansReports/TsunamiAnnex-2008.pdf>, accessed February 28, 2017.

¹⁷⁵ California Emergency Management Agency, *Tsunami Inundation Map for Emergency Planning, State of California – City and County of San Francisco, San Francisco North Quadrangle, San Francisco South Quadrangle (San Francisco Bay)*, June 15, 2009.

¹⁷⁶ San Francisco Planning Department, *Candlestick Point–Hunters Point Draft Environmental Impact Report*, 2009, p. III.M-14.

¹⁷⁷ Working Group On California Earthquake Probabilities, *Earthquake Probabilities in the San Francisco Bay Region: 2002–2031*, United States Geological Survey Open-File Report 03-214, Appendix D. Magnitude and Area Data for Strike Slip Earthquakes, Dr. William L. Ellsworth, Research Seismologist, United States Geological Survey, 2003.

Impact-C-HY-1: The proposed project, in combination with past, present, and reasonably foreseeable future projects, would result in less-than-significant cumulative impacts related to hydrology and water quality. (*Less than Significant*)

The proposed project would result in no impact with respect to 100-year flood zones, failure of dams or levees, and/or mudflow hazards. Therefore, the project would not have the potential to contribute to cumulative impacts related to these issue areas. The proposed project itself is within the seiche and tsunami inundation zone. However, San Francisco has alert systems and evacuation plans in place. As stated above in Impacts HY-1, HY-2, HY-3, and HY-4, the proposed project would result in less-than-significant impacts related to water quality, groundwater levels, alteration of drainage patterns, and the capacity of drainage infrastructure. The proposed project and all future projects within San Francisco would be required to comply with the water quality and drainage control requirements that apply to all land use development projects in the city, including the development of an erosion and sediment control plan for construction activities and a stormwater control plan for postconstruction operation. Because development projects would be required to follow the same regulations as the proposed project, peak stormwater drainage rates and volumes resulting from design storms would gradually decrease over time with the implementation of new, conforming development projects. As a result, cumulative impacts with respect to drainage patterns, water quality, stormwater runoff, and stormwater capacity of the combined sewer system would be less than significant.

In addition, San Francisco's very limited current use of groundwater would preclude any significant adverse cumulative effects on groundwater levels, and the latest urban water management plan states that there are sufficient water supplies to meet demand for existing and future projects through the year 2040.

Cumulative impacts are not anticipated because all development projects would be required to comply with the same drainage, dewatering, and water quality regulations as the proposed project. Thus, the proposed project would not combine with cumulative development projects to create or contribute to a cumulative impact related to hydrology and water quality, and cumulative impacts would be *less than significant*.

E.15. HAZARDS AND HAZARDOUS MATERIALS

Topics:	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact	Not Applicable
15. HAZARDS AND HAZARDOUS MATERIALS.—					
Would the project:					
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

The project site is not located within an airport land use plan or within 2 miles of a public or private airport. Therefore, questions 15e and 15f are not applicable to the proposed project. The proposed project would not expose people or structures to a significant risk of loss, injury, or death involving wildland fires because of the urbanized nature of the project site. There are no residences intermixed with wildlands in the project vicinity. Therefore, question 15h is not applicable to the proposed project.

Impact HZ-1: The proposed project would not create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials. (*Less than Significant*)

Construction-related activities would involve soil disturbance of approximately 11,100 cubic yards. This could result in the generation of hazardous soil and asphalt materials for transport off-site. The City would require the project sponsor and its contractor to comply with the Maher Ordinance, as discussed under Impact HZ-2 below, which would require material sampling and analysis before demolition and excavation to ensure proper handling of any hazardous materials in accordance with state and federal laws. Construction activities associated with the proposed new buildings would require the use of limited quantities of hazardous materials such as fuels, oils, solvents, paints, and other common construction materials that would not result in a significant impact on the environment. The City requirements, such as article 22, section 1203 of the San Francisco Health Code, would require the project sponsor to comply with the minimum standards of management of hazardous waste as specified in Title 22 of the California Code of Regulations, chapter 30, division 4, and grants the City the

right to conduct inspections of “any factory, plant, construction site, waste disposal site, transfer station, establishment or any other place or environment where hazardous wastes are stored, handled, processed, disposed of, or being treated to recover resources.”¹⁷⁸ As a result of existing regulations requiring the proper disposal of hazardous materials, construction-related transport and disposal of hazardous materials would not result in a significant impact on the environment.

Once constructed, the project would likely result in use of common types of hazardous materials typically associated with cleaning products and disinfectants. These products are labeled to inform users of their potential risks and to instruct them in appropriate handling procedures. However, most of these materials are consumed through use, resulting in relatively little waste. Businesses are required by law to guarantee employee safety by identifying hazardous materials in the workplace, providing safety information to workers who handle hazardous materials, and adequately training workers. For these reasons, hazardous materials used during project operation would not pose any substantial public health or safety hazards resulting from hazardous materials. In addition, transportation of hazardous materials would be regulated by the California Highway Patrol and the California Department of Transportation. These hazardous materials are not expected to cause any substantial health or safety hazards. Therefore, potential impacts related to the routine use, transport, and disposal of hazardous materials would be *less than significant*.

Impact HZ-2: The project site is not included on a list of hazardous materials sites compiled pursuant to Government Code section 65962.5, and the proposed project would not create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment. (*Less than Significant*)

Several environmental site investigations and analyses have taken place for the project site, with the latest performed in April 2018^{179, 180, 181, 182} Baseline Environmental Consulting and ENGEO Incorporated prepared a Phase I and other environmental site assessments (ESAs) that analyzed the potential for adverse environmental impacts from the proposed project related to the contemporary and historical uses and practices on the project site and the surrounding area.

Historic documents and previous reports indicated that the site was previously part of San Francisco Bay and located between two wharves. The site was filled with material of unknown origin in the 1860s. The site was used as a wood and coal yard and a railyard from 1913 until 1960. The Embarcadero Freeway ramp traversed a southern portion of the site from 1958 through 1991. The site has been a paved parking lot since that time.

Phase I Environmental Site Assessments

The purpose of the Phase I ESA is to determine the potential for site contamination and level of exposure risk associated with the project. Based on that information, the project sponsor may be required to conduct soil and/or groundwater sampling and analysis. Where such an analysis reveals the presence of hazardous substances in excess of federal or state standards, the project sponsor is required to submit a *site mitigation plan* to the San Francisco Department of Public Health or other appropriate federal or state agency (or agencies), and to remediate any site contamination in accordance with an approved *site mitigation plan* before the issuance of any building permit.

¹⁷⁸ City of San Francisco, San Francisco Health Code, article 22: Hazardous Waste Management, section 1203, Implementation and Enforcement of Hazardous Waste Control Act, [http://library.amlegal.com/hxt/gateway.dll/California/health/article22hazardouswastemanagement?f=templates\\$fn=ddefault.htm\\$3.0\\$vid=amlegal:sanfrancisco_ca\\$anc=JD_Article22](http://library.amlegal.com/hxt/gateway.dll/California/health/article22hazardouswastemanagement?f=templates$fn=ddefault.htm$3.0$vid=amlegal:sanfrancisco_ca$anc=JD_Article22), accessed June 22, 2018.

¹⁷⁹ ENGEO Incorporated, *Geotechnical Feasibility Assessment for the Hotel and Teatro ZinZanni Project*, December 8, 2015.

¹⁸⁰ ENGEO Incorporated, *Environmental Site Characterization Work Plan*, August 2016.

¹⁸¹ ENGEO Incorporated, *Environmental Site Characterization*, September 7, 2016.

¹⁸² ENGEO Incorporated, 2018, *Summary of Geotechnical and Environmental Studies and Summary of Project Construction Methodologies, Hotel and Theater Project Seawall Lots 323 and 324, San Francisco, California*, April 6, 2018.

In compliance with the Maher Ordinance, the project sponsor has submitted a Maher application to the San Francisco Department of Public Health¹⁸³ and an updated Summary of Geotechnical and Environmental Studies¹⁸⁴ has been prepared to assess the potential for site contamination. No observed evidence of any significant staining, spillage, and/or ponded liquids or unconfined solids was discovered on the project site during site reconnaissance. No recognized environmental conditions associated with the storage of hazardous materials at the project site were observed during a site reconnaissance for the Phase I and other ESAs. A summary of the findings from the Phase I and other ESAs prepared for the project site follows.

Earlier environmental site assessments, until recently (2015–2016), date back to October 1998 and before. In 1995 a 10,000-gallon underground storage tank was removed and replaced with a new tank. In 1997 the San Francisco Department of Public Health indicated that the storage tanks had not impacted groundwater and issued a closure letter. Previous contaminants included metals, polynuclear aromatic hydrocarbons, petroleum hydrocarbons, VOCs, and unknown hazardous materials.

The project site is not on a list of identified hazardous material sites pursuant to Government Code section 65962.5, as determined by the database searches compiled for the Phase I ESA reports, which include databases maintained by U.S. EPA, the California Department of Toxic Substances Control, and the State Water Resources Control Board. One site that is hydraulically upgradient of the project site had previously reported a release of gasoline that may affect subsurface conditions at the project site. According to the State Water Resources Control Board's GeoTracker website, this hydraulically upgradient site was closed on October 11, 2009. Sites previously identified as leaking underground storage tank cleanup sites are present in surrounding areas; however, those sites have since been designated as completed—case closed, and have been remediated to the satisfaction of the applicable regulatory authority (San Francisco Bay RWQCB, California Department of Toxic Substances Control, or San Francisco Department of Public Health).

The most recent environmental soil and groundwater samples were analyzed as part of an additional site characterization analysis completed on August 12, 2016 by Torrent Laboratory, Inc.¹⁸⁵ Nine exploratory borings were taken on the southern end and four borings were taken on the northern end, where the future public park would be located, in addition to 66 soil samples that were taken within the borings at depths ranging from one to 20 feet below ground surface. The findings indicated that select VOC and semivolatile organic compound analytes were in excess of either and/or both residential or commercial screening levels established by San Francisco Bay Regional Water Quality Control Board. Three groundwater samples were taken from the boring locations which exhibited detectable concentrations of petroleum hydrocarbons, VOCs, SVOCs and metallic analytes.

Based on the results of the soil and groundwater samples, ENGEO Incorporated concluded that due to past site use it is possible that unknown areas with potentially impacted soil, buried debris or solid waste could be encountered and should be handled under observation of an environmental professional. Preparation of a Soil Management Plan with procedures and protocols was also recommended. Additional environmental site characterization should be done in conformance with the Maher Ordinance program to address potential soil and groundwater impacts that may have resulted from earlier industrial and commercial uses associated with the railyard, gasoline service station, and surface parking lot. Demolition, excavation, and construction activities would follow all appropriate standards and regulations for hazardous materials, including the California Health and Safety Code.

¹⁸³ The project sponsor submitted the Maher Application to the San Francisco Department of Public Health in accordance with San Francisco Health Code article 22A on June 26, 2016 and received the letter of compliance on April 26, 2017.

¹⁸⁴ ENGEO Incorporated, 2018, *Summary of Geotechnical and Environmental Studies and Summary of Project Construction Methodologies, Hotel and Theater Project Seawall Lots 323 and 324, San Francisco, California*, April 6, 2018.

¹⁸⁵ ENGEO Incorporated, *Environmental Site Characterization*, September 7, 2016.

Lead Exposure

According to the environmental site assessments, lead was detected at elevated levels in most of the samples; therefore, before excavation of soil for off-site disposal, further characterization and testing would be necessary to determine characterization for appropriate removal and disposal.¹⁸⁶ Demolition of the parking lots and excavation of underlying soil also would be subject to the Division of Occupational Safety and Health's Lead in Construction Standard (CCR title 8, section 1532.1). This standard requires development and implementation of a *lead compliance plan* when materials containing lead would be disturbed during construction. The plan must describe activities that could emit lead, methods that would be used to comply with the standard, safe work practices, and a plan to protect workers from exposure to lead during construction activities. The Division of Occupational Safety and Health would require 24-hour notification if more than 100 square feet of materials containing lead would be disturbed. Implementation of procedures required by section 3426 of the San Francisco Building Code and the Lead in Construction Standard would guarantee that potential impacts of demolition or excavation with lead-contaminated asphalt or soil would not be significant.

A Maher response letter from the City Department of Public Health was provided on April 26, 2017,¹⁸⁷ and indicated based on the Phase I and other ESAs, the subsurface investigation work plan, and the environmental site characterization report were approved and the geotechnical feasibility assessment report was accepted; however, further investigation and documentation may be warranted and a *site mitigation plan* will be required. As described in the letter, the project sponsor would be required to remediate any groundwater or soil contamination in accordance with an approved *site mitigation plan* before issuance of any building permit pursuant to the Maher Ordinance. Normal grading procedures, including dust control regulations, routine soil disposal criteria mandated by landfills and the use of approved fill material, if needed, would offset any adverse site conditions.

Based on mandatory compliance with existing regulatory requirements, the information and conclusions from the Phase I and other ESAs, and adherence to the Maher Ordinance, the proposed project would result in a *less-than-significant* impact on the public or environment from releasing contaminated soil, groundwater, or construction debris.

Impact HZ-3: The proposed project would not emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within 0.25 mile of an existing or proposed school. (*Less than Significant*)

One school is within 0.25 mile of the project site: John Yehall Chin Elementary School, a San Francisco Unified School District school at 350 Broadway, about 0.20 mile west of the project site.

As stated in this section the proposed project would not result in the storage, handling, or disposal of significant quantities of hazardous materials and would not otherwise include any uses that would result in the emission of hazardous substances. Any hazardous materials currently on the site, such as contaminated soil or asphalt, would be sampled, analyzed, and removed before or during demolition of the parking lots and excavation for the foundation and before project construction. Such materials would be handled in compliance with applicable laws and regulations as described in this section. With the required adherence to these regulations, the impact related to hazardous emissions or the handling of hazardous materials during construction or post-construction would be *less than significant* for the nearby school.

¹⁸⁶ ENGEO Incorporated, 2018, *Summary of Geotechnical and Environmental Studies and Summary of Project Construction Methodologies, Hotel and Theater Project Seawall Lots 323 and 324, San Francisco, California*, April 6, 2018.

¹⁸⁷ City and County of San Francisco Department of Public Health and Environmental Health, April 26, 2017. *San Francisco Health Code article 22A, Compliance, Hotel and Teatro ZinZanni Project Seawall Lots 323 and 324, San Francisco, CA*, EHB-SAM NO. – SMED: 1461.

Impact HZ-4: The proposed project would not expose people or structures to a significant risk of loss, injury, or death involving fires, nor would the project interfere with the implementation of an emergency response plan. (*Less than Significant*)

San Francisco applies fire safety measures primarily through provisions of the building and fire codes. Final building plans are reviewed by SFFD (as well as DBI) to confirm conformance with these provisions. In this way, potential fire hazards, including those associated with hydrant water pressures and emergency access, would be addressed during the permit review process. Compliance with fire safety regulations would ensure that the proposed project would not impair implementation of or physically interfere with an adopted emergency response or emergency evacuation plan, or expose people or structures to a significant risk of loss, injury, or death involving fires. This impact would be *less than significant*.

Impact C-HZ-1: The proposed project, in combination with past, present, and reasonably foreseeable future projects in the vicinity of the project site, would result in less-than-significant cumulative impacts related to hazards and hazardous materials. (*Less than Significant*)

Impacts from hazardous materials are generally site-specific and typically do not result in cumulative impacts. Any potential hazards occurring at nearby sites would be subject to the same safety, investigation, and/or remediation requirements discussed for the proposed project, which would reduce any cumulative hazardous effects to less-than-significant levels. As such, the proposed project would not combine with cumulative development projects to create or contribute to a cumulative impact related to hazards and hazardous materials. Cumulative impacts would be *less than significant*.

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E.16. MINERAL AND ENERGY RESOURCES

Topics:	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact	Not Applicable
16. MINERAL AND ENERGY RESOURCES.—Would the project:					
a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Encourage activities which result in the use of large amounts of fuel, water, or energy, or use these in a wasteful manner?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The project site is designated by the California Division of Mines and Geology as Mineral Resource Zone (MRZ) 4 under the Surface Mining and Reclamation Act of 1975.¹⁸⁸ The MRZ-4 designation indicates that the site does not belong to any other MRZ and does not have any significant mineral deposits. As a result, the proposed project's development and operation would not have an impact on operational mineral resource recovery sites. Therefore, questions 16a and 16b are not applicable to the proposed project.

Impact ME-1: The proposed project would not encourage activities that would result in the use of large amounts of fuel, water, or energy or use these resources in a wasteful manner. (*Less than Significant*)

The proposed project would demolish an existing parking lot and construct a mixed-use development with an entertainment venue and a 192-room hotel, which would increase the intensity of uses at the project site, although not to an extent that would exceed planned growth in the area. Because it would include a new building in San Francisco, the proposed project would be subject to the energy conservation standards included in the San Francisco Green Building Code and Title 24 of the California Code of Regulations (Title 24). The San Francisco Green Building Code would require the project to meet a number of conservation standards, including installation of water-efficient fixtures and energy-efficient appliances. The proposed project would also provide features that encourage alternative modes of transportation, such as bicycle racks and car-share parking spaces. Documentation showing compliance with the San Francisco Green Building Code would be submitted with the application of the building permits, and would be enforced by DBI. In addition, the proposed project would be required to comply with Title 24, which regulates energy consumption for the heating, cooling, ventilation, and lighting of residential and nonresidential buildings and is enforced by DBI. Compliance with Title 24 and the San Francisco Green Building Code would guarantee a reduction in the use of fuel, water, and energy by the proposed project.

In addition, San Francisco has a lower VMT ratio than the Bay Area region as a whole. The transportation analysis zone in which the project site is located (TAZ 830) has between 25 and 85 percent fewer daily VMT per employee than the Bay Area's regional average.¹⁸⁹ Furthermore, the following transportation-related aspects of the proposed project would discourage single-occupancy vehicle trips: proximity to transit, bicycle storage, and a transportation demand management plan with strategies to discourage the use of automobiles and to encourage transit and other modes of transportation. Because the proposed project is an infill mixed-use development in a transit-rich area, the proposed project's vehicle trips and

¹⁸⁸ California Division of Mines and Geology, *Update of Mineral Land Classification: Aggregate Materials in the South San Francisco Bay Production-Consumption Region*, Open-File Report 96-03 and Special Report 146, parts I and II.

¹⁸⁹ CHS Consulting Group, *Seawall Lot 323 and 324 (Teatro Zinzanni) Project Final Transportation Impact Study*, May 2018.

associated fuel use would not constitute wasteful use of energy, and therefore would be consistent with the *Plan Bay Area* land use strategy, which seeks to reduce per-capita VMT.

For the above reasons, the proposed project would not result in the use of large amounts of fuel, water, or energy, or result in the use of these resources in a wasteful manner. Impacts related to the use of these resources would be *less than significant*.

Impact C-ME-1: The proposed project, in combination with past, present, and reasonably foreseeable future projects in the vicinity of the project site, would result in a cumulative impact on mineral and energy resources. (*Less than Significant*)

No known minerals exist in the project site or in the vicinity, because all of San Francisco falls within MRZ-4, meaning that no known minerals exist in the project site or in the vicinity. Therefore, there would be no cumulative impacts on mineral resources.

The cumulative development projects identified in Table 3 and mapped in Figure 17 in Section B.3, Cumulative Projects, as well as other projects in the city would be required by DBI to conform to Title 24 and the San Francisco Green Building Code. They would be required to minimize the use of large amounts of fuel, water, or energy by, for instance, installing energy-efficient appliances and water-efficient fixtures, which would preclude cumulative significant impacts on fuel, water, or energy. Furthermore, the cumulative projects are also infill projects and would contribute to reduced transportation-related fuel demand compared to projects located in a less VMT efficient setting. Additionally, statewide efforts are being made to increase power supply and to encourage energy conservation, the demand for energy created by the proposed project would be insubstantial in the context of the total demand in San Francisco and the state, and would not require a major expansion of power facilities. The City also plans to reduce GHG emissions to 25 percent below 1990 levels by 2017, and ultimately reduce GHG emissions to 80 percent below 1990 levels by 2050, which would be achieved through a number of different strategies, including energy efficiency. Thus, the proposed project combined with cumulative projects would result in a *less-than-significant* cumulative impact on fuel, water, and energy resources.

E.17. AGRICULTURE AND FORESTRY RESOURCES

<i>Topics:</i>	<i>Potentially Significant Impact</i>	<i>Less than Significant with Mitigation Incorporated</i>	<i>Less than Significant Impact</i>	<i>No Impact</i>	<i>Not Applicable</i>
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17. AGRICULTURE AND FORESTRY RESOURCES: In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Department of Conservation as a model to use in assessing impacts on agriculture and farmland. In determining whether impacts to forest resources, including timberland, are significant environmental effects, lead agencies may refer to information compiled by the California Department of Forestry and Fire Protection regarding State inventory of forest land, including the Forest and Range Assessment and Forest Legacy Assessment projects; and forest carbon measurement methodology provided in Forest Protocols adopted by the California Air Resources Board.

—Would the project:

a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance, as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code Section 12220(g)), timberland (as defined by Public Resources Code Section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Result in the loss of forest land or conversion of forest land to non-forest use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland to non-agricultural use or forest land to non-forest use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

The project site is in an urbanized area of San Francisco. No land in San Francisco County has been designated by the California Department of Conservation's Farmland Mapping and Monitoring Program as agricultural land. Because the project site does not contain agricultural uses and is not zoned for such uses, the proposed project would not require the conversion of any land designated as Prime Farmland, Unique Farmland, or Farmland of Statewide Importance to nonagricultural use. The proposed project would not conflict with any existing agricultural zoning or Williamson Act contracts.¹⁹⁰ No land in San Francisco is designated as forest land or timberland by the California Public Resources Code. Therefore, the proposed project would not conflict with zoning for forest land, cause a loss of forest land, or convert forest land to a different use. For these reasons, questions 17a, 17b, 17c, 17d, and 17e are not applicable to the proposed project.

¹⁹⁰ San Francisco is identified as "Urban and Built-Up Land" on the California Department of Conservation Important Farmland in California Map, 2012, <http://www.consrv.ca.gov>, accessed January 12, 2017.

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E.18. MANDATORY FINDINGS OF SIGNIFICANCE

Topics:	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact	Not Applicable
18. MANDATORY FINDINGS OF SIGNIFICANCE—					
a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal, or eliminate important examples of the major periods of California history or prehistory?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

As discussed in the previous sections (E.1 through E.17), impacts of the proposed project are anticipated to be less than significant or less than significant with mitigation in the areas discussed. The foregoing analysis identifies potentially significant impacts related to cultural resources and air quality, which would be mitigated through implementation of mitigation and improvement measures, as described in the following paragraphs. Section F, Mitigation Measures and Improvement Measures, identifies mitigation and improvement measures applicable to the proposed project.

As described in Section E.3, Cultural Resources, the proposed project could result in a substantial adverse change on historic and archeological resources, including tribal cultural resources. In addition, the proposed project could disturb human remains. Implementation of **Mitigation Measures M-CR-2, Archeological Testing**, and **M-CR-4, Tribal Cultural Resources Interpretive Program**, would reduce the impacts to **less-than-significant** levels. Therefore, the proposed project would not result in a significant impact through the elimination of important examples of major periods of California history or prehistory.

As described in Section E.6, Air Quality, the proposed project's construction activities would generate TACs, including diesel PM, which could expose sensitive receptors to substantial pollutant concentrations. The proposed project would add a new source of TACs in an area that already experiences poor air quality. Implementation of **Mitigation Measures M-AQ-2, Construction Emissions Air Quality**, and **M-AQ-4, Best Available Control Technology for Diesel Generators**, would reduce the impacts to **less-than-significant** levels. With implementation of these measures, the proposed project would not result in a significant air quality impact.

Both long-term and short-term environmental effects, including substantial adverse effects on human beings, associated with the proposed project would be *less than significant with mitigation*, as discussed under each environmental topic. Each environmental topic area includes an analysis of cumulative impacts. This initial study concludes that cumulative impacts for all environmental topic areas would be *less than significant*.

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F. MITIGATION MEASURES AND IMPROVEMENT MEASURES

The following mitigation measures have been identified to reduce potentially significant impacts resulting from the proposed project to a less-than-significant level. Improvement measures recommended to reduce or avoid less-than-significant impacts are also identified below. Accordingly, the project sponsor has agreed to implement the mitigation measures and improvement measures described below.

F.1. MITIGATION MEASURES

Mitigation Measure M-CR-2: Archeological Testing

Based on a reasonable presumption that archeological resources may be present on the project site, the following measures shall be undertaken to avoid any potentially significant adverse effect from the proposed project on buried or submerged historical resources.

The project sponsor shall retain the services of an archeological consultant from the rotational Department Qualified Archaeological Consultants List maintained by the San Francisco Planning Department's archeologist. The project sponsor shall contact the department's archeologist to obtain the names and contact information for the next three archeological consultants on the list. The archeological consultant shall undertake an archeological testing program as specified herein. In addition, the consultant shall be available to conduct an archeological monitoring and/or data recovery program if required pursuant to this measure. The archeological consultant's work shall be conducted in accordance with this measure at the direction of the environmental review officer (ERO). All plans and reports prepared by the consultant as specified herein shall be submitted first and directly to the ERO for review and comment, and shall be considered draft reports subject to revision until final approval by the ERO. Archeological monitoring and/or data recovery programs required by this measure could suspend construction of the project for up to 4 weeks. At the direction of the ERO, the suspension of construction can be extended beyond 4 weeks only if such a suspension is the only feasible means to reduce to a less-than-significant level potential effects on a significant archeological resource as defined in CEQA Guidelines sections 15064.5(a) and 15064.5(c).

Consultation with Descendant Communities: On discovery of an archeological site¹⁹¹ associated with descendant Native Americans, the Overseas Chinese, or other potentially interested descendant group, an appropriate representative¹⁹² of the descendant group and the ERO shall be contacted. The representative of the descendant group shall be given the opportunity to monitor archeological field investigations of the site and to offer recommendations to the ERO regarding appropriate archeological treatment of the site, of recovered data from the site, and if applicable, any interpretative treatment of the associated archeological site. A copy of the final archeological resources report shall be provided to the representative of the descendant group.

Archeological Testing Program. The archeological consultant shall prepare and submit to the ERO for review and approval an archeological testing plan. The archeological testing program shall be conducted in accordance with the approved testing plan. The archeological testing plan shall identify the property types of the expected archeological resource(s) that potentially could be adversely affected by the proposed project, the testing method to be used, and the locations recommended for testing. The purpose of the archeological testing program will be to determine to the extent

¹⁹¹ The term "archeological site" is intended here to minimally include any archeological deposit, feature, burial, or evidence of burial.

¹⁹² An "appropriate representative" of the descendant group is here defined to mean, in the case of Native Americans, any individual listed in the current Native American Contact List for the City and County of San Francisco maintained by the California Native American Heritage Commission and in the case of the Overseas Chinese, the Chinese Historical Society of America. An appropriate representative of other descendant groups should be determined in consultation with the Department archeologist.

possible the presence or absence of archeological resources and to identify and evaluate whether any archeological resource encountered on the site constitutes a historical resource under CEQA.

At the completion of the archeological testing program, the archeological consultant shall submit a written report of the findings to the ERO. If based on the archeological testing program the archeological consultant finds that significant archeological resources may be present, the ERO in consultation with the archeological consultant shall determine whether additional measures are warranted. Additional measures that may be undertaken include additional archeological testing, archeological monitoring, and/or an archeological data recovery program. No archeological data recovery shall be undertaken without the prior approval of the ERO or the San Francisco Planning Department's archeologist. If the ERO determines that a significant archeological resource is present and that the resource could be adversely affected by the proposed project, at the discretion of the project sponsor either:

- (A) The proposed project shall be redesigned to avoid any adverse effect on the significant archeological resource. OR
- (B) A data recovery program shall be implemented, unless the ERO determines that the archeological resource is of greater interpretive than research significance and that interpretive use of the resource is feasible.

Archeological Monitoring Program. If the ERO in consultation with the archeological consultant determines that an archeological monitoring program shall be implemented, the archeological monitoring program shall minimally include the following provisions:

- The archeological consultant, project sponsor, and ERO shall meet and consult on the scope of the archeological monitoring program a reasonably prior to any project-related soil-disturbing activities commencing. The ERO in consultation with the archeological consultant shall determine what project activities shall be archeologically monitored. In most cases, any soil-disturbing activities, such as demolition, foundation removal, excavation, grading, utilities installation, foundation work, driving of piles (e.g., foundation, shoring), and site remediation, shall require archeological monitoring because of the risk these activities pose to potential archeological resources and to their depositional context.
- The archeological consultant shall advise all project contractors to be on the alert for evidence of the presence of the expected resource(s), how to identify the evidence of the expected resource(s) and the appropriate protocol in the event of apparent discovery of an archeological resource.
- The archeological monitor(s) shall be present on the project site according to a schedule agreed upon by the archeological consultant and the ERO until the ERO has, in consultation with the project's archeological consultant, determined that project construction activities could have no effects on significant archeological deposits.
- The archeological monitor shall record and be authorized to collect soil samples and artifactual/ecofactual material as warranted for analysis.
- If an intact archeological deposit is encountered, all soil-disturbing activities in the vicinity of the deposit shall cease. The archeological monitor shall be empowered to temporarily redirect demolition/excavation/pile driving/construction activities and equipment until the deposit is evaluated. If in the case of pile driving or deep foundation activities (e.g., foundation, shoring), the archeological monitor has cause to believe that the pile driving or deep foundation activities may affect an archeological resource, the pile driving or deep foundation activities shall be terminated until an appropriate evaluation of the

resource has been made in consultation with the ERO. The archeological consultant shall immediately notify the ERO of the encountered archeological deposit. The archeological consultant shall make a reasonable effort to assess the identity, integrity, and significance of the encountered archeological deposit, and present the findings of this assessment to the ERO.

Whether or not significant archeological resources are encountered, the archeological consultant shall submit a written report of the findings of the monitoring program to the ERO.

Archeological Data Recovery Program. The archeological data recovery program shall be conducted in accordance with an archeological data recovery plan (ADRP). The archeological consultant, project sponsor, and ERO shall meet and consult on the plan's scope of the ADRP prior to preparation of a draft ADRP. The archeological consultant shall submit a draft ADRP to the ERO. The ADRP shall identify how the proposed data recovery program will preserve the significant information the archeological resource is expected to contain. That is, the ADRP will identify what scientific/historical research questions are applicable to the expected resource, what data classes the resource is expected to possess, and how the expected data classes would address the applicable research questions. Data recovery, in general, should be limited to the portions of the historical property that could be adversely affected by the proposed project. Destructive data recovery methods shall not be applied to portions of the archeological resources if nondestructive methods are practical.

The scope of the ADRP shall include the following elements:

- *Field Methods and Procedures.* Descriptions of proposed field strategies, procedures, and operations.
- *Cataloguing and Laboratory Analysis.* Description of the selected cataloguing system and artifact analysis procedures.
- *Discard and Deaccession Policy.* Description of and rationale for field and post-field discard and deaccession policies.
- *Interpretive Program.* Consideration of an onsite/offsite public interpretive program during the course of the archeological data recovery program.
- *Security Measures.* Recommended security measures to protect the archeological resource from vandalism, looting, and unintentionally damaging activities.
- *Final Report.* Description of proposed report format and distribution of results.
- *Curation.* Description of the procedures and recommendations for the curation of any recovered data having potential research value, identification of appropriate curation facilities, and a summary of the accession policies of the curation facilities.

Human Remains, Associated or Unassociated Funerary Objects. The treatment of human remains and of associated or unassociated funerary objects discovered during any soil-disturbing activity shall comply with applicable state and federal laws, including immediate notification of the Office of the Chief Medical Examiner of the City and County of San Francisco and, in the event of the medical examiner's determination that the human remains are Native American, notification of the Native American Heritage Commission, which shall appoint a Most Likely Descendant (MLD) (PRC section 5097.98). The ERO shall also be immediately notified upon discovery of human remains. The archeological consultant, project sponsor, ERO, and MLD shall have up to but not beyond 6 days after the discovery to make all reasonable efforts to develop an agreement for the treatment of human remains and

associated or unassociated funerary objects with appropriate dignity (CEQA Guidelines, section 15064.5[d]). The agreement should take into consideration the appropriate excavation, removal, recordation, analysis, curation, possession, and final disposition of the human remains and associated or unassociated funerary objects. Nothing in existing state regulations or in this mitigation measure compels the project sponsor and the ERO to accept the recommendations of an MLD. The archeological consultant shall retain possession of any Native American human remains and associated or unassociated burial objects until completion of any scientific analyses of the human remains or objects as specified in the treatment agreement, if such an agreement has been made, or otherwise, as determined by the archeological consultant and the ERO. If no agreement is reached, state regulations shall be followed, including the reburial of the human remains and associated burial objects with appropriate dignity on the property in a location not subject to further subsurface disturbance (PRC section 5097.98).

Final Archeological Resources Report. The archeological consultant shall submit a draft final archeological resources report to the ERO that evaluates the historical significance of any discovered archeological resource and describes the archeological and historical research methods employed in the archeological testing/monitoring/data recovery program(s) undertaken. Information that may put at risk any archeological resource shall be provided in a separate removable insert within the final report.

Once approved by the ERO, copies of the draft final archeological resources report shall be distributed as follows: The California Archaeological Site Survey Northwest Information Center shall receive one copy and the ERO shall receive a copy of the transmittal of the report to the Northwest Information Center. The Environmental Planning Division of the San Francisco Planning Department shall receive one bound, one unbound, and one unlocked, searchable PDF copy on CD of the report, along with copies of any formal site recordation forms (CA DPR 523 series) and/or documentation for nomination to the NRHP/CRHR. In instances of high public interest in or the high interpretive value of the resource, the ERO may require a different final report content, format, and distribution than that presented above.

Mitigation Measure M-CR-4: Tribal Cultural Resources Interpretive Program

If the ERO determines that a significant archeological resource is present, and if in consultation with the affiliated Native American tribal representatives, the ERO determines that the resource constitutes a tribal cultural resource and that the resource could be adversely affected by the proposed project, the proposed project shall be redesigned to avoid any adverse effect on the significant tribal cultural resource, if feasible.

If the ERO, in consultation with the affiliated Native American tribal representatives and the project sponsor, determines that preservation in place of the tribal cultural resources is not a sufficient or feasible option, the project sponsor shall implement an interpretive program of the tribal cultural resource in consultation with affiliated tribal representatives. An interpretive plan produced in consultation with the ERO and affiliated tribal representatives, at a minimum, and approved by the ERO would be required to guide the interpretive program. The plan shall identify, as appropriate, proposed locations for installations or displays, the proposed content and materials of those displays or installation, the producers or artists of the displays or installation, and a long-term maintenance program. The interpretive program may include artist installations, preferably by local Native American artists, oral histories with local Native Americans, artifact displays and interpretation, and educational panels or other informational displays.

Mitigation Measure M-AQ-2: Construction Air Quality

The project sponsor or the project sponsor's contractor shall comply with the following:

A. Engine Requirements. Where access to alternative sources of power is available, portable diesel engines shall be prohibited. Diesel engines, whether for off-road or on-road equipment, shall not be left idling for more than 2

minutes, at any location, except as provided in exceptions to the applicable state regulations regarding idling for off-road and on-road equipment (e.g., traffic conditions, safe operating conditions). The contractor shall post legible and visible signs in English, Spanish, and Chinese, in designated queuing areas, and at the construction site to remind operators of the 2-minute idling limit.

The contractor shall instruct construction workers and equipment operators on the maintenance and tuning of construction equipment, and require that such workers and operators properly maintain and tune equipment in accordance with manufacturer specifications.

B. Waivers.

1. The Planning Department's environmental review officer or designee may waive the alternative source of power requirement of subsection (A)(2) if an alternative source of power is limited or infeasible at the project site. If the ERO grants the waiver, the contractor must submit documentation that the equipment used for onsite power generation meets the requirements of subsection (A)(1).
2. The ERO may waive the equipment requirements of subsection (A)(1) if: a particular piece of off-road equipment with an ARB Level 3 VDECS is technically not feasible; the equipment would not produce desired emissions reduction due to expected operating modes; installation of the equipment would create a safety hazard or impaired visibility for the operator; or there is a compelling emergency need to use off-road equipment that is not retrofitted with an ARB level 3 VDECS. If the ERO grants the waiver, the contractor must use the next cleanest piece of off-road equipment, according to Table M-AQ-2.

**TABLE M-AQ-2 OFF-ROAD EQUIPMENT COMPLIANCE STEP-DOWN SCHEDULE
COMPLIANCE**

Compliance Alternative	Engine Emission Standard	Emissions Control
1	Tier 2	ARB Level 2 VDECS
2	Tier 2	ARB Level 1 VDECS
3	Tier 2	Alternative Fuel*

How to use the table: If the ERO determines that the equipment requirements cannot be met, then the project sponsor would need to meet Compliance Alternative 1. If the ERO determines that the contractor cannot supply off-road equipment meeting Compliance Alternative 1, then the contractor must meet Compliance Alternative 2. If the ERO determines that the contractor cannot supply off-road equipment meeting Compliance Alternative 2, then the contractor must meet Compliance Alternative 3. Alternative fuels are not a VDECS.

C. Construction Emissions Minimization Plan. Before starting onsite construction activities, the contractor shall submit a construction emissions minimization plan to the ERO for review and approval. The plan shall state, in reasonable detail, how the contractor will meet the requirements of Section A.

1. The plan shall include estimates of the construction timeline by phase, with a description of each piece of off-road equipment required for every construction phase. The description may include, but is not limited to: equipment type, equipment manufacturer, equipment identification number, engine model year, engine certification (tier rating), horsepower, engine serial number, and expected fuel usage and hours of operation. For VDECS installed, the description may include: technology type, serial number, make, model, manufacturer, ARB verification number level, and installation date and hour meter reading on installation date. For off-road equipment using alternative fuels, the description shall also specify the type of alternative fuel being used.
2. The project sponsor shall ensure that all applicable requirements of the plan have been incorporated into the contract specifications. The plan shall include a certification statement that the contractor agrees to comply fully with the plan.

3. The contractor shall make the plan available to the public for review onsite during working hours. The contractor shall post at the construction site a legible and visible sign summarizing the plan. The sign shall also state that the public may ask to inspect the plan for the project at any time during working hours and shall explain how to request to inspect the plan. The contractor shall post at least one copy of the sign in a visible location on each side of the construction site facing a public right-of-way.

D. Monitoring. After start of construction activities, the contractor shall submit quarterly reports to the ERO documenting compliance with the plan. After completion of construction activities and prior to receiving a final certificate of occupancy, the project sponsor shall submit to the ERO a final report summarizing construction activities, including the start and end dates and duration of each construction phase, and the specific information required in the plan.

Mitigation Measure M-AQ-4: Best Available Control Technology for Diesel Generators

The project sponsor shall ensure that the backup diesel generator meets or exceeds one of the following emission standards for particulate matter: (1) tier 4 certified engine, or (2) tier 2 or tier 3 certified engine that is equipped with an ARB level 3 verified diesel emissions control strategy (VDECS). A nonverified diesel emission control strategy may be used if the filter has the same particulate matter reduction as the identical ARB-verified model and if BAAQMD approves of its use. The project sponsor shall submit documentation of compliance with the BAAQMD New Source Review permitting process (regulation 2, rule 2, and regulation 2, rule 5) and the emission standard requirement of this mitigation measure to the Planning Department for review and approval prior to issuance of a permit for a backup diesel generator from any City agency.

F.2. IMPROVEMENT MEASURES

Improvement measures have been identified to further reduce any potential effects related to conflicts between vehicles (general traffic and freight/delivery trucks) and other users of roadways at the project site (e.g., pedestrians and bicyclists) and encourage bicycle use by residents, employees, and patrons of the proposed project. Although the proposed project's pedestrian impacts would be less than significant, implementation of the following transportation improvement measures would reduce and/or eliminate any potential conflicts and improve circulation for pedestrians, bicyclists, and drivers engaged with the site.

Improvement Measure I-TR-2a: Monitoring and Abatement of Queues

As an improvement measure to reduce the potential for queuing of vehicles accessing the project site, it will be the responsibility of the project sponsor or subsequent property owner to ensure that recurring vehicle queues do not occur adjacent to the site (i.e., along Davis Street and Broadway loading areas or other surrounding streets).

It will be the responsibility of the owner/operator of the building to ensure that recurring vehicle queues do not occur on the public ROW. A vehicle queue is defined as one or more vehicles (destined to the loading zones on Davis Street or Broadway) blocking any portion of any public street, alley, or sidewalk for a consecutive period of 3 minutes or longer on a daily or weekly basis.

If a recurring queue occurs, the owner/operator of the building will employ abatement methods as needed to abate the queue. Appropriate abatement methods will vary depending on the characteristics and causes of the recurring queue, as well as the characteristics of the loading zone, the street(s) adjacent to the zone, and the associated land uses (if applicable).

Suggested abatement methods include but are not limited to the following: redesign of loading zones to improve vehicle circulation; use of additional offsite parking facilities or shared parking with nearby uses; and travel demand management strategies such as additional bicycle parking, customer shuttles, and delivery services.

If the planning director, or his or her designee, suspects that a recurring queue is present, the San Francisco Planning Department will notify the property owner in writing. Upon request, the owner/operator will hire a qualified transportation consultant to evaluate the conditions at the site for no less than 7 days. The consultant will prepare a monitoring report to be submitted to the planning department for review. If the planning department determines that a recurring queue does exist, the owner/operator will have 90 days from the date of the written determination to abate the queue.

Improvement Measure I-TR-2b: Active Valet Parking Management

Queues for arriving hotel patrons at the curbside valet passenger loading zone on Broadway will be managed by professionally trained valet staff to ensure that valet vehicle queues are confined within the valet loading zone and there is no vehicle spillover into the travel lanes on westbound Broadway back to The Embarcadero. The proposed project will provide adequate valet staffing to ensure the most efficient processing of arriving and departing hotel patron vehicles, which will be parked in an offsite garage facility under a covenant agreement with the project sponsor. Guests returning to the project curbside for their vehicles will be retrieved by valet staff and returned to the proposed 80-foot-long passenger loading zone along the project frontage on Broadway. Although no spillover queues are anticipated, if any recurring queues occur, the owner/operator of the project building will employ abatement methods as needed to abate such queues. Appropriate abatement methods will vary depending on the characteristics and causes of recurring queues, as well as the characteristics of the loading zone, the street(s) adjacent to the zone, and the associated land uses (if applicable), and are detailed in **Improvement Measure I-TR-2a, Monitoring and Abatement of Queues**.

Improvement Measure I-TR-2c: Active Loading Dock Driveway Controls

As an improvement measure to reduce and/or eliminate any potential conflicts between freight delivery vehicles entering and exiting the project driveway to and from the off-street freight loading spaces and conflicts between moving vehicles and other users of the roadway (e.g., cyclists, pedestrians in sidewalk areas), it will be the responsibility of the project sponsor and/or property owner to install active management controls at the off-street freight loading space driveway and within the off-street freight loading area.

It is recommended that sensors be installed at the gated loading dock ramp and at the driveway entrance/exit lane at Davis Street to detect any outbound vehicles and pedestrians within the driveway and ramp area. Upon exiting the loading dock, vehicles traveling along the garage ramp and approaching the gate would then trigger a sensor that would activate an electronic sign, signal, or audible devices at the driveway entrance to notify any vehicles, pedestrians, or bicyclists of the exiting vehicle.

Additional traffic calming and safety treatments will be installed within the loading dock area. Specific signage will be installed to notify drivers exiting the parking driveway to slow, stop, and yield to any pedestrians walking along the sidewalk on Davis Street (e.g., "Caution: Pedestrian Crossings," "Watch for Pedestrians," "Exit Slowly," "STOP"). Diagonal mirrors will also be installed so that motorists exiting the loading dock area and pedestrians on the sidewalk can see each other. The project sponsor will also install rumble strips or similar devices to maintain slow speeds for vehicles exiting the loading dock.

Improvement Measure I-TR-2d: Coordination of Large Deliveries and Garbage Pickup

Trucks exceeding 40 feet in length will be scheduled and coordinated through hotel management and restaurant tenants, and directed to use the proposed curbside 142½-foot-long commercial loading zone along the Davis Street frontage of the project site.

To reduce the potential for double-parking (or other illegal parking activity) by delivery or trash vehicles in the travel lanes along the Davis Street or Broadway frontages of the project site (in the event that the existing or proposed on-street loading spaces are occupied), appropriate delivery and trash pickup procedures will be enforced to avoid any blockages of Davis Street or Broadway over an extended period of time and reduce any potential conflicts between deliveries and pedestrians walking along Davis Street or Broadway.

The building manager will notify the hotel, restaurant, entertainment venue, and retail tenants of garbage pickup times and locations so that they are efficiently coordinated and result in minimum conflict with other loading activity and traffic circulation in the immediate vicinity of the project.

Improvement Measure I-TR-2e: Construction Truck Deliveries during Off-Peak Periods

Any construction traffic occurring between 7 a.m. and 9 a.m. or between 3:30 p.m. and 6 p.m. on weekdays would coincide with weekday commute-period traffic and could temporarily disrupt traffic and transit flow, although it would not be considered a significant impact. Limiting truck movements to the hours between 9 a.m. and 3:30 p.m. on weekdays (or other times, if approved by SFMTA) would further minimize disruptions to circulation along adjacent streets during the weekday a.m. and p.m. peak periods.

As required, the project sponsor and construction contractor(s) will meet with SFMTA, SFFD, and the San Francisco Planning Department to determine feasible measures to reduce traffic congestion, including potential transit disruption and pedestrian circulation impacts, during construction of the project. To minimize cumulative traffic impacts due to project construction, the project sponsor will coordinate with construction contractors for any concurrent nearby projects that are planned for construction or which later become known, including the proposed mixed-use development at 88 Broadway and 753 Davis Street.

Improvement Measure I-TR-2f: Construction Management Plan

In addition to items required in the construction management plan, the project sponsor will include the following:

- *Carpool and Transit, and Other Access for Construction Workers.* As an improvement measure to minimize parking demand and vehicle-trips associated with construction workers, the construction contractor(s) will include methods to encourage carpooling, transit and bicycle use, or on-foot travel to and from the project site by construction workers in the construction management plan contracts.
- *Project Construction Updates.* As an improvement measure to minimize construction impacts on nearby businesses, the project sponsor will provide regularly updated information (typically in the form of a website, news articles, and onsite postings) regarding project construction and schedule, as well as contact information for specific construction inquiries or concerns.

G. PUBLIC NOTICE AND COMMENT

On October 6, 2016, the Planning Department mailed a Notice of Project Receiving Environmental Review to property owners within 300 feet of the project site, adjacent tenants, and other potentially interested parties. Ten comment letters were received and addressed the following:

- Waterfront views and protection of view corridors from residential properties
- Height of 55 foot hotel building will block residential views of waterfront
- Passenger and commercial loading zones will cause traffic congestion on streets
- Loss of a parking lot will cause parking problems
- Increased traffic congestion from hotel and theater patrons on streets around the project site
- Increase in pollution from buses and trucks
- Proximity of hotel drop-off and interference with vehicle, bicycle or pedestrian traffic on Broadway
- Vacating street areas
- Increased noise from hotel roof deck and hotel operations; noise from theater performances
- Light and glare from roof deck
- Roof treatment incorporation of industrial skylights
- Proximity to designated historic and cultural resources
- Construction of project in area potentially subject to liquefaction during earthquake
- Construction of project in area potentially affected by seismic failure of seawall
- Conflicts with sea level rise
- Sensitivity of project's location at Broadway gateway to North Beach and Chinatown
- Cumulative effects of proposed project including proposed 88 Broadway Project and Davis Street Project

The comments that directly relate to a physical impact on the environment were directly addressed in: section E.3, Cultural Resources (historic resources); section E.4, Transportation and Circulation (transit demand); section E.5, Noise (noise concerns); section E.6, Air Quality (emissions); section E.13, Geology and Soils; and section E.14, Hydrology and Water Quality.

On October 17, 2018, the Planning Department issued a "Notice of Availability of and Intent to Adopt a Negative Declaration" in accordance with CEQA guidelines section 15072. Ten comments were received. One comment that was received consisted of a request for electronic copies of the Transportation Impact Study to review the conclusion that the proposed project would not have a significant impact on parking. The Planning Department complied with this request by sending the requestor electronic copies of the Transportation Impact Study, which provides a detailed explanation of how the proposed project complies with CEQA. The nine other comments that were received were in support of the project by local neighborhood groups.


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H. DETERMINATION

On the basis of this Initial Study:

- ☐ I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.
- ☒ I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.
- ☐ I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.
- ☐ I find that the proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.
- ☐ I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, no further environmental documentation is required.

DATE 12/21/18



Lisa Gibson
Environmental Review Officer
for
John Rahaim
Director of Planning

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**CITY AND COUNTY OF SAN FRANCISCO
LONDON N. BREED, MAYOR**

LEASE DISPOSITION AND DEVELOPMENT AGREEMENT

BY AND BETWEEN

**THE CITY AND COUNTY OF SAN FRANCISCO
OPERATING BY AND THROUGH THE
SAN FRANCISCO PORT COMMISSION**

AND

**TZK BROADWAY, LLC
A CALIFORNIA LIMITED LIABILITY COMPANY**

SEAWALL LOTS 323 AND 324

[], 2019

**ELAINE FORBES
EXECUTIVE DIRECTOR**

SAN FRANCISCO PORT COMMISSION

**KIMBERLY BRANDON, PRESIDENT
WILLIE ADAMS, VICE PRESIDENT
GAIL GILMAN, COMMISSIONER
VICTOR MAKRAS, COMMISSIONER
DOREEN WOO HO, COMMISSIONER**

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LEASE DISPOSITION AND DEVELOPMENT AGREEMENT

THIS LEASE DISPOSITION AND DEVELOPMENT AGREEMENT dated for reference purposes as of [REDACTED], 2019, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City"), operating by and through the SAN FRANCISCO PORT COMMISSION ("Port"), and TZK Broadway, LLC, a California limited liability company ("Developer"). This Lease Disposition and Development Agreement, including the recitals and exhibits, are and shall be construed as a single instrument and are referred herein as this "Agreement." All capitalized terms in this Agreement are defined in *Article 19*.

RECITALS

This Agreement is made with reference to the following facts and circumstances:

- A. Port is an agency of the City, exercising its functions and powers over property under its jurisdiction and organized and existing under the Burton Act and the City's Charter. Port's Waterfront Land Use Plan ("WLUP") is Port's adopted land use document for property within Port jurisdiction, which provides the policy foundation for waterfront development and improvement projects.
- B. Most Port property consists of tidelands and submerged lands that are subject to the common law public trust doctrine, the California Constitution, the Burton Act, and the related transfer agreement under which the State of California (the "State") transferred most of the San Francisco waterfront to the City in 1969.
- C. Seawall Lot ("SWL") 323 and SWL 324 are two separate, nearly triangular land parcels with frontages on The Embarcadero, Broadway, Davis and Vallejo Streets and are located in the Northeast Waterfront area of the WLUP. The SWLs abut two right-of-ways at the intersection of Davis and Vallejo Streets (collectively, "ROWS"). The SWLs and ROWS (collectively, the "Site") are also located in the Northeast Waterfront Historic District and are within a C-2 (Community Business) zoning district, Waterfront Special Use District No. 3, and a 40-X Height and Bulk district.
- D. The WLUP and the Planning Department's Northeastern Waterfront Subarea Plan and Northeast Embarcadero Study list hotel, entertainment, theatre and public open space as acceptable uses for the SWLs.
- E. Port and One Reel, a Washington State nonprofit corporation, entered into Lease No. L-12847 in 1999 (as amended, the "Prior Theater Lease") for portions of Piers 27 and 29 to be used for Teatro ZinZanni's dinner-theater and cabaret operations commonly known as "Teatro ZinZanni". Teatro ZinZanni, a Washington State non-profit corporation ("TZ") was created in 2002 to serve as the manager and transferee of the Theater Lease and as the operator of Teatro's dinner-theater operations. The Prior Theater Lease expired in 2005, and continued on a holdover month-to-month basis until 2011. To accommodate the 34th America's Cup and the construction of the new James R. Herman Cruise Terminal on Pier 27, Port and TZ terminated the Prior Theater Lease and identified a portion of SWL 324 as a potential relocation site pursuant to that certain Mutual Agreement for Lease Termination and Reservation of Rights Agreement dated August 12, 2011 ("Mutual Termination Agreement").
- F. TZ initially proposed that it lease from Port a portion of SWL 324 for a term not to exceed 10 years and operate Teatro ZinZanni within a temporary structure. But Teatro abandoned the initial proposal after various stakeholders raised concerns that a temporary structure would be incompatible within the historic district.
- G. TZ, in 2013, re-formed itself as TZZ San Francisco, LLC, a Washington limited liability company ("Teatro"). TZZ San Francisco, LLC is the successor in interest to TZ.
- H. Teatro concluded that to amortize the cost of permanent structures for Teatro ZinZanni, it would need to increase the lease term, expand the use program and enlarge the

footprint of the development. Accordingly, Teatro proposed to bring on a development partner with the financial resources and expertise to help it shepherd the expanded development.

I. Teatro, Kenwood Investments No. 6, LLC (“**Kenwood**”) and PresidioCo Bay Area LLC (“**Presidio**”), each a member of Tenant, are developing the Project.

J. Developer proposes to build and finance a state-of-the-art theatre and entertainment venue, a 192 room Hotel, and a public park, together with related public infrastructure and other improvements, as further described in the Scope of Development attached hereto as *Exhibit A* (collectively, the “**Project**”).

K. On October 28, 2014, the Port Commission approved Resolution No. 14-58 directing Port staff to assist Teatro and Developer in developing and introducing a resolution to the Board of Supervisors (“**Board**”) for its consideration on exempting the potential lease of the Site to Developer from the competitive bidding policy of Administrative Code Section 2.6-1.

L. On May 5, 2015, the Board adopted Resolution No. 170-15 (the “**Sole Source Resolution**”) and found that the proposed Project is exempt from competitive bidding requirements of Administrative Code Section 2.6-1.

M. Port staff and a Port-hired third-party real estate consultant reviewed Kenwood Investments’ qualifications and financial capacity to develop the Project and issued a report confirming that Kenwood Investments is qualified to develop the Project (“**Qualification Determination**”). Port staff submitted a copy of the Qualifications Determination to the Clerk of the Board on August 18, 2015.

N. On September 8, 2015, the Port Commission adopted Resolution No. 15—31 and authorized and directed Port’s Executive Director (the “**Executive Director**”), or her designee, to enter into an Exclusive Negotiation Agreement (“**ENA**”). The ENA, dated September 10, 2015, was subsequently executed by the Parties.

O. On April 26, 2016, the Port Commission adopted Resolution No. 16-18 and endorsed a non-binding term sheet describing the fundamental deal terms for the Project (“**Term Sheet**”) and authorized and directed the Executive Director, or her designee, to forward the Term Sheet to the Board for its consideration. In the same resolution the Port Commission directed the Executive Director, or her designee, to work with the Developer to undertake project review and negotiate the terms and conditions of the final transaction documents, including this Agreement.

P. On July 12, 2016, the Board adopted Resolution No. 277—16 and endorsed the Term Sheet.

Q. On December 21, 2018, the Planning Department approved the issuance of the Final Mitigated Negative Declaration (“**FMND**”) as prepared by the Planning Department.

R. On March 6, 2019, the Historic Preservation Commission adopted Motion No. 0370 finding that the proposed Project is consistent with Article 10 of the Planning Code and the Secretary of the Interior’s Standards for Rehabilitation in conformance with the architectural plans filed with the Planning Department subject to the conditions and findings listed in its Motion No. 0370.

S. On May 2, 2019, the Planning Commission conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Authorization Application and General Plan Referral Nos. 2015-016326 CUA and 2016- 011011GPR. At that hearing, pursuant to Resolution No. 20443, the Planning Commission made Findings of Consistency with the General Plan and with the Priority Policies of Planning Code Section 101.1 for the street vacations for the Project, pursuant to Section 4.105 of the City Charter and Section 2A.53 of the Administrative Code. In addition, pursuant to Motion No. 20444, the Planning Commission granted a Conditional Use Authorization for the Development pursuant to Planning Code

Sections 210.1, 240.3 and 303 to allow a hotel use within the C-2 Zoning District, the Waterfront Special Use District No. 3, and a 40-X Height and Bulk District, subject to the conditions and findings listed in the Motion No. 20444.

T. In Resolution No. 20443, the Planning Commission, having reviewed the FMND, concurred with the Planning Department's determination that, pursuant to the FMND, including its mitigation measures, the Project could not have a significant impact on the environment. In Motion No. 20444, the Planning Commission made the same findings as in Resolution No. 20443, and more specifically found that, based on review and consideration of the FMND and the record as a whole, there is no substantial evidence that the Project will have a significant effect on the environment with the adoption of the mitigation measures contained in the Mitigation Monitoring and Reporting Program. The Planning Commission adopted the FMND and the Mitigation Monitoring and Reporting Program and included all required mitigation measures identified in the FMND and contained in the Mitigation Monitoring and Reporting Program as conditions of approval.

U. On September 10, 2019, by Resolution No. 19-36, the Port Commission, among other things, adopted the Mitigation, Monitoring, and Reporting Program and authorized and directed the Executive Director to (i) enter into this Agreement and other Transaction Documents with Developer and (ii) seek approval of the form of Lease from the Board.

V. On [REDACTED], 2019, by Resolution No. XX-19, the Board, among other things, adopted the Mitigation, Monitoring, and Reporting Program and approved the form of Lease with Developer.

W. The parties now desire to enter into this Agreement to set forth the terms and conditions upon which Port will deliver the Lease to Developer and Developer will Construct the Improvements.

AGREEMENT

Accordingly, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as set forth below.

1. SITE; TERM; RELATIONSHIP TO LEASE; MEMORANDUM OF TECHNICAL CORRECTIONS

1.1. **Site.** The Site is bounded by The Embarcadero, Broadway, Davis and Vallejo Streets in the City and County of San Francisco, and is more particularly described in the legal description (*Exhibit A-1*) and the Site Map (*Exhibit A-2*) attached to this Agreement. The Site includes SWL 323, SWL 324, and the two abutting ROWs and has a combined land area of approximately 57,170 square feet.

1.2. **Term.** The term of this Agreement is from the Effective Date until recording of the Certificate of Completion, unless this Agreement is earlier terminated in accordance with its provisions (the "LDDA Term").

1.3. **Relationship of this Agreement to the Lease.** This Agreement addresses, among other matters, the conditions precedent to Close of Escrow and the Delivery of the Lease to Developer, the scope of Developer's obligations to design and Construct the Improvements, and the financing for Construction of the Improvements by Developer, provided, however, the foregoing does not limit right of Developer to mortgage leasehold interest in accordance with the Lease. If the conditions precedent for the Close of Escrow as set forth in *Section 2* are satisfied, then upon Close of Escrow, Port will lease the Site to Developer, and Developer will lease the Site from Port, pursuant to the Lease. Before Completion, this Agreement shall control in the event of any inconsistency between this Agreement and the Lease. From and after Completion, the Lease will govern the rights and obligations of the Parties with respect to use and occupancy of the Site.

1.4. Memorandum of Technical Corrections. The Parties reserve the right, upon mutual agreement of Port's Executive Director and Developer, to enter into a memorandum of technical corrections to reflect any non-material changes in the actual legal description and square footages of the Site and the Improvements, and upon full execution thereof, such memoranda will be deemed to become a part of this Agreement.

2. PAYMENTS.

2.1. LDDA Fee. Developer will pay to Port a fee equal to Thirty-Seven Thousand Five Hundred Dollars (\$37,500) ("LDDA Fee") as consideration for Port's agreement to enter into this Agreement for one (1) year from and after the Effective Date (the "Initial Period to Close Escrow"), subject to Force Majeure and extensions of term as set forth in this Agreement. The LDDA Fee will not be pro-rated or reduced in the event Close of Escrow occurs prior to the expiration of the Initial Period to Close Escrow.

2.2. Target Close Date Extension Fee. In the event Developer elects to extend the Target Close Date in accordance with *Section 4.3(b)*, then for each three (3)-month extension, Developer will pay to Port an extension fee equal to Twenty-Five Thousand Dollars (\$25,000) (the "Target Close Date Extension Fee") in accordance with *Section 4.3(b)*. The Target Close Date Extension Fee will not be pro-rated or reduced in the event Close of Escrow occurs prior to the expiration of the applicable three (3) month extended term.

2.3. Deferred ENA Negotiation Fee. The Parties agreed in the ENA that as consideration for the right to exclusively negotiate with Developer, Developer will pay Port a negotiation fee ("ENA Negotiation Fee") equal to One Hundred Thousand Dollars (\$100,000). The Parties also agreed in the ENA that a portion of the ENA Negotiation Fee will be paid on or before the Close of Escrow. As of the Effective Date, the amount of the ENA Negotiation Fee that has not been paid to Port equals Fifty Thousand Dollars (\$50,000) ("Deferred ENA Negotiation Fee"). The Parties agree that the Deferred ENA Negotiation Fee will be paid to Port as of the Close of Escrow.

2.4. LDDA Termination Fee. Unless this Agreement terminates solely as a result of a Port Event of Default or a Title Defect as set forth in *Section 4.7(c)*, if this Agreement terminates prior to Close of Escrow, then Developer must pay to Port, as liquidated damages, a termination fee (the "LDDA Termination Fee") in the amount of Fifty Thousand Dollars (\$50,000), payable within thirty (30) days following the termination of this Agreement. The (i) LDDA Termination Fee, and (ii) Developer's assignment to Port of the Project Materials and Developer's rights under any Regulatory Approval (pursuant to *Section 15.6*), are Port's sole and exclusive remedy for any such termination.

THE PARTIES AGREE THAT THE SUM OF FIFTY THOUSAND DOLLARS (\$50,000) IS A REASONABLE SUM CONSIDERING THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT, INCLUDING THE RELATIONSHIP OF THE SUM TO THE RANGE OF HARM TO PORT THAT REASONABLY COULD BE ANTICIPATED AND THAT THE ANTICIPATION THAT PROOF OF ACTUAL DAMAGES COULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. IN PLACING THEIR INITIALS BELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF EACH OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION AT THE TIME THIS AGREEMENT WAS MADE.

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2.5. *Transaction Costs.*

(a) Definition of Transaction Costs. Developer will pay the reasonable expenses (collectively, the "Transaction Costs") incurred by Port related to this Agreement, the Lease, other Transaction Documents, and the Project. Transaction Costs includes time spent by Port staff (including City staff paid by Port) and Outside Transaction Costs. Transaction Costs also include costs incurred by Port for negotiating Transaction Documents; costs related to CEQA review of the Project; costs related to monitoring Developer's compliance with the Mitigation Monitoring and Reporting Program and if required by Port, the Environmental Protection Plan until the Certificate of Completion is recorded in the Official Records; costs related to pursuit of entitlements for which Port is required to be a co-permittee or co-applicant; costs related to review of public trust consistency with State Lands or other Regulatory Agencies, including, if necessary, any legislative process pursued to obtain legislative authorization of trust consistency; costs of preparing materials to be submitted to the Board of Supervisors, the Port Commission, State Lands and any other Regulatory Agency; costs of preparing legislative reports, records, findings, resolutions and other materials related to any hearing on the Project, this Agreement, the Lease and other Transaction Documents by the Port Commission, the Board of Supervisors, the Planning Commission, and any other Regulatory Agency, as applicable; costs associated with community outreach and other public meetings; costs of the review of any construction documents, architectural design or schematic drawings, plans and specifications; and costs associated with any event of Litigation Force Majeure.

(b) Payment of Transaction Costs.

(i) Developer agrees to reimburse Port for up to Three Hundred Thousand Dollars (\$300,000) of Transaction Costs that Port incurs during the LDDA Term; provided, however, there will be no cap on Developer's obligation to reimburse Port for Transaction Costs if there is any litigation related to the Project. The first Payment Advance will be due on the Effective Date and cover the period ending [_____, 201XX]; provided, however, that Developer will be entitled to credit against any Payment Advance due hereunder the amount of any Overpayment existing under the ENA as of the Effective Date. **[Note: Insert last date of the first full quarter immediately after the Effective Date.]**

(ii) Subject to credit for any Overpayment existing under the ENA, following the first Payment Advance, each subsequent Payment Advance will be due on the first (1st) day of every subsequent calendar quarter (i.e., January 1, April 1, July 1, and October 1). Port will use Payment Advances as needed to reimburse Port for its Transaction Costs incurred during the LDDA Term.

(iii) The parties agree and acknowledge that a Payment Advance may not cover all of Port's Transaction Costs incurred for the period covered by such Payment Advance. Accordingly, if the Payment Advances paid to Port are insufficient to cover Transaction Costs, Developer must pay any Underpayment to Port within thirty (30) days after Port's delivery of the Port Statement showing an Underpayment.

(iv) Within thirty (30) days after the end of each calendar quarter, Port will provide Developer with a Port Statement for that quarter. If Developer has overpaid in the prior quarter, Developer may use such overpayment as a credit against the next Payment Advance owed. Developer expressly agrees that after this Agreement expires or terminates, Port may apply any Overpayment against any Transaction Costs or other amounts then owed to Port under this Agreement. Subject to the immediately preceding sentence, any remaining Overpayment will be returned to Developer within ninety (90) days after this Agreement expires or terminates.

(c) Additional Definitions.

"Consultant Invoice" means an invoice for Outside Transaction Costs.

“**Outside Transaction Costs**” means all reasonable costs that Port incurs for services of architect, engineering, appraisal, real estate, economic, and other professional consultants (including City staff and other experts within the City that are paid by Port), construction management services, and legal services (including costs for the City Attorney’s office and outside counsel fees and costs).

“**Overpayment**” means Payment Advances paid by Developer in excess of the actual Transaction Costs for the periods covered.

“**Payment Advance**” means an installment payment by Developer to Port to be applied towards Port’s Transaction Costs. Each Payment Advance will equal Forty-Five Thousand Dollars (\$45,000).

“**Port Statement**” means a reasonably detailed statement showing Transaction Costs incurred by Port for, and Port’s application of previously paid Payment Advances during, the immediately preceding quarter, including a calculation of the difference between the amounts of the Payment Advance and actual Transactions Costs for the immediately preceding quarter. Port will include in Port Statement any Consultant Invoices for any Outside Transaction Costs paid during that quarter.

“**Underpayment**” means the amount of actual Transaction Costs incurred by Port to date as set forth in a Port Statement that exceeds the Payment Advance paid by Developer for such applicable period.

2.6. Target CO Date Extension Fee. If Developer elects to exercise its option to extend the Target Final Inspection Date in accordance with **Section 10.2**, then for each three (3)-month extension, Developer will pay to Port an extension fee equal to Twenty-Five Thousand Dollars (\$25,000) (the “**Target CO Date Extension Fee**”) in accordance with **Section 10.2**.

2.7. Liquidated Damages for Failure to Have Final Certificate of Occupancy by Certain Date. If Port has not issued a Final Certificate of Occupancy for the Improvements by the Fourth Extended Target Final Inspection Date, then Developer must pay to Port, as liquidated damages, a daily fee (the “**Delayed Completion Fee**”) in the amount of One Thousand Three Hundred Fifty Dollars (\$1,350), for each day following the Fourth Extended Target Final Inspection Date until Port has issued a Final Certificate of Occupancy for the Improvements. The accrued Delayed Completion Fee for each calendar month will be payable by the fifth (5th) day of the immediately following calendar month.

THE PARTIES AGREE THAT THE DAILY FEE OF ONE THOUSAND ONE HUNDRED FIFTY DOLLARS (\$1,150) IS A REASONABLE SUM CONSIDERING THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT, INCLUDING THE RELATIONSHIP OF THE SUM TO THE RANGE OF HARM TO PORT THAT REASONABLY COULD BE ANTICIPATED AND THAT THE ANTICIPATION THAT PROOF OF ACTUAL DAMAGES COULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. IN PLACING THEIR INITIALS BELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF EACH OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION AT THE TIME THIS AGREEMENT WAS MADE.

Developer	Port

2.8. Acknowledgements. The Parties acknowledge and agree that: (a) under California Government Code section 87103.6, Developer's payments to Port and the City are not a "source of income" within the meaning of the California Political Reform Act; (b) Port reserves the full and sole discretion and authority to determine which consultants, contractors, or employees to hire or assign to work on the Project, to direct and evaluate their work and to establish the amount of compensation paid; (c) Developer will have no control over which Port or City account is used to pay for their consultants, contractors, or employees; (d) Developer will have no right to withhold payment of or recover from Port or the City any portion of the LDDA Fee, Target Close Date Extension Fee, Target CO Date Extension Fee, the Deferred ENA Negotiation Fee, Transaction Costs, LDDA Termination Fee, or Delayed Completion Fee, that have become due and payable under this Agreement (regardless of whether or not the Lease and/or other Transaction Document is executed); (e) Port may offset any outstanding amounts due and payable (including amounts due and payable to Port under *Section 15.2* (Port's Remedies) following a Developer Event of Default) against such amounts before Port is obligated to refund any unused balance to Developer.

2.9. Survival. The terms and conditions of this Section 2 will survive the expiration or earlier termination of this Agreement.

3. EXISTING PARKING OPERATIONS ON SITE; DELIVERY OF SITE FREE OF TENANTS AND OCCUPANTS AT CLOSE OF ESCROW.

3.1. Existing Parking Operations on Site; Leasing and Revenues Prior to Close of Escrow. The Site is currently operated as a surface parking lot. Until the Close of Escrow, subject to *Section 3.2*, Port will continue to have the absolute right to operate the Site as a surface parking lot or for any other use and, in its sole discretion, (i) execute any new leases, licenses, or agreements affecting the Site, (ii) modify, renew or extend any existing leases or licenses, and (iii) consent to or approve of any request made by a tenant, licensee, or other occupant or user. Port will retain all revenues from activities on the Site occurring prior to Close of Escrow.

3.2. Delivery of Site Free of Tenants and Occupants. Except for rights of Port reserved under the Lease or as otherwise allowed as Permitted Title Exceptions, Port is responsible, at no cost or expense to Developer, for vacating the Site of all tenants and occupants as of the Close of Escrow, provided that there is no material Developer Event of Default. Such responsibility consists of vacating the Site of all Port uses, and terminating all existing tenancies. Port is required under the existing parking operations agreement to provide the parking operator prior written notice before terminating the agreement. Accordingly, Developer will provide Port at least one hundred twenty (120) days prior notice of its anticipated Target Close Date.

3.3. Failure to Deliver or Delay.

(a) Port's failure to obtain possession or delay in obtaining possession from all tenants and occupants on the Site before the Close of Escrow as required hereby will not be considered a Port Event of Default, but may be considered a Title Defect, subject to the terms and remedies of *Section 4.7(c)*.

(b) In no event will Port be liable for monetary damages of any kind or nature arising from Port's failure to obtain possession from all of the tenants and occupants on the Site as required by this Agreement; provided, however, if Close of Escrow is delayed solely as a result of Port's failure to deliver possession of the Site free of all tenants and occupants, then Developer may extend the Target Close Date without payment of any Target Close Date Extension Fee and without having to exercise any remaining options to extend the Target Close Date. In the event of any such extension of the Target Close Date by Developer, the term of this Agreement shall be extended day-for-day for each day Port fails to deliver possession of the Site free of all tenants and occupants.

4. DISPOSITION OF LEASE THROUGH ESCROW.

4.1. Agreement to Lease. Subject to satisfaction or waiver of all of the conditions to Close of Escrow, Port agrees to lease to Developer and Developer agrees to lease from Port, the Site (subject to the Permitted Title Exceptions) pursuant to the terms and conditions set forth in the Lease, substantially in the form and substance of *Exhibit B*, all in accordance with and subject to the terms, covenants and conditions of this Agreement.

4.2. Escrow.

(a) **Opening of Escrow.** Developer must open an escrow for the Delivery of the Lease ("Escrow") with the San Francisco office of Chicago Title Company ("Title Company"). Developer must open the Escrow no later than the date set forth in the Schedule of Performance.

(b) **Joint Escrow Instructions.** No later than seven (7) business days prior to the anticipated date for Close of Escrow, the Parties will prepare joint escrow instructions as are necessary and consistent with this Agreement and execute and deliver the same to the Title Company no less than two (2) business days prior to the anticipated date for Close of Escrow (the "Joint Escrow Instructions").

(c) **Costs of Escrow.** Port is not responsible for any costs or expenses related to the Escrow. Developer must pay all fees, charges, costs and other amounts necessary for the opening and close of Escrow (collectively, the "Closing Costs"), including (i) Escrow fees; (ii) the cost of any title reports, ALTA survey, or other surveys, inspections and premiums for all title insurance policies obtained by Developer, Port, and if applicable, any lender; (iii) recording fees; and (iv) transfer taxes. Developer must pay the Closing Costs promptly after the Title Company notifies Developer that such amounts are payable, but in any event before the Close of Escrow. If the Title Company requires, Developer will pay into Escrow any fees, costs, charges or other amounts required for the Close of Escrow under this Agreement.

4.3. Target Close Date; Extension of Target Close Date; Outside Close Date.

(a) **Target Close Date.** Subject to Force Majeure, Close of Escrow will occur no later than twelve (12) months after the Effective Date ("Target Close Date"), subject to extension in accordance with *Section 4.3(b)*. Notwithstanding the foregoing, Close of Escrow may not occur earlier than the date by which all of the conditions in *Sections 4.4 and 4.5* are either satisfied or waived by the Party which is benefited by such conditions.

(b) Extension of Target Close Date.

(i) If Close of Escrow does not occur by the Target Close Date, Developer has four (4) consecutive three (3)-month options to extend the Target Close Date, subject to satisfaction of all of *Sections 4.3(b)(i)(1)–4.3(b)(i)(4)*. "Extended Target Close Date" means the date that is three (3) months after the Target Close Date and if further extended in accordance with this *Section 4.3(b)*, the date that is three (3) months after the previously applicable Extended Target Close Date.

(1) Port receives written notice of Developer's exercise of its option to extend the Target Close Date or the Extended Target Close Date, as applicable, no later than thirty (30) days before the Target Close Date or the Extended Target Close Date, as applicable;

(2) There is no uncured Developer Event of Default or Unmatured Developer Event of Default;

(3) Port received Developer's notice of its proposed anticipated Target Close Date at least one hundred twenty (120) days prior to the anticipated Target Close Date; and

(4) Together with the notice to extend, Port receives from Developer (A) an extension fee in an amount equal to Twenty-Five Thousand Dollars (\$25,000.00) to extend the Target Close Date or the applicable Extended Target Close Date, as applicable, by an additional three (3) months ("**Target Close Date Extension Fee**"), and (B) any other amounts due and payable to Port under this Agreement.

(c) Target Close Date Extension Fee Acknowledgements. Developer agrees and acknowledges that the Target Close Date Extension Fee is non-refundable, will not be credited against any rent or other consideration due Port under the Lease, and will not be reduced or pro-rated if Close of Escrow occurs before the end of the applicable three (3)-month extended period.

(d) No Change. Other than the extension of the Target Close Date or the Extended Target Close Date, as applicable, and any corresponding change, if any, to the dates to complete the various Performance Benchmarks ("**Performance Dates**"), all other terms and conditions to this Agreement will remain the same.

(e) Termination. If Developer fails to extend the Target Close Date or if applicable, the Extended Target Close Date in accordance with **Section 4.3(b)** in a timely manner, then this Agreement will terminate on the date immediately following the Target Close Date or if applicable, the applicable Extended Target Close Date. If Developer extends the Extended Target Close Date in accordance to **Section 4.3(b)**, but Close of Escrow does not occur by the Outside Close Date, then this Agreement will terminate on the day immediately following the Outside Close Date, unless earlier terminated in accordance with this Agreement.

(f) Outside Close Date. Subject to Force Majeure or **Section 3.3(b)**, in no event will Close of Escrow occur beyond two (2) years after the Effective Date ("**Outside Close Date**").

4.4. Conditions to Port's Obligation to Close Escrow.

(a) Port's Conditions Precedent. The following are conditions precedent to Port's obligation to close Escrow:

(i) Developer has deposited into Escrow the Deferred ENA Negotiation Fee.

(ii) Developer has performed all obligations under this Agreement required to be performed on its part before the Close of Escrow, no Unmatured Developer Event of Default or uncured Developer Event of Default exists and all of Developer's representations and warranties made in **Section 18.21** was true and correct in all aspects when made and is true and correct in all aspects as of the Close of Escrow. At the Close of Escrow, Developer will deliver to Port a certificate to confirm the accuracy of such representations and warranties in all aspects substantially in the form of **Exhibit C**.

(iii) Port has approved those aspects of the Construction Documents that are required under **Section 9.4** to be approved by the Close of Escrow and in accordance with the Schedule of Performance.

(iv) Port has received and approved evidence of adequate financing for the Improvements to be constructed in accordance with the Construction Documents approved hereunder, including evidence of Developer's ability to meet any debt service obligation(s) attendant thereto, as provided for below. In this regard, as to the following **Sections 4.4(a)(iv)(1), 4.4(a)(iv)(2), and 4.4(a)(iv)(3)**, no later than the date specified in the Schedule of Performance for submission of evidence of financing:

(1) Developer has submitted and Port has reasonably approved the then current Development Budget, which Development Budget will be substantially in the form of the Anticipated Development Budget.

(2) Developer has submitted, and Port has reasonably approved, (i) evidence of a bona fide commitment or commitments for the financing of that portion of the Development Budget Developer intends to borrow, certified by Developer to be a true and correct copy or copies thereof, with (1) no conditions to funding other than standard and customary conditions and (2) no provisions requiring acts of Developer prohibited in this Agreement or the Lease, or prohibiting acts of Developer required in this Agreement or the Lease, and (ii) such documentation showing sources and uses of funds as may be required by such leasehold lender.

(3) Developer has submitted a statement and appropriate supporting documents certified by Developer to be true and correct and in form reasonably satisfactory to Port showing sources and expected uses of funds sufficient to demonstrate that Developer has or will have funds equal to or exceeding the total development cost of the Improvements (as shown on the Development Budget) as of the Close of Escrow, and such funds have been or will be spent for uses described in the Development Budget.

(4) Within thirty (30) days after Developer's submission of all of the applicable documents described in this *Section 4.4(a)(iv)*, Port will notify Developer in writing of Port's approval or disapproval (including the reasons for disapproval) of the evidence of financing, exercised in accordance with the approval standards set forth in *Section 18.5(g)*.

(v) If Developer elects to finance any part of the Improvements with a leasehold lender, then such financing will close simultaneously with the Close of Escrow.

(vi) Developer will have submitted and Port has approved prior to Close of Escrow, the Final Pro-Forma, updated to account for any updates to the Development Budget and market conditions and that is materially similar to the anticipated Pro-Forma attached as *Exhibit D*.

(vii) Port has received Developer's notice of its anticipated Target Close Date at least one hundred twenty (120) days prior to the anticipated Target Close Date.

(viii) Developer has deposited into Escrow the Lease and the Memorandum of Lease, duly executed by Developer.

(ix) Developer has in place all insurance required under this Agreement and the Lease and has deposited evidence thereof into Escrow.

(x) Developer has deposited into Escrow Transaction Costs due and payable to Port, if any.

(xi) Legislation for the vacation of the ROWS has been approved by the Board of Supervisors, signed by the Mayor and Finally Granted.

(xii) Building Permits for the Improvements are ready to be issued but for the execution of the Lease by Port and payment by Developer of all Building Permit fees that are required to be paid prior to commencement of Construction of the Improvements.

(xiii) Developer has deposited into Escrow funds necessary for payment to the City of all development exaction fees that are required to be paid prior to commencement of Construction of the Improvements.

(xiv) Developer has deposited into Escrow a duly executed and authorized Performance Bond.

(xv) Port has reasonably approved evidence of a guaranteed maximum price contract or other comparable construction contract approved by Port for Construction of the Improvements consistent with the Construction Documents ("**Construction Contract**"). Port's approval of the Construction Contract will solely be for purposes of determining consistency with the Development Budget and the Scope of Development, and consistency with the terms of

this Agreement and the Lease. Port's approval of the Construction Contract is in addition to, and not as a limitation of, Port's approval rights of the Construction Documents pursuant to *Article 9*.

(xvi) City has approved the submissions Developer is required to make before the Close of Escrow relating to Developer's obligations to comply with the First Source Hiring Program, participation of LBES, and Local Hiring Requirements, and Developer and the City have entered into any agreements related to the foregoing that are required to be entered into prior to issuance of the Building Permit.

(xvii) Developer has executed and delivered to Port a certification of compliance with Administrative Code Chapters 12B and 12C on the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form, as set forth in *Section 16.1(d)*, together with supporting documentation, and has submitted evidence to Port that it has secured approval of the form by the City's Human Rights Commission.

(xviii) Port has approved Developer's integrated pest management plan as set forth in *Section 16.9*.

(xix) The WDAC has reviewed and provided recommendations, if any, and the Port Commission, and, if required under Planning Code Section 240, the Planning Commission, has reviewed and approved the design of the Improvements, and such approvals are final, binding and non-appealable.

(xx) Developer has obtained all Regulatory Approvals required for the development of the Improvements and the same has been Finally Granted.

(xxi) Developer has deposited into Escrow such evidence of authority to enter into the Lease, this Agreement and any other Transaction Documents, as Port and the Title Company may reasonably require (including certificates of good standing, officer's certificates, resolutions, and certificates of incumbency).

(xxii) The Title Company is prepared to issue to Port the title insurance policy required by *Section 4.8(a)(ii)* to be delivered to Port.

(xxiii) The Port Commission's authorization and approval, by resolution, of this Agreement, the Lease, and any other Transaction Document to be executed by Port, and the Board of Supervisors' authorization and approval, by resolution, of the Lease and any other Transaction Document if required, has been completed and has become and remain effective, and such approvals shall be Finally Granted.

(b) Satisfaction of Port's Conditions. The conditions precedent set forth in *Section 4.4(a)* are intended solely for the benefit of Port. If any such condition precedent is not satisfied on or before the required completion date specified therefor in the Schedule of Performance, the Executive Director, or, if the Executive Director determines that waiver of the condition precedent materially affects the rights, obligations, or expectations of Port, the Port Commission by resolution, has the right in its sole discretion to (i) waive in writing the condition precedent in question and proceed with Delivery of the Lease, or (ii) terminate this Agreement and exercise its rights and remedies hereunder.

4.5. Conditions to Developer's Obligation to Close Escrow.

(a) Developer's Conditions Precedent. The following are conditions precedent to Developer's obligation to close Escrow:

(i) Port has performed all obligations under this Agreement that Port is required to perform before the Close of Escrow and no Unmatured Port Event of Default or uncured Port Event of Default exists.

(ii) Port has approved those aspects of the Construction Documents that are required under *Section 9.4* to be approved by Port by the Close of Escrow and in

accordance with the Schedule of Performance, provided that Developer has timely submitted all required information and documents.

(iii) Port has approved evidence of adequate financing for the Construction of the Improvements in accordance with *Sections 4.4(a)(iv)*.

(iv) If Developer elects to finance any part of the Improvements with a leasehold lender, then such financing will close simultaneously with the Close of Escrow.

(v) Port has approved prior to Close of Escrow, the Development Budget and the Final Pro-Forma.

(vi) Port has deposited into Escrow the Lease, duly executed by Port.

(vii) Legislation for the vacation of the ROWS has been approved by the Board of Supervisors, signed by the Mayor and Finally Granted.

(viii) Building Permits for the Improvements are ready to be issued but for the execution of the Lease by Port and payment by Developer of all Building Permit fees that are required to be paid prior to commencement of Construction of the Improvements.

(ix) Developer has obtained all Regulatory Approvals required for the development of the Improvements and the same has been Finally Granted.

(x) The WDAC has reviewed and provided recommendations, if any, and the Port Commission, and, if required under Planning Code Section 240, the Planning Commission, has reviewed and approved the design of the Improvements, and such approvals are final, binding and non-appealable.

(xi) City has approved the submissions Developer is required to make before Close of Escrow relating to Developer's obligations to comply with the EOP and Developer and the City, through its First Source Hiring Administration, have entered into that certain First Source Hiring Agreement attached as an exhibit to that certain Memorandum of Understanding between the same parties, substantially in the form attached hereto as *Exhibit E*.

(xii) The Title Company is prepared to issue to Developer, upon payment by Developer of the Closing Costs, the title insurance policy required by *Section 4.8(a)(i)* to be delivered to Developer.

(xiii) The Port Commission's authorization and approval, by resolution, of this Agreement, the Lease, and any other Transaction Documents to be executed by Port, and the Board of Supervisors' authorization and approval, by resolution, of the Lease and any other Transaction Documents if required, has been completed and has become and remain effective, and such approvals shall be Finally Granted.

(b) Satisfaction of Developer's Conditions Precedent. The conditions precedent set forth in *Section 4.5(a)* are intended solely for the benefit of Developer. If any such condition precedent is not satisfied on or before the Close of Escrow, Developer has the right in its sole discretion to waive in writing the condition precedent in question and proceed with the Close of Escrow and acceptance of the Site or to terminate this Agreement.

4.6. *Delivery of the Lease.*

(a) Obligation to Close Escrow. Provided that the conditions to Port's and Developer's obligations with respect to Close of Escrow as set forth in *Sections 4.4 and 4.5* have been satisfied or expressly waived by the benefited party on or before the Performance Dates or as otherwise set forth in this Agreement, Port and Developer will instruct the Title Company to complete the Close of Escrow as set forth below. Upon the Close of Escrow, the Lease will be Delivered to Developer, and Developer will accept such Delivery.

(b) Steps to Close Escrow. Close of Escrow will be completed as follows:

(i) On or before Close of Escrow, Port will execute and acknowledge, as necessary, and deposit into Escrow with the Title Company the following documents: (1) the Lease; (2) the Memorandum of Lease; (3) copies of the resolution(s) of the Port Commission authorizing and approving the Lease and related Transaction Documents; and (4) copies of the resolution(s) of the Board of Supervisors authorizing and approving the Lease.

(ii) On or before the Close of Escrow, Developer will execute and acknowledge (or cause to be executed and acknowledged), as necessary, and deposit into Escrow with the Title Company the following: (1) the Lease; (2) the Memorandum of Lease; (3) the certificate as to the accuracy of the representations and warranties under this Agreement required by *Section 4.4(a)(ii)*; (4) such resolution(s) of Developer its authorizing the execution and delivery of the Lease, this Agreement and the related Transaction Documents, and any other evidence of authority as Port or the Title Company may reasonably require; (5) all Closing Costs; (6) the Security Deposit, and if required under the Lease, the Environmental Oversight Deposit, and Environmental Financial Performance Deposit; (7) the Performance Bond or if applicable, a letter of credit or if approved by Port, a completion guaranty from a guarantor approved by Port in its sole discretion; and (8) if Developer finances the Improvements with a leasehold lender, the deed of trust and other related loan documents.

(iii) Upon receipt of confirmation from the Title Company that it has received the items described in *Sections 4.6(b)(i) and 4.6(b)(ii)* and if applicable, is ready to disburse funds to the applicable Parties, Port and Developer will instruct the Title Company to close the Escrow. Upon Close of Escrow, the Title Company will record in the Official Records, the Memorandum of Lease, and any other documents reasonably required to be recorded in the Official Records under the terms of Regulatory Approvals.

(iv) The Title Company will issue title policies to Developer and Port as required under *Section 4.8*.

(c) Waiver of Pre-Delivery Conditions. Unless the Parties otherwise expressly agree at the time of Close of Escrow, all conditions of the Parties to Close of Escrow will, upon Close of Escrow, be deemed waived by the Party benefited by such condition.

4.7. Condition of Title.

(a) Permitted Title Exceptions. Except for the items listed in the attached *Exhibit F*, underground utility lines (including for water, power, telecommunications, and sewer), and such other matters as Developer will cause or suffer to arise (collectively, "**Permitted Title Exceptions**"), Port will Deliver to Developer the Site under and subject to the provisions of the Lease for the term specified in the Lease, free and clear of possession by others and liens, assessments, and taxes.

(b) Title Defect. If at the time scheduled for Close of Escrow, other than as set forth in *Section 4.7(a)*, any (i) possession or use by others, (ii) rights of possession or use other than those of Developer or Port as reserved under the Lease, or (iii) lien, encumbrance, assessment, tax or other matter which is not a Permitted Title Exception, encumbers the Site and would materially and adversely affect the Construction of the Improvements ("**Title Defect**"), Port will have up to thirty (30) days from the date scheduled for Close of Escrow to remove the Title Defect (the "**Title Defect Cure Period**"). In such event, Close of Escrow will be extended to the earlier of seven (7) business days after the Title Defect is removed or the expiration of the Title Defect Cure Period, but in no event will Close of Escrow extend beyond the Outside Close Date. If the Title Defect can be removed by bonding and Port has not bonded within the Title Defect Cure Period, Developer may cause a bond to be issued. If Developer causes a bond to be issued in accordance with this *Section 4.7(b)*, Port, at its option, will reimburse Developer for the cost of such bond within thirty (30) days of demand therefor or offset such amounts against any rent due under the Lease.

(c) Developer's Remedies With Respect to Uncured Title Defect. If after expiration of the Title Defect Cure Period, a Title Defect still exists at the time scheduled for Close of Escrow, Developer may by written notice to Port:

- (i) terminate this Agreement;
- (ii) accept Delivery of the Site; or
- (iii) extend the time scheduled for Close of Escrow if the Title Defect relates solely to continued possession or use of the Site by others until the Site is no longer in possession or use by others.

If Developer accepts Delivery, the Title Defect will be deemed waived by Developer. If Developer does not accept Delivery and fails to terminate this Agreement within seven (7) days after expiration of the Title Defect Cure Period, so long as Developer has not extended the Close of Escrow in accordance with *Section 4.7(c)(iii)*, Port may terminate this Agreement upon three (3) days written notice to Developer. If this Agreement is terminated under this *Section 4.7(c)*, Developer will have no further remedies against, or other obligations to Port with respect to such termination (other than those that survive expiration or earlier termination of this Agreement). In the event that Developer does not accept Delivery and fails to terminate this Agreement within such seven (7) days after the expiration of the Title Defect Cure Period, *Section 4.7(c)(iii)* is not applicable, and Port elects not to terminate this Agreement as set forth in this Section, then this Agreement will continue in full force and effect and until the Target Close Date or if applicable, the Extended Target Close Date (but in no event later than the Outside Close Date), and any Title Defect will be deemed waived by Developer.

(d) Reservation of Mineral Rights by the State. In accordance with Sections 2 and 3.5(c) of the Burton Act, Developer and Port acknowledge that the State reserves certain subsurface mineral rights from a point of entry outside of the Site, and subject to certain limitations, as more particularly described in the Lease.

4.8. Title Insurance.

(a) Title Insurance to be Issued at the Close of Escrow. The Joint Escrow Instructions will provide that concurrently with Close of Escrow, the Title Company will issue and deliver:

(i) To Developer, an A.L.T.A. extended coverage title insurance policy issued by the Title Company, with such coinsurance or reinsurance and direct access agreements as Developer may request reasonably, in an amount designated by Developer which is satisfactory to the Title Company, insuring that the leasehold estate in the Site is vested in Developer subject only to the Permitted Title Exceptions, and with such A.L.T.A. and/or C.L.T.A. form endorsements as may be requested reasonably by Developer, all at the sole cost and expense of Developer; and

(ii) To Port, an A.L.T.A. extended coverage title insurance policy issued by Title Company in an amount specified by Port and satisfactory to the Title Company, insuring Port's fee interest in the Site subject to the Public Trust, the Lease and the other Permitted Title Exceptions which are applicable to the fee, and with such C.L.T.A. endorsements as Port may reasonably request, all at the sole cost and expense of Developer, provided that subject to *Section 4.8(c)*, Port pays any incremental cost for such policy (including endorsements) in excess of the cost of the title policy and endorsements referred to in *Section 4.8(a)(i)*.

(b) Surveys. Developer is responsible for securing any and all surveys and engineering studies at its sole cost and expense, as needed for the title insurance required under this Agreement or as otherwise required to consummate the transactions contemplated by this Agreement. Developer, at no cost to Port, must provide Port with complete and accurate copies

of all such final surveys (which surveys must be certified to Port in a form reasonably acceptable to Port) and engineering studies.

(c) **Construction Endorsement.** In the event that the title insurance policy described in *Section 4.8(a)(ii)* is issued to Port, and in the event that Developer obtains an endorsement to its title insurance policy insuring Developer that the Improvements have been completed free and clear of all mechanics' and materialmen's liens, Developer will also obtain such an endorsement for Port with respect to Port's title insurance policy, all at the sole cost and expense of Developer.

4.9. Taxes and Assessments.

(a) **Ad Valorem Taxes and Assessments Before and After Close of Escrow.** For any period before Close of Escrow, Developer is responsible for the payment of any ad valorem taxes (including possessory interest and special taxes) assessed by reason of this Agreement, Developer's entry upon the Site under any Transaction Document or otherwise. Ad valorem taxes and assessments levied, assessed, or imposed for any period on or after Close of Escrow, including possessory interest and special taxes, are the sole responsibility of Developer, as provided in the Lease.

(b) **Possessory Interest Taxes.** Developer recognizes and understands that this Agreement may create a possessory interest subject to property taxation and that Developer may be subject to the payment of property taxes levied on such interest. Administrative Code Sections 23.38 and 23.39 (or any successor statute) require that certain information relating to the creation, renewal, extension, assignment, or other transfer of this Agreement be reported to the County Assessor within sixty (60) days after any such transaction. Accordingly, Developer must provide a copy of this Agreement to the County Assessor not later than sixty (60) days after the Effective Date, and any failure of Developer to timely provide a copy of this Agreement to the County Assessor will be a default under this Agreement. Developer will also timely provide any information that Port or City may request to ensure compliance with this or any other reporting requirement.

4.10. Compliance with Laws; Regulatory Approvals and Other Requirements.

(a) **Compliance with Laws and Other Requirements.** As to the Site and the Improvements, at its sole cost and expense, Developer will comply (taking into account any variances or other deviations properly approved) at all times throughout the LDDA Term, with: (i) all Laws; (ii) all requirements of all policies of insurance which may be applicable to the Site, the Improvements, or Developer's personal property; (iii) the Lease (to the extent then in effect); and (iv) all of the Mitigation Monitoring and Reporting Program. It is expressly understood and agreed that the performance required of Developer by the preceding sentence includes the obligation to make, at Developer's sole cost and expense, all additions to, modifications of, and installations on the Site which may be required by any Laws regulating the Site, the Improvements, or any of Developer's insurance policies covering the Site, the Improvements, or Developer's personal property, regardless of, among other factors, the relationship of the cost of curative action to the rent payable under the Lease, the length of the then remaining term thereof, the relative benefit of the repairs to Developer or Port, the degree to which the curative action may interfere with Developer's use or enjoyment of the Site, the likelihood that the parties contemplated the particular Laws involved, and whether the Laws involved is related to Developer's particular use of the Site. Developer will, promptly upon request, provide Port with evidence of Developer's compliance with its obligations under this *Section 4.10(a)*. The Parties acknowledge and agree that Developer's obligation to comply with this *Section 4.10(a)* is a material part of the bargained for consideration under this Agreement. Except as otherwise expressly set forth in this Agreement, no occurrence or situation arising during the LDDA Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, will relieve Developer of its obligations hereunder, nor give Developer any right to terminate this Agreement in whole or in part or to seek redress against Port, except to the extent Developer may

have remedies against Port pursuant to this Agreement or applicable Law. Developer waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Agreement, to receive any abatement, diminution, reduction or suspension of payment of rent under the Lease, or to compel Port to make any repairs to comply with any such Laws, on account of any such occurrence or situation. Developer will, promptly upon request, provide Port with evidence of compliance with Developer's obligations under this *Section 4.10(a)*.

(b) Regulatory Approvals.

(i) Developer understands and agrees that Port is entering into this Agreement in its capacity as a landowner with a proprietary interest in the Site (subject to the Public Trust) and not as a Regulatory Agency with certain police powers. Developer agrees and acknowledges that Port has made no representation or warranty that the necessary Regulatory Approvals to allow for Construction of the Improvements can be obtained. Developer agrees and acknowledges that although Port is an agency of the City, Port staff and executives have no authority or influence over officials or Regulatory Agencies responsible for the issuance of any Regulatory Approvals, including Port and/or City officials acting in a regulatory capacity. Accordingly, there is no guarantee, nor a presumption, that any of the Regulatory Approvals required for the approval or Construction of the Improvements will be issued by the appropriate Regulatory Agency and Developer understands and agrees that neither entry by Port into this Agreement nor any approvals given by Port under this Agreement will be deemed to imply that Developer will obtain any required approvals from Regulatory Agencies which have jurisdiction over the Site, including Port itself in its regulatory capacity. Port's status as an agency of the City will in no way limit the obligation of Developer, at Developer's own cost and initiative, to obtain Regulatory Approvals from Regulatory Agencies that have jurisdiction over the Site or Construction of the Improvements. By entering into this Agreement, Port is in no way modifying or limiting the obligations of Developer to Construct the Improvements in accordance with all Laws. Without limiting the foregoing, Developer understands and agrees that Port staff have no obligation to advocate, promote or lobby any Regulatory Agency and/or any local, regional, state or federal official for any Regulatory Approval, for approval of the Improvements, this Agreement or the Lease, and any such advocacy, promotion or lobbying will be done by Developer at Developer's sole cost and expense. Port's sole obligation will be to negotiate with Developer in compliance with this Agreement and to present any final negotiated agreement to the Port Commission and the Board of Supervisors (with respect to the Lease only) for their review and consideration. Developer hereby waives any Losses against the Indemnified Parties, and fully releases and discharges the Indemnified Parties to the fullest extent permitted by Law, from any liability relating to the failure of Port, the City or any Regulatory Agency from issuing any required Regulatory Approval or from issuing any approval of the Improvements.

(ii) Developer understands that its construction of the Improvements require Regulatory Approvals from Regulatory Agencies, which may include RWQCB, SHPO, the National Park Service, State Lands, the City's Planning Commission and/or Zoning Administrator, SFPUC, and other Regulatory Agencies. Developer will be solely responsible for obtaining any such Regulatory Approvals, as further provided in this *Section 4.10(b)*.

(iii) Developer will not seek any Regulatory Approval without first obtaining approval of Port, which (except as set forth in this *Section 4.10(b)*) will not be unreasonably withheld, conditioned or delayed. Throughout the LDDA Term, Developer will submit all applications and other forms of request for required Regulatory Approvals on a timely basis and will consult and coordinate with Port in Developer's efforts to obtain Regulatory Approvals. Port will provide Developer with its approval or disapproval thereof in writing to Developer within ten (10) days after receipt of Developer's written request, or if Port's Executive Director determines that Port Commission or Board of Supervisors action is necessary, at the first Port and subsequent Board hearings after receipt of Developer's written request subject to notice requirements and reasonable staff preparation time.

(iv) Port will cooperate reasonably with Developer in its efforts to obtain the Regulatory Approvals required for the Project. However, Developer will not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a Regulatory Approval if Port is required to be a co-permittee under such permit or the conditions and/or restrictions in the permit could create any obligations on the part of Port or could otherwise encumber, restrict or change the use of Port property, unless in each instance, Port has previously approved, in Port's sole and absolute discretion, such conditions or restrictions.

(v) Developer will bear, and will pay as they are incurred, all costs associated with (x) applying for and obtaining any necessary Regulatory Approval, and (y) complying with any and all conditions or restrictions imposed by Regulatory Agencies as part of any Regulatory Approval, including the economic costs of any development concessions, waivers, or other impositions, and whether such conditions or restrictions are on-Site or require off-Site improvements, removal, or other measures. Developer has the right to appeal or contest any condition in any manner permitted by law imposed upon any such Regulatory Approval. Developer will provide Port with prior notice of any such appeal or contest and keep Port informed of such proceedings. Developer will pay or discharge any fines, penalties or corrective actions imposed as a result of Developer's failure to comply with the terms and conditions of any Regulatory Approval. No Port Approval will limit Developer's obligation to pay all the costs of complying with any conditions or restrictions.

(vi) Without limiting any other Indemnification provisions of this Agreement, Developer will Indemnify Port and the Indemnified Parties from and against any and all Losses which may arise in connection with Developer's failure to obtain or seek to obtain in good faith, or to comply with the terms and conditions of any Regulatory Approval or to pursue in good faith the appeal or contest of any conditions of any Regulatory Approval except to the extent that such Losses arise solely from the gross negligent or willful acts or omissions of Port acting in its proprietary capacity.

5. AS IS CONDITION OF THE SITE; RELEASE; INDEMNIFICATION.

The provisions of this *Section 5* will survive the expiration or earlier termination of this Agreement.

5.1. Site As Is; Risk of Loss.

(a) Acceptance of Site in "AS IS WITH ALL FAULTS" Condition. Port will not prepare the Site for any purpose whatsoever, except solely for its obligations to Deliver the Site as provided in *Sections 3.2* and *4.7*. Subject to the provisions of *Section 4.7*, Developer agrees to accept the Site in its "AS IS WITH ALL FAULTS" condition on the date of Close of Escrow as further described in *Sections 5.1(b) and 5.1(c)*.

(b) Independent Investigation by Developer. Developer acknowledges that it has been afforded a full opportunity to inspect Port's records relating to conditions of the Site. Port makes no representation or warranty as to the accuracy or completeness of any matters contained in such records. Developer is not relying on any such information. All information contained in such records is subject to the limitations set forth in *Section 5.1(c)*. Developer represents and warrants to Port that Developer has performed a diligent and thorough inspection and investigation of the Site, either independently or through its own experts including (i) the quality, nature, adequacy and physical condition of the Site including the structural elements, foundation, and all other physical and functional aspects of the Site; (ii) the quality, nature, adequacy, and physical, geotechnical and environmental condition of the Site, including the soil and any groundwater (including Hazardous Materials conditions (including the presence of asbestos or lead) with regard to the building, soils and any groundwater); (iii) the suitability of the Site for the Improvements and Developer's planned use of the Site; (iv) the zoning, land use regulations, historic preservation laws, and other Laws governing use of or construction on the

Site; and (v) all other matters of material significance affecting the Site and its development under this Agreement.

(c) **DISCLAIMER OF REPRESENTATIONS AND WARRANTIES.** DEVELOPER AGREES THAT THE SITE IS BEING DELIVERED BY PORT AND ACCEPTED BY DEVELOPER IN ITS **AS IS WITH ALL FAULTS CONDITION**. DEVELOPER REPRESENTS AND WARRANTS TO PORT THAT DEVELOPER HAS RECEIVED AND REVIEWED PORT'S RECORDS. DEVELOPER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT NEITHER THE CITY, INCLUDING PORT, NOR ANY OF THE OTHER INDEMNIFIED PARTIES, HAS MADE, AND THERE IS HEREBY DISCLAIMED, ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND, WITH RESPECT TO THE CONDITION IN, ON, UNDER, OR PERTAINING TO THE SITE, THE SUITABILITY OR FITNESS OF THE SITE OR APPURTENANCES TO THE SITE FOR THE DEVELOPMENT, USE OR OPERATION OF THE IMPROVEMENTS, ANY COMPLIANCE WITH LAWS OR APPLICABLE LAND USE OR ZONING REGULATIONS, ANY MATTER AFFECTING THE USE, VALUE, OCCUPANCY OR ENJOYMENT OF THE SITE, THE ACCURACY OF PORT'S RECORDS, OR ANY OTHER MATTER WHATSOEVER PERTAINING TO THE SITE OR THE PROPOSED PROJECT.

Developer

5.2. Release. As a material condition to Port's agreement to enter into this Agreement, as part of Developer's agreement to accept the Site in its "As Is With All Faults" condition, Developer, on behalf of itself and its successors and assigns, is deemed to waive any right to recover from, and forever release, acquit and discharge, Port and the Indemnified Parties from any and all Losses, whether direct or indirect, known or unknown, foreseen or unforeseen, that Developer may now have or that may arise on account of or in any way be connected with (i) the physical, geotechnical or environmental condition in, on, under, above, or about the Site (including soil and groundwater conditions), including any Hazardous Materials in, on, under, above or about the Site, (ii) the suitability of the Site for Construction of the Improvements, (iii) any applicable Laws, including Environmental Laws or Laws pertaining to rehabilitation or historic preservation of historic resources, (iv) damages by death of or injury to any Person, or to property of any kind whatsoever and to whomever belonging, and (v) goodwill, or business opportunities arising or lost at any time and from any cause, in, on, under, or about the Site, including all claims arising from the joint, concurrent, active or passive negligence of any of Indemnified Parties, but the foregoing waivers or releases of claims do not extend to Losses to the extent caused by the sole negligence or willful misconduct of the Indemnified Parties.

Further, Port would not be willing to enter into this Agreement without the agreement of Developer, on behalf of itself and its successors and assigns, to waive any right to recover from, and forever release, acquit and discharge, Port and the Indemnified Parties from any and all consequential, incidental or punitive damages, and Developer expressly assumes the risk with respect thereto. Accordingly, without limiting any Indemnification obligations of Developer or other waivers contained in this Agreement and as a material part of the consideration of this Agreement, Developer fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against the Indemnified Parties for consequential, incidental and punitive damages (including, without limitation, lost profits) and covenants not to sue for such damages, the Indemnified Parties arising out of this Agreement or the uses authorized hereunder, including, any interference with uses conducted by Developer pursuant to this Agreement regardless of the cause, and whether or not due to the negligence of the Indemnified Parties.

Developer understands and expressly accepts and assumes the risk that any facts concerning the claims released, waived and discharged in this Agreement might be found later to be other than or different from the facts now believed to be true, and agrees that the releases, waivers, and discharges in this Agreement will remain effective. Therefore, with respect to the claims released, waived and discharged in this Agreement, Developer waives any rights or benefits provided by Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR THE RELEASED PARTY.

Developer

Developer agrees that the releases, waivers, and discharges given in and/or contemplated by this **Section 5.2** includes all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims regarding (i) all or any of the physical, geotechnical, and environmental condition in, on, under, above, or about the Site (including soil and groundwater conditions), including any Hazardous Materials in, on, under, above or about the Site, (ii) the suitability of the Site for Construction of the Improvements, (iii) applicable Laws, including Environmental Laws or Laws pertaining to rehabilitation or historic preservation of historic resources, (iv) damages by death of or injury to any Person or to property of any kind whatsoever and to whomever belonging, (v) goodwill, or business opportunities arising or lost at any time and from any cause, in, on, under, or about the Site, including all claims arising from the joint, concurrent, active or passive negligence of any of Indemnified Parties, and (vi) consequential, incidental or punitive damages. Accordingly, Developer hereby waives the benefits of Civil Code Section 1542, or under any other statute or common law principle of similar effect, in connection with the releases contained in this Section.

5.3. General Indemnification.

(a) Indemnification Prior to Close of Escrow. Before Close of Escrow and without limiting any Indemnity contained in any other Transaction Document or under Law, Developer will Indemnify the Indemnified Parties from and against any and all Losses incurred in connection with or arising directly or indirectly, in whole or in part, out of: (i) the death of any person or any accident, injury, loss or damage whatsoever caused to any person or to the property of any person (including the person or property of Developer or its Agents) which may occur in, on, under, about, or around the Site, and which may be directly or indirectly caused by any acts done in, on, under, around, or about the Site, or acts or omissions of Developer, its Agents or Invitees, (ii) any failure by Developer or its Agents or Invitees, as applicable, in the observation or performance of any of the terms, covenants or conditions of this Agreement; (iii) the entry or use by Developer, its Agents or Invitees in, on, under, around, or about the Site; and (iv) performance of any labor or services or the furnishing of any materials or other property with respect to the Site or any part thereof by Developer or its Agents during the LDDA Term; and (v) any acts, omissions, or negligence of Developer, its Agents or Invitees during the LDDA Term.

(b) Indemnification After Close of Escrow. On and after the Close of Escrow, Developer will Indemnify the Indemnified Parties in accordance with the provisions of the Lease.

(c) General Provisions Regarding Indemnities.

(i) **Costs.** The foregoing Indemnities include, without limitation, Attorneys' Fees and Costs, as well as the Indemnified Party's costs of investigating any Loss.

(ii) **Immediate Obligation to Defend.** Developer's Indemnification obligations are enforceable regardless of the active or passive negligence of the Indemnified Parties, and regardless of whether liability without fault is imposed or sought to be imposed on the Indemnified Parties. Developer agrees to immediately defend the Indemnified Parties against any claims that are actually or potentially within the scope of the Indemnity provisions of this Agreement even if such claims may be groundless, fraudulent or false. The Indemnified Party against whom any claim is made which may be within the scope of the Indemnity provisions of this Agreement shall provide notice to Developer of such claim within a reasonable time after learning of such claim, and thereafter shall cooperate with Developer in the defense of such claim. Developer's obligation to defend shall arise at the time such claim is tendered to Developer by the Indemnified Parties and shall continue at all times thereafter until finally resolved; provided, however, any failure to provide such notice shall not affect Developer's obligations under any such Indemnity provisions except to the extent Developer is materially prejudiced by such failure.

(iii) **Exclusion.** Developer will not be required to Indemnify the Indemnified Parties if such Losses are caused solely by the gross negligence or willful misconduct of any of the Indemnified Parties.

(iv) **Survival.** Developer's Indemnification obligations set forth in this Agreement and Developer's releases, waivers, and discharges made in this Agreement will survive the expiration or earlier termination of this Agreement as to any acts or omissions occurring prior to such date, provided that after Close of Escrow, Developer's Indemnification obligations under this Agreement will be subsumed in the Indemnification obligations of Developer under the Lease.

(v) **Defense.** Developer will, at its option but subject to the reasonable consent and approval of Port, be entitled to control the defense, compromise, or settlement of any Indemnified matter through counsel of Developer's own choice; provided, however, in all cases Port is entitled to participate in such defense, compromise, or settlement at its own expense. If Developer fails, however, within a reasonable time following notice from Port describing in reasonable detail the nature of Developer's alleged failure, to take reasonable and appropriate action to defend such suit or claim, Port has the right promptly to use the City Attorney or to hire outside counsel to carry out such defense, which expense will be due and payable to Port within thirty (30) days after receipt by Developer of an invoice therefor.

(vi) **Additional Obligations.** The agreements to Indemnify under this Agreement are in addition to, and may not be construed to limit or replace any other obligations or liabilities that Port may have to Developer or that Developer may have to Port under applicable Law.

(vii) **Not Limited by Insurance.** The insurance requirements and other provisions of this Agreement will not limit Developer's Indemnification obligations under this Agreement or any other Transaction Document.

6. DAMAGE OR DESTRUCTION.

6.1. *After Close of Escrow.* If at any time after the Close of Escrow, a fire or other casualty damages or destroys the Site or any portion thereof, the Lease will govern the obligations of the Parties.

6.2. Before Close of Escrow.

(a) If prior to Close of Escrow, the Site suffers any damage from fire or other casualty that would add less than Ten Million Dollars (\$10,000,000) to the Development Budget, Developer agrees that it will consummate the Close of Escrow in accordance with this Agreement. The Schedule of Performance will be adjusted, as necessary, to reflect any additional work necessitated by the fire or other casualty.

(b) If prior to Close of Escrow, the Site suffers any damage from fire or other casualty that would add more than Ten Million Dollars (\$10,000,000) to the Development Budget, then either Party may elect to terminate this Agreement, by written notice to the other Party delivered not less than thirty (30) days following the event that caused such damage. If neither Party so terminates this Agreement, the Parties will consummate the Close of Escrow and this Agreement will remain in effect. Developer (or any permitted assignee) will not be entitled to any additional rent credit, abatement or allowance under the Lease as a result of such casualty. The Schedule of Performance will be adjusted, as necessary, to reflect any additional work necessitated by the fire or other casualty.

(c) Following a termination pursuant to this *Section 6.2*, neither Party will have any further right or obligation hereunder other than those that survive the expiration or earlier termination of this Agreement.

7. HAZARDOUS MATERIALS.

(a) Developer must comply with all Environmental Laws applicable to the Site and the activities it conducts on the Site. Developer must perform any required Investigation and Remediation of Hazardous Materials as required by applicable Laws regarding any condition of the Site existing before or after the Effective Date to the extent necessitated by Developer's construction of the Improvements or Release or Exacerbation of Hazardous Materials, at no cost to Port, in accordance with applicable Laws. Developer must comply with all Environmental Laws and with all conditions for Regulatory Approval of any Investigation or Remediation. Without limiting Developer's obligations to comply with Environmental Laws and other Hazardous Materials obligations under any other Transaction Document, from and after Close of Escrow, Developer's obligations related to Hazardous Materials will be set forth in the Lease.

(b) If a notice of violation or other regulatory order from a Regulatory Agency with jurisdiction over the Site and/or Developer's activities and operations in, on, under, or pertaining to the Site (in each case, an "Environmental Notice") is delivered to Developer and such notice of violation arises from Developer's activities in, on, under, or pertaining to the Site and cannot be cured, or such regulatory order cannot be complied with, within fourteen (14) calendar days after delivery of such Environmental Notice, Developer will reimburse Port, within five (5) days following demand, for Port's administrative costs and expenses incurred while inspecting and monitoring the conditions of the Site and enforcing and administering Developer's obligations under this Agreement (including staff time corresponding with and responding to Regulatory Agencies and collection and laboratory analysis of environmental samples).

If an Environmental Notice is delivered to Developer and such notice of violation is cured, or regulatory order is complied with, within fourteen (14) calendar days after delivery of such Environmental Notice, Developer shall pay to Port within five (5) days following demand, Five Hundred Dollars (\$500.00) for each Environmental Notice delivered to Developer to reimburse Port for its administrative cost and expense. The parties agree that the foregoing charge relating to each Environmental Notice delivered to Developer represents a fair and reasonable estimate of the administrative cost and expense Port will incur by reason of Port staff time devoted to its response and action to each Environmental Notice.

(c) Nothing in this Agreement is intended in any way to preclude or limit Developer from pursuing any remedies Developer may have with regard to the existence of Hazardous Materials in, on, under, or pertaining to the Site, against any Third Party; provided, however, Developer may pursue remedies against Third Parties only at Developer's sole cost and expense and with advance written notice to, and approval from, Port. Port will have the right, in its sole election and at its sole cost, to join in any such suit or claim.

8. DEVELOPER ACCESS TO SITE.

8.1. *Before Close of Escrow.*

(a) Access to Perform Due Diligence. From time to time and at all reasonable times prior to the Close of Escrow, Developer will have the right to access the Site for the purposes of performing due diligence, visual surveys and inspections; provided, however, Developer must first obtain a license from Port in its standard form, including, but not limited to, the Indemnification and insurance requirements contained in such license.

(b) No Right to Perform Excavation or Construction. Developer may not perform any removal, salvaging operation, demolition, excavation or construction work before Close of Escrow without the express written approval of Port, which Port may give or withhold in its sole and absolute discretion. If Port grants such approval, Port may require additional insurance, bond, guaranty and Indemnification requirements as Port determines are appropriate to protect its interest in light of the proposed use.

8.2. *After Close of Escrow.* From and after the Close of Escrow, Developer's right of access and entry upon the Site to Construct the Improvements will be in accordance with the Lease.

9. DEVELOPMENT OF THE SITE.

9.1. *Developer's Construction Obligations.*

(a) Scope of Development; Schedule of Performance. Developer will Construct or cause to be Constructed the Improvements in accordance with the Project Requirements within the times and in the manner set forth in this **Section 9**, the Schedule of Performance, the Scope of Development, and the Schematic Drawings. The satisfaction of the matters set forth in the Schedule of Performance by the required Performance Dates is an essential part of this Agreement, time being of the essence. In the event Port grants an extension of any such date, Port will not be deemed to be waiving any other rights under this Agreement or implying the extension of any other dates.

(b) Project Requirements. Developer must Construct all of the Improvements (i) to achieve no less than LEED Gold Certification, (ii) in accordance with this Agreement and all applicable Laws, including the Port Building Code, required Regulatory Approvals, the Waterfront Plan, Environmental Laws, disabled access Laws, and Laws regulating construction on the Site, (iii) in compliance with Administrative Code Section 4.1-3 (All-Gender Toilet Facilities in Buildings on City Owned or Leased Land), Construction Dust Control Plan, a Sediment and Erosion Control Plan, and a Site Mitigation Plan, Public Works Code Sections 140-140.7 (Control of Fats, Oils and Grease) and the inclusion of automatic grease removal devices on all kitchen sinks in any café, restaurant or other food establishment or kitchen facility on the Site, and the applicable requirements of the design approved by the Port Commission and, if required, the Historic Preservation Commission, the Planning Commission, pursuant to Section 240 of the Planning Code, (iv) in compliance with the Mitigation Monitoring and Reporting Program and the Conditional Use Permit; (v) in accordance with the Port approved Construction Documents; [and (vi) in compliance with the Equal Opportunity Program]. All the foregoing requirements are sometimes referred to collectively as the "Project Requirements". Notwithstanding any other provision of this Agreement or the Lease to the contrary, Port's approval of the Schematic Drawings and the site plan in the respective forms

attached hereto is in no manner intended to, and is not, evidence or be deemed to evidence Port's approval of the Preliminary Construction Documents or the Final Construction Documents.

(c) Costs; Private Development. Developer will bear all of the cost of developing the Site and construction of all Improvements, including, without limitation, any and all cost overruns in relation to the approved Development Budget. Without limiting the foregoing, Developer is responsible for performing all Site preparation work necessary for construction of the Improvements. Such preparation of the Site includes, among other things, Investigation and Remediation of Hazardous Materials required for development or operation of the Improvements, all structure and substructure work, disabled access improvements and, public access improvements and tenant improvements.

(d) Permits. Developer will apply for all necessary permits for the Construction of the Improvements directly with the applicable Regulatory Agency. Developer will bear all risk of delay due to its submission of an incomplete or insufficient permit application.

(e) Standards Generally. All construction at the Project must be performed diligently, commenced and Completed within the time frames under the Schedule of Performance, and in accordance with good construction and engineering practices and applicable Laws. Dust, noise and other effects of the Construction must be controlled using commercially reasonable methods customarily used to control deleterious effects associated with construction projects in populated or developed urban areas. Developer must make adequate provision for the safety of all Persons affected by the Construction, and Developer must undertake commercially reasonable measures in accordance with good construction practices to: (i) minimize damage, disruption, or inconvenience caused by the Construction, (ii) minimize the risk of injury or damage to the Site and the surrounding property, or the risk of injury or death to members of the public and (iii) make adequate provision for the safety of all Persons affected by the Construction.

(f) Mitigation Monitoring and Reporting Program; Environmental Protection Plan. In order to mitigate potential significant environmental impacts of development of the Site, Developer agrees that the Construction of the Improvements will be in accordance with the Mitigation Monitoring and Reporting Program. In order to document and comply with pollution prevention measures during Construction of the Improvements, including dust control measures, Regulatory Approval requirements, and stormwater pollution prevention measures, Developer will implement and comply with the Port's Environmental Protection Plan if required by Port in its sole discretion until a Certificate of Completion is recorded. Developer shall perform and comply with the Mitigation Monitoring and Reporting Program and if applicable, the Environmental Protection Plan at no cost to Port. As appropriate, Developer shall incorporate the Mitigation Monitoring and Reporting Program and the Environmental Protection Plan into any contract for the Construction of the Improvements and cause such contractors to comply with such provisions.

(g) Utilities. Developer, at its sole expense, must (i) arrange for the provision and construction of all on-site and off-site utilities necessary to Construct the Improvements and necessary to operate the Project upon Completion, subject to Section 14.3 of the Lease (requirement to use SFPUC power), (ii) maintain, replace, restore, and provide utilities to any tenants, subtenants, licensees or other users at the Site, and (iii) coordinate with San Francisco Public Works with respect to installation of off-site utilities, including providing advance notice to appropriate parties of trenching requirements.

9.2. *The Construction Documents.*

(a) Definitions.

(i) "Construction Documents" mean Schematic Drawings (which are attached to this Agreement), the Preliminary Construction Documents and the Final Construction

Documents. As used in this Agreement “**Construction Documents**” does not mean any contracts between Developer and any contractor, subcontractor, architect, engineer or consultant.

(ii) “**Preliminary Construction Documents**” must be in sufficient detail and completeness to show the Improvements and the Construction thereof will comply with the Project Requirements and will generally include, without limitation:

(1) Site plan(s) at appropriate scale showing the buildings, the Spiegeltent, streets, walks, Exterior Improvements, and other open spaces. All land uses shall be designated. All site development details and bounding streets, points of vehicular and pedestrian access shall be shown.

(2) All building plans and elevations at appropriate scale.

(3) Building sections showing all typical cross sections at appropriate scale.

(4) Floor plans.

(5) Preliminary tenant improvement plans.

(6) Preliminary Exterior Improvement plans.

(7) Plans for public access areas showing details of features intended to be Constructed as part of the Improvements, including but not limited to, walls, fences, railings, benches, lockers, bicycle racks, street furniture, markers, plaques, models, paving, exterior lighting, signs, trash containers, and other Exterior Improvements.

(8) Outline specifications for materials, finishes and methods of construction.

(9) Plans for interior and exterior signs required by the Port Building Code.

(10) Site and exterior and interior (for common areas only) lighting plans.

(11) Material and color samples for exterior facades, public plazas and open space, and other public areas.

(12) Roof plans showing all proposed mechanical and other equipment, vents, photo-voltaic panels, satellite dish(es), antennae(s), and mechanical or elevator penthouses.

(13) Geotechnical, structural, and other engineering assessments and investigation reports.

The Preliminary Construction Documents must be in conformance with the Schematic Drawings and the Scope of Development, and must incorporate conditions, modifications and changes specified by Port or required as a condition of Regulatory Approvals as approved by Port. The Preliminary Construction Documents must also be in sufficient detail and completeness to show that the Improvements will be in compliance with **Section 9.1(b)** and matters previously approved. “**Preliminary Construction Documents**” also includes if applicable, the Environmental Protection Plan and the Mobilization and Staging Plan, all as approved by Port.

(iii) “**Final Construction Documents**” must include all plans and specifications required under applicable Laws to be submitted with an application for a Building Permit, including, to the extent applicable: (i) geotechnical, structural, and other engineering assessments and investigation reports, and (ii) a technical report summarizing construction objectives and methodology, operational requirements, project design criteria, and preliminary cost estimates. The Final Construction Documents must be a final development of, and be based

upon and conform to, the approved Preliminary Construction Documents for the Improvements. The Final Construction Documents must incorporate conditions, modifications and changes required by Port for the approval of the Preliminary Construction Documents for the Improvements. The Final Construction Documents must include all drawings, specifications and documents necessary for the Improvements to be constructed and completed in accordance with this Agreement.

(b) Preparation of Construction Documents by Licensed Architect. The Construction Documents must be prepared by or signed by an architect (or architects) duly licensed to practice architecture in and by the State of California. A California licensed architect will coordinate the work of any associated design professionals, including engineers and landscape architects.

(c) Inspection. A California licensed architect must inspect all Construction of the Improvements and must provide an Architect's Certificate substantially in the form attached hereto as *Exhibit G* concurrently with Developer's request for Port's issuance of a Certificate of Completion, as further described in *Section 12.1(a)(ii)*.

(d) Certification by Structural Engineer. A California licensed structural engineer must review and certify (by wet-stamp on the Construction Documents) all final structural plans and the sufficiency of structural support elements to support the Improvements.

9.3. Submission of Construction Documents. Developer will prepare and submit the Construction Documents to Port for review and approval as provided in *Sections 9.4 and 9.5* at the time or times established in the Schedule of Performance.

9.4. Port Review of Construction Documents.

(a) Scope of Review. Port's review and approval of the Construction Documents under this Agreement will be reasonable and will address (i) conformity and compliance with the Project Requirements, (ii) exterior architectural appearance and aesthetics of structures on the Site, (iii) alterations to any structures on the Site, (iv) landscape and design of all outdoor areas, including those required under Regulatory Approvals to be accessible to the public, and (v) the design and appearance of all exterior Signs (whether temporary or permanent), including the Signs described in *Section 9.13*. The design of the Improvements will be subject to the design review process pursuant to Planning Code Section 240. Port's review and approval of the Construction Documents will not be inconsistent with the design matters previously approved by the Port Commission and, if required, the Planning Commission, pursuant to the Section 240 process.

(b) Effect of Review. Port's review and approval or disapproval of Construction Documents, exercised in accordance with *Section 18.5(g)*, will be final and conclusive. Except by mutual agreement with Developer, Port will not disapprove or require changes subsequently in, or in a manner that is inconsistent with, matters that it has approved previously. If there is a disagreement between Port and Developer as to whether or not a matter contained in a particular submittal has been approved previously or whether Port is acting in a manner that is inconsistent with matters that it approved previously, Port's reasonable judgment, exercised in accordance with *Section 18.5(g)*, will apply in resolving the disagreement.

(c) Method of Port Action/Prior Approvals. Port will approve, disapprove or approve conditionally each set of the Construction Documents, in writing, within the time frames set forth in the Schedule of Performance, so long as each set of the applicable Construction Documents are properly submitted within the time frames set forth in the Schedule of Performance. Failure by Port to either approve or disapprove within such times will entitle Developer to an extension of time equal to the period of such delay. Notwithstanding any other provision of this Agreement or the Lease to the contrary, Port's approval of the Schematic Drawings and the site plan in the respective forms attached hereto is in no manner intended to,

and will not, evidence or be deemed to evidence Port's approval of the Preliminary Construction Documents or the Final Construction Documents.

(d) Timing of Port Disapproval/Conditional Approval and Developer Resubmission. If Port disapproves aspects of the Construction Documents in whole or in part, Port in the written disapproval will state the reason or reasons for such disapproval and may recommend changes and make other recommendations. If Port conditionally approves the Construction Documents in whole or in part, the conditions will be stated in writing and a time will be stated for satisfying the conditions. Developer will resubmit as expeditiously as possible. Developer may continue making resubmissions until the earlier of (i) approval of the submissions, or (ii) the later of (x) the time specified in any conditional approval, or (y) the date specified in the Schedule of Performance, as either may be extended by Port. Developer's failure to obtain a required Port approval of a submission by the later date will give Port the right to terminate this Agreement on 30 days' notice to Developer, unless Developer earlier terminates this Agreement or cures the failure within the 30 day period or Developer exercises its rights under any Extension Option.

(e) Exterior Improvements. Developer acknowledges that any Exterior Improvements not otherwise approved by Port during Port's review of Construction Documents will need Port's prior approval before installation, which may require, in Port's sole discretion, review by the WDAC. Developer will provide to Port the size, design, color, dimensions, text, materials, location, and method of installation of the Exterior Improvements to enable Port to evaluate the proposed request for approval; provided, however, any Signs requiring Port's prior approval under *Section 9.13* will be approved as set forth in *Section 9.13*.

9.5. *Changes in Final Construction Documents.*

(a) Approval of Changes in Required Elements. Developer will not make or cause to be made any material or substantial changes in any Port-approved Construction Documents as to elements requiring Port approval as provided in *Section 9* (each a "Required Element") without Port's express written approval. Prior to making any changes that Developer considers to be non-material to any Port approved Construction Documents as to Required Elements, including substituting materials that are the architectural equivalent as to aesthetic appearance, quality, color, transparency, design and texture, Developer must first notify Port in writing of such changes in Required Elements. If Port determines that such noticed changes are material or substantial, then such changes will be subject to Port's approval under *Section 9.5(b)*. Port's determination of whether such changes are material or substantial will be conclusive.

(b) Response. Developer will request Port's approval for all material or substantial changes in Required Elements in writing. Port will respond to Developer in writing as promptly as reasonably possible, but in no event later than twenty (20) days after receipt of Developer's request. If Port fails to respond to such request within such twenty (20) day period, then Developer will submit a second written notice to Port requesting Port's approval or disapproval ("Second Notice"). The Second Notice must display prominently in at least 16 point font on the envelope enclosing such request and on the first page of such request, substantially the following: **"APPROVAL REQUEST FOR CHANGE IN REQUIRED ELEMENT OF TEATRO/HOTEL PROJECT. IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND WITHIN FIVE (5) BUSINESS DAYS WILL RESULT IN THE REQUEST BEING DEEMED APPROVED."** If Port fails to approve or disapprove the requested changes within five (5) business days following receipt of the Second Notice, then such requested changes will be deemed approved by Port.

9.6. *Conflict With Other Governmental Requirements.*

(a) Approval by Port. Port will not withhold its approval, where otherwise required under this Agreement, of elements of the Construction Documents or changes in

Construction Documents required by any other governmental body with jurisdiction if all of the following have occurred:

- (i) Port receives written notice of the required change;
- (ii) Port is afforded at least thirty (30) days to discuss such element or change with the governmental body having jurisdiction of and requiring such element or change and with Developer's architect;
- (iii) Developer cooperates fully with the governmental body having jurisdiction in seeking reasonable modifications of such requirement, or reasonable design modifications of the Improvements, or some combination of such modifications, all to the end that a design solution reasonably satisfactory to Port may be achieved despite the imposition of such requirement; and
- (iv) any conditions imposed in connection with such requirements is subject to *Section 4.10*.

(b) Best Efforts to Attempt to Resolve Disputes. Developer and Port recognize that the foregoing kind of conflict may arise at any stage in the preparation of the Construction Documents, but that it is more likely to arise at or after the time of the preparation of the Final Construction Documents and may arise in connection with the issuance of Building Permits. Accordingly, time is of the essence when such a conflict arises. Both Parties agree to use their best efforts to reach a solution expeditiously that is mutually satisfactory to Developer and Port.

9.7. *Progress Meetings/Consultation.* During the preparation of Construction Documents and the Construction of the Improvements, Port staff and Developer agree to hold periodic progress meetings, as appropriate considering Developer's progress, to coordinate the preparation of, submission to, and review by Port of Construction Documents and the Construction process, including occasional attendance by Port at on-site construction meetings. Additionally, Developer must provide Port with at least five (5) days advance notice of any on-Site mock-ups, on-Site trial installations, and in-plant visual mock-ups. Port staff and Developer (and its applicable consultants) agree to communicate and consult informally as frequently as is reasonably necessary to assure that the formal submittal of any Construction Documents to Port can receive prompt and speedy consideration. Developer will keep Port reasonably informed of all meetings taking place in connection with Construction and will give Port the opportunity to attend and participate in such meetings. Port may, but is not obligated to, have one or more individuals present on-Site at any time and from time to time during Construction, to observe the progress of Construction and to monitor Developer's compliance with this Agreement.

9.8. *Quarterly and Annual Project Cost and Equity Statements.*

(a) Quarterly Project Cost and Equity Statement.

(i) From and after the Effective Date until the twentieth (20th) day following Port's issuance of a Final Certificate of Occupancy, Developer will furnish to Port by the twentieth (20th) day of each Quarter, a complete statement setting forth in reasonable detail for the immediately preceding Quarter (the "**Quarterly Project Cost and Equity Statement**"): (i) the Total Project Cost incurred as of the last day of the immediately preceding Quarter, including as line items, increases over (or decreases under) the items listed in the Development Budget, (ii) Outstanding Developer Equity, if any, as of the last day of the immediately preceding calendar Quarter, (iii) Developer Equity expended, if any, during the immediately preceding Quarter only, (iv) all debt or other Third Party proceeds received by or on behalf of Developer in connection with the Project as of the last day of the immediately preceding Quarter, and (v) any disputed amounts or expenditures from prior monthly or annual project cost statements or Developer's Certified Total Project Cost and Equity Statement. An example of the Quarterly

Project Cost and Equity Statement is attached hereto as *Exhibit H*. A financial officer of Developer must certify each Quarterly Project Cost and Equity Statement as true, accurate, complete and current.

(ii) Within thirty (30) days following receipt of the applicable Quarterly Project Cost and Equity Statement, Port will notify Developer if it agrees or disagrees with all or any of the amounts set forth in the Quarterly Project Cost and Equity Statement. If Port disagrees with all or any of the amounts set forth in the applicable Quarterly Project Cost and Equity Statement, then the Parties will meet as many times as necessary over the next twenty-one (21) days to resolve their disagreement. If the Parties are unable to resolve their disagreement within such twenty-one (21) day period, Developer will include in all future Quarterly Project Cost and Equity Statements, Annual Project Cost and Equity Statements, and the Developer's Certified Total Project Cost and Equity Statement, a separate line item for such disputed amount or expenditure until such dispute is resolved between the Parties or either Party exercises its rights under *Section 11.3*.

(b) Annual Project Cost and Equity Statement.

(i) Within ninety (90) days after the end of each calendar year (or for the calendar year when Port issues a Final Certificate of Occupancy, if it is issued before October 1, ninety (90) days following the date of such issuance), Developer will deliver to Port a complete statement setting forth in reasonable detail (the "**Annual Project Cost and Equity Statement**"): (i) the Total Project Cost incurred as of the last day of the immediately preceding calendar year (or portion thereof if applicable), including as line items, increases over (or decreases under) the items listed in the Development Budget, (ii) total Outstanding Developer Equity, if any, as of the last day of the immediately preceding calendar year (or portion thereof if applicable), (iii) all debt or other Third Party proceeds received by or on behalf of Developer in connection with the Project as of the last day of the immediately preceding calendar year, (iv) any adjustments to any of the Quarterly Project Cost and Equity Statements applicable to such calendar year (or portion thereof if applicable) and previously delivered to Port, and (v) any disputed amounts or expenditures from prior monthly or annual project cost statements. A financial officer of Developer must certify each Annual Project Cost and Equity Statement as true, accurate, complete and current.

(ii) Within sixty (60) days following receipt of the applicable Annual Project Cost and Equity Statement, Port will notify Developer if it agrees or disagrees with all or any of the amounts set forth in the Annual Project Cost and Equity Statement. If Port disagrees with all or any of the amounts set forth in the applicable Annual Project Cost and Equity Statement, then the Parties will meet as many times as necessary over the next twenty-one (21) days to resolve their disagreement. If the Parties are unable to resolve their disagreement within such twenty-one (21) day period, then Developer will include in all future Quarterly Project Cost and Equity Statements and Annual Project Cost and Equity Statements, a separate line item for such disputed amount or expenditure until such dispute is resolved between the Parties or either Party exercises its rights under *Section 11.3*.

(c) Port Representative to Examine Books and Records. If Developer fails to deliver any Quarterly Project Cost and Equity Statement, Annual Project Cost and Equity Statement, or Developer's Certified Total Project Cost and Equity Statement, as applicable, within the time period set forth in *Sections 9.8 and 11.2*, as applicable, and such failure continues for thirty (30) days after the date Port delivers to Developer written notice of such failure, Port has the right, among its other remedies under this Agreement, to have a Port Representative examine Developer's books and records as may be necessary to determine all the information required in the Quarterly Project Cost and Equity Statement or Annual Project Cost and Equity Statement, as applicable. The determination made by Port Representative will be binding upon Developer, absent manifest error, and Developer must promptly pay to Port the total cost of the examination.

9.9. *Submittals after Completion.*

(a) Record Drawings. Developer shall furnish Port Record Drawings of the Improvements Constructed on, in, under and around the Site within the timeframe set forth in the Schedule of Performance in electronic format as (1) full-size scanned TIF files, and (2) AutoCAD files of the completed and updated Construction Documents, as further described below. As used in this Section "Record Drawings" means drawings, plans and surveys showing Improvements as built on the Site and prepared during the course of Construction. If Developer fails to provide Record Drawings to Port within such period of time, Port will give written notice to Developer requesting such Record Drawings, and if Developer has not provided the Record Drawings within ninety (90) days' after Port's delivery of such notice, Port will have the right, but not the obligation, to cause the preparation of the Record Drawings by an architect of Port's choice, at Developer's sole cost, to be paid by Developer to Port within ten (10) days after Port's request therefor.

(b) Record Drawings Requirements. Record Drawings must be based on no less than 24" x 36", with mark-ups neatly drafted to indicate modifications from the original design drawings, scanned at 400 dpi. Each drawing must have a Port-assigned number placed onto the title block prior to scanning. An index of drawings shall be prepared correlating drawing titles to the numbers. A minimum of ten (10) drawings must be scanned as a test, prior to execution of this requirement in full.

(c) AutoCAD Requirements. The AutoCAD files must be contained in Release 2006 or a later version, and drawings must be transcribed onto a compact disc(s), DVD(s) or such other format requested by Port. All X-REF, block and other referenced files shall be coherently addressed within the environment of the compact disc. Discs containing files that do not open automatically without searching or reassigning X-REF addresses will be returned for reformatting. A minimum of ten (10) complete drawing files, including all referenced files, is required to be transmitted to Port as a test, prior to execution of this requirement in full.

(d) Certified Total Project Cost. Following Port's issuance of a Final Certificate of Occupancy for the Improvements, Developer will furnish to Port Developer's Certified Total Project Cost and Statement in accordance and within the time frame set forth in *Section 11.2.*

9.10. *Insurance Requirements.*

(a) Before Close of Escrow. Before Close of Escrow, Developer will procure and maintain insurance coverage as required by any other Transaction Document agreement entered into between Developer and Port.

(b) After Delivery. From and after Close of Escrow, Developer's requirement to maintain insurance under this Agreement will be as set forth in the Lease.

(c) Port Self-Help Right to Obtain Insurance. After five (5) days' written notice to Developer, Port has the right, but not the obligation, to obtain, and thereafter to continuously maintain, any insurance required by this Agreement that Developer fails to obtain or maintain, and to charge the cost of obtaining and maintaining that insurance to Developer; provided, however, if Developer reimburses Port for any premiums and subsequently provides such insurance satisfactory to Port, then Port agrees to cancel the insurance it obtained and to credit Developer with any premium refund less any other costs incurred by Port resulting from Developer's failure to obtain or maintain the required insurance.

(d) Indemnity. The Indemnification requirements under this Agreement, the Lease, or any other agreement between Port and Developer, will in no way be limited by any insurance requirements under any such agreements.

9.11. *Building Permit.* Developer will submit to Port a complete application for the Building Permit (subject to Developer's election to make deferred submittals in accordance with the Port Building Code) within a time adequate to obtain the same before the date set forth in the Schedule of Performance, taking into account normal processing time by Port and notwithstanding the dates set forth in the Schedule of Performance for submission of Construction Documents. Upon any such submission, Developer will prosecute the application diligently to issuance.

9.12. *Port Rights of Access.* Without limiting the rights of Port in its regulatory capacity, Port and its Agents will have the right of access to the Site and upon reasonable advance notice of no less than 2-hours (except in an emergency which requires no prior notice) which may be by electronic mail or telephone, to the extent necessary to carry out the purposes of this Agreement, including to observe the progress of Construction, to inspect the work being performed in Constructing the Improvements, and to monitor Developer's compliance with the Mitigation Monitoring and Reporting Program, the Conditional Use Permit, and if required, the Environmental Protection Plan. Port will not be estopped from taking any action (including later claiming that the construction of the Improvements is defective, unauthorized or incomplete) nor be required to take any action as a result of any such inspection.

9.13. *Construction Barriers; Signs.*

(a) ***Construction Fencing and Barriers.*** Developer will provide appropriate construction fencing and barriers on-Site during the period of Construction. Developer will obtain from Port a building permit prior to the placement of any such construction fencing and/or barrier.

(b) ***Construction Signs.*** Developer will provide appropriate construction Signs and post the Signs on-Site during the period of Construction. All Signs will comply with Port's Sign Guidelines. The size, design, color, dimensions, text, materials, location, and method of installation of such Signs must be submitted to Port for approval prior to installation.

(c) ***Project Signs.*** At Developer's election, Developer may also post Signs that provide general information about the Project and its status, including "Coming Soon" Signs. All such Signs will comply with Port's Sign Guidelines. The size, design, color, dimensions, text, materials, location, and method of installation of such Signs must be submitted to Port for approval prior to installation.

9.14. *Coordination with City Projects.* Developer acknowledges that during the LDDA Term, the SFPUC North Shore Force Main Rehabilitation Project], the affordable housing project at SWL 322-1, development at Piers 19, 23, and 29, improvements to all or any portion of the seawall, and other projects on Port or City property also may be constructed in the vicinity of the Site (collectively, "**City Projects**"). Developer is aware that construction of the City Projects and other construction projects of Port tenants, licensees or occupants within or in the vicinity of the Site and the activities associated with such construction may generate adverse impacts on construction of the Improvements, use and/or operation of the Site after construction, or may result in inconvenience to or disturbance of Developer and its Agents and Invitees. Said impacts may include increased vehicle and truck traffic, closure of traffic lanes, traffic delays and re-routing, loss of street and public parking, dust, dirt, construction noise, and visual obstructions. Developer hereby waives any and all Losses against the Indemnified Parties arising out of any inconvenience or disturbance to Developer, its Agents or Invitees, increased vehicle and truck traffic, traffic delays and re-routing, loss of street and public parking, dust, dirt, construction noise, and visual obstructions due to construction of the City Projects. The Parties will each use reasonable efforts to coordinate its construction efforts with each other and with others engaged in construction on such other projects in a manner that will seek, to the extent reasonably possible, to reduce construction conflicts.

9.15. Construction Staging. During construction of the Improvements, Developer will use the portions of the Site as staging areas for construction laydown and parking, construction equipment, and related materials, as reasonably determined by Developer. Port will have no responsibility for providing additional areas for construction staging, but agrees to reasonably cooperate with Developer in any consultations with SFMTA and San Francisco Public Works on construction staging needs.

10. CONSTRUCTION PERIOD; EXTENSION FEES; LIQUIDATED DAMAGES.

10.1. Construction Period. Subject to *Section 10.1*, Developer must complete construction of the Improvements such that Port is able to issue a Final Certificate of Occupancy for the Improvements within twenty-four (24) months following Close of Escrow (the "Target Final Inspection Date").

10.2. Extension of Construction Period and Extension Fees.

(a) If Port has not issued a Final Certificate of Occupancy for the Improvements by the Target Final Inspection Date, then unless Developer extends the Target Final Inspection Date in accordance with this *Section 10.2(a)*, Developer will be in default under this Agreement. "Extended Target Final Inspection Date" means the date that is three (3) months after the Target Final Inspection Date or the applicable Extended Target Final Inspection Date, as applicable.

(i) Port receives written notice from Developer of the necessity to extend by an additional three (3) months, the Target Final Inspection Date or the Extended Target Final Inspection Date, as applicable, no later than thirty (30) days before the Target Final Inspection Date or the Extended Target Final Inspection Date, as applicable;

(ii) There is no uncured Developer Event of Default or Unmatured Developer Event of Default at the time Port receives the notice to extend and as of the Target Final Inspection Date or the First Extended Target Final Inspection Date, as applicable;

(iii) Together with the notice to extend, Port receives from Developer (A) the Target CO Extension Fee to extend the Target Final Inspection Date or if applicable, the Extended Target Final Inspection Date, by an additional three (3) months, and (B) any other amounts due and payable to Port under this Agreement.

(b) Target CO Date Extension Fee Acknowledgements. Developer agrees and acknowledges that the Target CO Date Extension Fee is non-refundable, will not be credited against any rent or other consideration due Port under the Lease, and will not be reduced or pro-rated if Port issues a Final Certificate of Occupancy for the Improvements before the end of the applicable three (3)-month extended period.

(c) No Other Change. Other than the extension of the Target Final Inspection Date or the Extended Target Final Inspection Date, as applicable, and any corresponding change, if any, to the Performance Dates, all other terms and conditions to this Agreement will remain the same.

10.3. Liquidated Damages. If Port is unable to issue a Final Certificate of Occupancy for the Improvements because Developer has not completed construction of the Improvements by the fourth Extended Target Final Inspection Date, then Developer will pay to Port on a daily basis, the Delayed Completion Fee in accordance with *Section 2.7*.

11. CERTIFICATION OF TOTAL PROJECT COST.

11.1. Definitions.

"Agreed Total Project Cost and Developer Equity Amount" is defined in *Section 11.2(b)*.

"Annual Project Cost and Equity Statement" is defined in *Section 9.8(b)(i)*.

“Developer’s Certified Total Project Cost and Equity Statement” is defined in *Section 11.2(a)*.

“Hard Costs” means Developer’s reasonable out-of-pocket costs actually incurred from and after the [XXXXXX, 2019 (the effective date of the LDDA)] until and including the Hotel Opening Date attributable to the cost of labor, materials and construction of the Project. The following do not constitute **“Hard Costs”**: any Soft Costs, Pre-LDDA Costs, and other than any Hard Costs attributable to Deferred Items, any Hard Costs attributable to the Premises after the Hotel Opening Date or any of Tenant’s Personal Property.

“Hotel Opening Date” means the date a Final Certificate of Occupancy for the Hotel is issued by Port for the Premises to permit the Hotel to be opened for guests.

“Permissible Financing Costs” means debt service and other customary financing costs that are capitalized by Developer in connection with obtaining, negotiating and closing any debt for the development of the Project that is secured by a mortgage against Developer’s leasehold interest in the Premises, as permitted under the Lease, and all interest costs and other customary payments made by Developer pursuant to the terms thereof, including all application fees, transaction costs, reasonable legal, professional and consultant fees, origination fees, brokerage commissions for the financing, and appraisal, title and survey costs actually incurred in connection with such financing and paid by Developer.

“Pre-LDDA Costs” means reasonable costs actually incurred and paid by Developer and directly related to the development, entitlement, acquisition and implementation of the Project incurred by Developer between November 5, 2015 (the effective date of the ENA) and [XXXXXX, 2019 (the effective date of the LDDA)], including architectural, engineering, environmental, community outreach, reasonable legal and other professional and consulting fees; payments to Port required under the ENA; insurance, title, and survey expenses; fees and charges for bonds and permits; [and so long as the following have not already been accounted for in Hard Costs or Soft Costs, the wages, salaries and other compensation (excluding bonuses) and benefits, including taxes levied thereon, of Developer’s employees below the level of manager who devote substantially all of their employed time to the Project]. The following do not constitute **“Pre-LDDA Costs”**: (1) repayment of the principal, fees and interest of any loan or other expense; (2) distributions, dividends, preferred return or other capital return to the members or shareholders of the Developer, Developer, or any of their respective Affiliates, (3) the wages, salaries and other compensation and benefits, including taxes levied thereon, attributable to personnel above the level of manager, any officer, director, or investor of Developer or any of its members or Affiliates, or (4) a development, project management, or guaranty fee; or (5) any late charges or fees or default interest on late payments. The Parties agree that the total Pre-LDDA Costs is equal to \$ _____. **[NOTE: The amount is to be agreed up by the execution of the LDDA.]**

“Project Cost” means the Total Project Cost incurred as of the applicable date.

“Soft Costs” means Developer’s reasonable out-of-pocket costs actually incurred from and after [XXXXXX, 2019 (the effective date of the LDDA)] until and including the Hotel Opening Date, and directly attributable to the development of the Project, including:

(1) architectural, engineering, environmental, reasonable attorney and other professional or consulting fees;

(2) a development fee to Developer (not to exceed 5% of Hard Costs) reasonable construction management, asset management, or owner’s representative fees; provided, however, that the combined development fee, construction management fee, asset management fee, owner’s representative fee, and other reasonably related costs or charges for similar tasks do not exceed in the aggregate Nine Million Two Hundred Fifty Thousand Dollars (\$9,250,000.00);

- Approvals;
- (3) costs related to community outreach and efforts to obtain Regulatory
 - (4) marketing fees;
 - (5) permit and impact fees;
 - (6) payments to Port required under this Agreement (other than any late fees or default interest)
 - (7) application fees and review fees, and other pre-opening costs and fees required under the hotel franchise or third-party hotel management agreement paid by Developer, which may include employee training costs;
 - (8) Permissible Financing Costs;
 - (9) premiums for builder's risk insurance and other insurance expenses directly related to construction of the Project, including premiums for the title insurance required in *Section 4.8*;
 - (10) performance and payment bond expenses;
 - (11) costs incurred in developing and opening the Hotel, the Venue Space and public park;
 - (12) liquor license fees; and
 - (13) so long as the following have not already been accounted for in Hard Costs, Soft Costs, or Pre-LDDA Costs, the wages, salaries and other compensation (excluding bonuses) and benefits, including taxes levied thereon, of all employees of Developer below the level of manager who devote substantially all of their employed time to the Project.

The following do not constitute "Soft Costs:" (1) distributions, dividends, preferred return or other capital return to the members or shareholders of Developer, Developer, or any of their respective Affiliates, (2) the wages, salaries and other compensation and benefits, including taxes levied thereon, attributable to personnel above the level of manager or any officer, director, or investor of Developer or any of its members or Affiliates, (3) any late charges or fees or default interest on late payments (4) any amount of a development fee, construction management fee, asset management fee, owner's representative fee, and other reasonably related costs or charges for similar tasks that in the aggregate, is in excess of Nine Million Two Hundred Fifty Thousand Dollars (\$9,250,000.00), (5) any Soft Costs attributable to the Premises after the Hotel Opening Date, (6) any Hard Costs or Pre-LDDA Costs, (7) any guaranty fee, or (8) any Personal Property.

"Total Project Cost" means (i) the sum of Pre-LDDA Costs and all Hard Costs and Soft Costs incurred by Developer for the development and construction of the Project prior to the Hotel Opening Date plus the cost of any Deferred Items incurred after the Hotel Opening Date included in the Agreed Total Project Cost and Developer Equity Amount.

11.2. Developer's Certified Total Project Cost and Equity Statement.

(a) Within one hundred twenty (120) days following the Hotel Opening Date, Developer will furnish Port with an itemized statement setting forth in detail: (i) the Total Project Cost incurred by Developer as of the Hotel Opening Date, including as line items, increases over (or decreases under) the items listed in the Development Budget, (ii) all debt proceeds secured by Permitted Mortgages used as of the applicable Project Cost Cut-Off Date, (iii) Developer Equity expended by Developer as of the applicable Project Cost Cut-Off Date, and (iv) any disputed amounts or expenditures from prior monthly or annual project cost statements, certified as true, accurate and complete by an independent certified public accountant (the "Developer's Certified Total Project Cost and Equity Statement").

(b) Port will notify Developer within sixty (60) days following Port's receipt of the Developer's Certified Total Project Cost and Equity Statement of Port's agreement or disagreement with such statement. If Port disagrees with the Developer's Certified Total Project Cost and Equity Statement, the Parties will meet to resolve the disagreement. If (i) Port agrees with the Developer's Certified Total Project Cost and Equity Statement, (ii) disagreements between the Parties, if any, on Developer's Certified Total Project Cost and Equity Statement are resolved between the Parties, or (iii) the records are audited as described in **Section 11.3**, then "Agreed Total Project Cost and Developer Equity Amount" means the amounts set forth in the Developer's Certified Total Project Cost and Equity Statement, as adjusted between the Parties, if applicable, or the Audited Total Project Cost and Equity Statement, if applicable.

11.3. Audit Rights. If Port disagrees with the Developer's Certified Total Project Cost and Equity Statement and the Parties are unable to resolve their disagreement, Port may request that Developer's books and records be audited by an independent certified public accounting firm mutually acceptable to Port and Developer, or if the Parties are unable to agree, either Party may apply to the Superior Court of the State of California in and for the County of San Francisco for appointment of an auditor meeting the foregoing qualifications. If the court denies or otherwise refuses to act upon such application, either Party may apply to the American Arbitration Association, or any similar provider of professional commercial arbitration services, for appointment in accordance with the rules and procedures of such organization of an independent auditor. The audited Developer's Certified Total Project Cost and Equity Statement is referred to as the "Audited Total Project Cost and Equity Statement" which audited statement will be binding on the Parties, except in the case of fraud, corruption or undue influence. Port will pay the entire cost of the audit unless the audit discovers that Developer has overstated the Total Project Cost by more than three percent (3%) of the lower amount, in which case Developer will pay the entire cost of the audit.

11.4. Books and Records Related to Project Cost and Developer Equity. Developer must keep accurate books and records of the Project Cost incurred to date, funds expended by Developer, Outstanding Developer Equity, and debt or other Third Party proceeds received by or on behalf of Developer in connection with the development and construction of the Project, all in accordance with accounting principles generally accepted in the construction industry. Port, including its Agents, has the right to inspect Developer's books and records regarding the development of the Improvements, the costs incurred in connection therewith, and all other Total Project Cost, including funds expended by Developer, and debt or other Third Party proceeds received by or on behalf of Developer in connection with the development of the Project in a location within San Francisco during regular business hours and upon reasonable advance notice.

12. CERTIFICATE OF COMPLETION.

12.1. Certificate of Completion.

(a) Issuance Process.

(i) Other than in connection with the Construction of the Improvements, Developer may not occupy or use the buildings, Improvements, the Site, or any portion thereof where a Final Certificate of Occupancy has not been issued. A Certificate of Completion is not required to occupy or use portions of the Site where a Final Certificate of Occupancy has been issued for such area.

(ii) After Developer has Completed the Construction in accordance with all the provisions of this Agreement and there is an Agreed Total Project Cost and Developer Equity Amount, Developer will request a Certificate of Completion in writing and concurrently therewith submit the Architect's Certificate. Port will act on Developer's request within thirty (30) days of receipt.

(iii) Port's issuance of the Certificate of Completion does not relieve Developer or any other Person from any and all requirements or conditions of any Regulatory

Approval of any Regulatory Agency to occupancy of any building or other Improvement. Developer will comply with all such requirements or conditions separately.

(b) Condition to Issuance. If there remain (i) uncompleted customary punch list items, (ii) landscaping, (iii) exterior finishes (to the extent Developer can demonstrate to Port's reasonable satisfaction that such finishes would be damaged during the course of later construction of interior improvements) (collectively, "**Deferred Items**"), Port may reasonably condition issuance of the Certificate of Completion upon provision of security or other assurances in form, substance and amount satisfactory to Port that all of the Deferred Items will be diligently pursued to completion. Such security may consist of any one or more of the following forms of assurance: a letter of credit (in a form and issued by an institution acceptable to Port), a completion guaranty, or funds in an escrow account acceptable to Port (with joint escrow instructions acceptable to both Parties) or other forms of credit enhancement acceptable to the Port. Any such letter of credit, completion guaranty, other credit enhancement and/or escrowed funds will be in the amount of one hundred percent (100%) of the cost of completion of the Deferred Items as reasonably determined by Port. "**Deferred Items**" also includes (i) LEED Gold Certification so long as Developer has promptly after Completion of the Improvements, submitted all documents necessary to the U.S. Green Building Council to obtain such certification. Developer's obligation to obtain LEED Gold Certification survive the expiration or earlier termination of this Agreement.

(c) Definition of Completed and Completion. For purposes of Port's issuance of the Certificate of Completion in accordance with the provisions of *Section 12.1(a)*, "**Completed**" and "**Completion**" mean completion by Developer of all aspects of the Improvements in accordance with the approved Construction Documents, the Scope of Development, Project Requirements, and Laws, issuance of applicable certificates of occupancy for all the Improvements, together with completion of all Improvements which are required under conditions of any Regulatory Approvals needed for Construction of the Improvements, no uncured Developer Event of Default or Unmatured Developer Event of Default exists, Developer has paid all development exaction fees that are required to be paid to City or Port prior to issuance of a Final Certificate of Occupancy.

12.2. Form and Effect of Certificate.

(a) Form of Certificate. The Certificate of Completion, substantially in the form of *Exhibit I*, will be in a form that permits it to be recorded in the Official Records. For purposes of this Agreement, the Certificate of Completion will be a conclusive determination of Completion of the Improvements (except for completion of Deferred Items).

(b) Effect. The Certificate of Completion is not a notice of completion as referred to in Section 3093 of the California Civil Code, and is not in lieu of a certificate of occupancy or Final Certificate of Occupancy to be issued by Port in its regulatory capacity, which is separately required for occupancy.

(c) Termination of Agreement Upon Recordation. Recording of the Certificate of Completion by Port (or by Developer at the written request and authorization of Port) will terminate this Agreement (subject to any obligations that survive the expiration or termination of this Agreement).

12.3. Failure to Issue. If Port refuses or fails to issue the Certificate of Completion, Port shall provide Developer with a written statement specifying the reasons for Port's refusal or failure to issue the Certificate of Completion and identifying the items Developer shall complete or requirements it shall satisfy in order to obtain the Certificate of Completion.

13. ENCUMBRANCES AND LIENS.

13.1. No Mortgage of Fee. Developer may not under any circumstance engage in any financing or other transaction creating any mortgage, deed of trust, lien or other encumbrance on

Port's fee interest in the Site. The Public Trust and Port's interest under the Lease (including the rent payable thereunder) will not be subordinated under any circumstance whatsoever to any Mortgage.

13.2. Leasehold Liens. Following Close of Escrow, Developer will have the right pursuant to the terms and conditions of the Lease, to assign, mortgage, pledge, hypothecate or encumber all of its right, title and interest in the Site by way of leasehold mortgages, deeds of trust or other security instruments to the extent permitted in the Lease. In addition, Developer may assign, mortgage, pledge, or encumber its interest under this Agreement with the prior written consent of Port to any Mortgagee, and in such event all of the provisions set forth in the Lease relating to the rights of Mortgagees will also apply to the rights and obligations of Developer and Port under this Agreement.

13.3. Mechanics' Liens. Developer will keep the Site and any Improvements thereon free from any liens arising out of any work performed, materials furnished or obligations incurred by Developer or its Agents. If Developer does not, within twenty (20) days following Developer's receipt of notice of the imposition of any such lien, cause the same to be released of record or sufficiently bonded over to Port's reasonable satisfaction or take such other action reasonably acceptable, Port will have the right, but not the obligation, to cause the same to be released by such means as it deems proper, including payment of the claim giving rise to such lien. All sums paid by Port for such purpose and all expenses incurred by Port in connection therewith will be payable to Port by Developer within ten (10) days following written demand by Port.

13.4. Contests. Developer will be permitted to contest the validity or amount of any tax, assessment, encumbrance or lien related directly to the Site and to pursue any remedies associated with such contest subject to all of the terms and conditions of the Lease.

14. ASSIGNMENT AND TRANSFER.

14.1. Prohibition Against Transfer of this Agreement or Significant Change. Except as otherwise permitted under *Section 13.2* and following Close of Escrow, as permitted under the Lease, Developer may not sell, convey, assign, transfer, alienate or otherwise dispose of all or any of its interest or rights in this Agreement, including any right or obligation to acquire a leasehold estate in the Site, Construct the Improvements or otherwise do any of the above or make any contract or agreement to do any of the same (each a "Transfer"), or permit a Significant Change to occur, without in each instance obtaining the prior written approval of Port. Any Transfer or Significant Change made in violation of this *Section 14.1* is a Developer Event of Default from and after the time of Transfer or Significant Change, without necessity of Port's giving of notice or passage of time. Consent to any one Transfer or Significant Change will not be a waiver of Port's right to require such consent for each and every Transfer or Significant Change. Developer shall reimburse Port for its reasonable costs of reviewing a proposed Transfer, as provided in the Lease.

14.2. No Release of Developer's Obligations. No Transfer or Significant Change will relieve Developer or any other party from any obligations under this Agreement.

15. DEFAULTS, REMEDIES, TERMINATION AND PROJECT MATERIALS.

15.1. Developer Events of Default. Each of the following constitutes a "Developer Event of Default":

(a) Developer fails to use its good-faith efforts to obtain all Regulatory Approvals within the time frames set forth in the Schedule of Performance and such failure is not cured within ten (10) days following notice from Port;

(b) Developer fails to use its good-faith efforts to obtain all the elements of the financing described in *Sections 4.4(a)(iv) and 4.4(a)(v)* within the time frames set forth in

the Schedule of Performance and such failure is not cured within ten (10) days following notice from Port;

(c) After Close of Escrow, Developer fails to commence in accordance with the Schedule of Performance, or after commencement fails to prosecute diligently to Completion (except for Deferred Items, if any), the Construction of the Improvements to be constructed on the Site in accordance with the Scope of Development, approved Construction Documents, and this Agreement, or abandons or substantially suspends Construction for more than ten (10) consecutive days, and such failure, abandonment or suspension continues for a period of twenty (20) days from the date of written notice from Port;

(d) Developer fails to pay any amount required to be paid under this Agreement when due and such failure continues for five (5) business days following written notice from Port to Developer;

(e) Developer fails to comply with the Mitigation Monitoring and Reporting Program or if applicable, the Environmental Protection Plan and Developer fails to cure the foregoing within twenty-four (24) hours following written notice from Port. If such failure cannot reasonably be cured within such twenty-four (24) hour period, it shall not be a Developer Event of Default so long as Developer commences to cure within such twenty-four (24) hour period and diligently and in good faith continues to cure the failure;

(f) Developer does not accept Delivery of the Lease within the times set forth in this Agreement, provided that all pre-Delivery conditions to Developer's obligation to accept Delivery have been satisfied, and such failure continues for a period of twenty (20) days after written notice from Port;

(g) Developer fails to perform its obligations under *Article 16* (collectively, the "Special City Requirements"); provided, however, that any rights to cure and Port's remedies for any default under any of the Special City Requirements will be only as set forth in such applicable Special City Requirement;

(h) Developer does not submit the Construction Documents that are required to be submitted within the times provided in the Schedule of Performance and Developer does not cure such default within thirty (30) days after the date of written demand by Port specifying the items missing or due;

(i) Developer commits an uncured Tenant Event of Default or Unmatured Tenant Event of Default under the Lease (as such terms are defined in the Lease) but such Developer Event of Default under this Agreement shall be deemed cured if the uncured Tenant Event of Default or Unmatured Tenant Event of Default is cured pursuant thereto within the cure period set forth in the Lease;

(j) Developer is unable to cure an event of default under any Mortgage within the time period to cure in the applicable Mortgage;

(k) Developer files a petition for relief, or an order for relief is entered against Developer, in any case under applicable bankruptcy or insolvency law, or any comparable law that is now or hereafter may be in effect, whether for liquidation or reorganization, which proceedings if filed against Developer are not dismissed or stayed within one hundred twenty (120) days;

(l) A writ of execution is levied on this Agreement which is not released within one hundred twenty (120) days, or a receiver, trustee or custodian is appointed to take custody of all or any material part of the property of Developer, which appointment is not dismissed within one hundred twenty (120) days;

(m) Developer makes a general assignment for the benefit of its creditors;

(n) Developer fails to maintain the insurance required pursuant to *Section 9.10*, or fails to deliver certificates and endorsements or policies evidencing such coverage, and such failure continues for three (3) days following written notice from Port to Developer;

(o) Any Transfer or Significant Change made in violation of *Section 14.1* without the necessity of Port's giving of notice or the passage of time. If Port declares a Developer Event of Default, Developer will have fifteen (15) days to cure such default by effectively rescinding the Transfer or Significant Change, or obtaining Port's consent which may be given or withheld in Port's sole and absolute discretion. If Developer fails to cure such Developer Event of Default within such fifteen (15) day period, Port will be entitled to all remedies available to it hereunder, by law or at equity, including termination of this Agreement without necessity of Port's giving of further notice or the passage of further time; and

(p) Without limiting any other provisions of this *Section 15.1*, Developer violates any other covenant, or fails to perform any other obligation to be performed by Developer under this Agreement or the Lease, at the time such performance is due, and such violation or failure continues without cure for more than thirty (30) days after written notice from Port specifying the nature of such violation or failure, or, if such cure cannot reasonably be completed within such thirty (30) day period, if Developer does not within such thirty (30) day period commence such cure, or having so commenced, does not prosecute such cure with diligence and dispatch to completion within a reasonable time thereafter, but in no event more than sixty (60) days.

15.2. Remedies of Port. Except as otherwise provided in *Section 15.1(g)*, upon the occurrence of a Developer Event of Default, Port has the remedies set forth below:

(a) Termination. Port may terminate this Agreement upon thirty (30) days' written notice to Developer.

(b) Termination Fee. If such termination occurs prior to the Close of Escrow, Developer will pay to Port the LDDA Termination Fee, obtain copies of the Project Materials, and to the extent provided in *Section 15.6*, have the applicable Project Materials assigned to Port, as its sole right to damages. If such termination occurs after Close of Escrow, Port's remedies are as set forth in *Sections 15.2(c)–(e)*.

(c) Project Materials. Port shall be entitled to the Project Materials, as provided in *Section 15.6*.

(d) Specific Performance. Port may institute an action for specific performance.

(e) Additional Remedies of Port. Except as provided in *Sections 15.1(g) and 15.2(b)*, the remedies provided for in this Agreement are in addition to and not in limitation of other remedies including those provided (i) in the Lease, (ii) in the Special City Requirements, (iii) at Law; or (iv) in equity.

(f) Nonliability of Developer's Members, Partners, Shareholders, Directors, Officers and Employees. No member, officer, partner, agent, shareholder, director, or employee of Developer will be personally liable to Port, for a Developer Event of Default or for any amount which may become due to Port or for any obligations under the terms of this Agreement.

15.3. Port Events of Default. Each of the following constitutes a "Port Event of Default":

(a) The conditions to Close of Escrow in Port's favor have been satisfied, or waived by Port, and Port fails to Deliver the Lease where such failure is in violation of this Agreement, and continues for a period of twenty (20) days from the date of written notice from Developer;

(b) Port violates any covenants or fails to perform any other obligations and duties provided in this Agreement after the time for any cure or the expiration of any grace period specified therefor in this Agreement, or if no such time is specified, within thirty (30) days after the date of written demand by Developer to Port to perform such obligation and duty, or, in the case of a default not susceptible of cure within thirty (30) days, Port fails promptly to commence to cure such default and thereafter to prosecute diligently such cure to completion within a reasonable time.

15.4. Remedies of Developer. Upon the occurrence of a Port Event of Default, Developer has the exclusive remedies set forth below following the expiration of applicable cure periods:

(a) Termination. Developer may terminate this Agreement upon thirty (30) days' written notice to Port only if the Port Event of Default would make impossible Completion of the Improvements substantially in accordance with the Schedule of Performance and the provisions of this Agreement.

(b) Developer may institute an action for specific performance.

(c) Damages. Port will not be liable to Developer for monetary damages caused by any Port Event of Default.

(d) Nonliability of City and Port Members, Directors, Officers, Officials and Employees. No member, director, officer, official, agent or employee of the City, including its Port, will be personally liable to Developer, or any successor in interest, for a Port Event of Default or for any amount which may become due to Developer or successor or for any obligations under the terms of this Agreement.

15.5. General.

(a) Institution of Legal Actions. Subject to the limitations set forth in this Agreement, either Party may institute legal action to cure, correct or remedy any default, to recover damages for any default or to obtain any other remedy consistent with the terms of this Agreement. Such legal actions shall be instituted in the Superior Court of the City and County of San Francisco, State of California, in any other appropriate court in the City or, if appropriate, in the Federal District Court in San Francisco, California.

(b) Acceptance of Service of Process. In the event that any legal action is commenced by Developer against Port, service of process on Port shall be made by personal service upon the Executive Director of Port, or in such other manner as may be provided by Law. In the event that any legal action is commenced by Port against Developer, service of process on Developer shall be made by personal service upon Developer at the address provided for notices or such other address as shall have been given to Port by Developer under **Section 18.1**, or in such other manner as may be provided by Law, and will be valid whether made within or outside of the State.

(c) Rights and Remedies are Cumulative. Except with respect to any rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties to this Agreement, whether provided by Law, in equity or by this Agreement, are cumulative, and not in derogation of other rights and remedies found in this Agreement and, after Close of Escrow, in the Lease. The exercise by either Party of any one or more of such remedies will not preclude the exercise by it, at the same or a different time, of any other such remedies for the same default or breach or of any of its remedies for any other default or breach by the other Party.

(d) No Waiver. No waiver made by either Party with respect to the performance, or manner or time of performance, or any obligation of the other Party or any condition to its own obligation under this Agreement will be considered a waiver with respect to the particular obligation of the other Party or condition to its own obligation beyond those

expressly waived to the extent of such waiver, or a waiver in any respect in regard to any other rights of the Party making the waiver or any other obligations of the other Party.

15.6. Project Materials. If this Agreement terminates for any reason (other than a Port Event of Default) before Completion of the Improvements, Developer will within thirty (30) days after written demand from Port and without cost to Port, (i) deliver to Port any and all copies of studies, applications, reports, permits, plans, architectural drawings, test results, and similar work product regarding the physical condition of the Site, and any existing Construction Documents in the possession of Developer, or Developer's Agents, architects, engineers, or consultants (or if not in the foregoing parties' possession, reasonably obtainable by Developer), or prepared for Developer, including electronic or AutoCAD files (collectively, the "Project Materials"), and (ii) provided Developer is authorized to do so, assign to Port (x) all of Developer's existing rights and interest in the Project Materials, and (y) all of Developer's rights under any Regulatory Approval; provided, however, in each case without any representation or warranty, express or implied, by Developer, as to the sufficiency, accuracy, completeness or compliance with Laws or any other matter whatsoever. Port may use the Project Materials for any purpose whatsoever relating to the Site, without cost or liability therefor to Port or any other Person; provided, however, that, Port will release Developer and Developer's Agents, contractor, architect, engineer and other consultants from any Losses arising out of Port's use of such Project Materials and Construction Documents except to the extent such contractor, architect, engineer or other consultant is retained by Port to complete construction and they agree to such continued liability. Developer will use commercially reasonable efforts to include in all contracts and authorizations for services pertaining to the planning and design of the Improvements, an express agreement by the Person performing such services that Port may use such Project Materials as provided in this *Section 15.6* without compensation or payment from Port in the event such Project Materials are delivered to Port under the provisions of this *Section 15.6*, provided that Port agrees (i) not to remove the name of the preparer of such Project Materials without the preparer's written permission, or (ii) to remove the name of the preparer of such Project Materials at the preparer's written request. If a third-party (i.e. non-Port or non-City party or a party that is not the Project Material author) seeks to obtain and use the Project Materials assigned to the Port, then such third-party will be required to negotiate appropriate and reasonable compensation to the Project Material author for the incremental value of the Project Material.

15.7. Survival. The provisions of this Section will survive the expiration or earlier termination of this Agreement.

15.8. Return of Site. If this Agreement terminates after the Close of Escrow but before Completion of the Improvements due to a Developer Event of Default, Developer will, at its sole expense, return the Site to Port in a safe condition, and unless otherwise requested by Port, must remove all loose building materials, debris, supplies, equipment, personal property, and other materials present at the Site resulting from Developer's Construction activities. Developer's obligations set forth in this *Section 15.8* will survive the earlier termination of this Agreement.

16. SPECIAL PROVISIONS.

Developer has reviewed, understands, and is ready, willing, and able to comply with the terms of this *Article 16*, which summarizes additional City and Port requirements as of the Effective Date, each of which is incorporated by reference as if fully stated in this Agreement. Developer acknowledges that City and Port requirements in effect when Transaction Documents are executed will be incorporated into the Transaction Documents as applicable, and will apply to all contractors, subcontractors, subtenants, and any other Developer parties, as applicable. The following summary is for Developer's convenience only; Developer is obligated to become familiar with all applicable requirements and to comply with them fully as they are amended from time to time. City ordinances are currently available on the web at www.sfgov.org. References to specific laws in this *Article 16* refer to San Francisco municipal codes unless

specified otherwise. Capitalized or other terms used in this *Article 16* and not defined in this Agreement shall have the meanings ascribed to them in the cited ordinance.

16.1. *Non-Discrimination in City Contracts and Benefits Ordinance.*

(a) Covenant Not to Discriminate. In the performance of this Agreement, Developer covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), weight, height, association with members of classes protected under Chapter 12B or 12C of the Administrative Code or in retaliation for opposition to any practices forbidden under Chapter 12B or 12C of the Administrative Code against any employee of Developer or any City and County employee working with Developer, any applicant for employment with Developer, or any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Developer in the City and County of San Francisco.

(b) Subleases and Other Contracts. Developer shall include in all Subleases and other contracts relating to the Site a non-discrimination clause applicable to such Subtenant or other contractor in substantially the form of *Section 16.1(a)*. In addition, Developer shall incorporate by reference in all Subleases and other contracts the provisions of Sections 12B.2 (a), 12B.2 (c)-(k) and 12C.3 of the Administrative Code and shall require all subtenants and other contractors to comply with such provisions.

(c) Non-Discrimination in Benefits. Developer represents that it does not as of the date of this Agreement and will not during the LDDA Term or Lease Term, in any of its operations in San Francisco or where the work is being performed for the City, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits (collectively "Core Benefits") as well as any benefits other than the Core Benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local Law authorizing such registration, subject to the conditions set forth in Section 12B.2 of the Administrative Code.

(d) CMD Form. On or prior to the Effective Date, Developer shall execute and deliver to Port the "Nondiscrimination in Contracts and Benefits" form approved by CMD.

(e) Penalties. Developer understands that pursuant to Section 12B.2(h) of the Administrative Code, a penalty of \$50.00 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Developer and/or deducted from any payments due Developer.

16.2. *Requiring Health Benefits for Covered Employees.* Unless exempt, Developer agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in Administrative Code Chapter 12Q (Chapter 12Q).

(a) For each Covered Employee Developer shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO.

(b) Notwithstanding the above, if Developer meets the requirements of a "small business" by the City pursuant to Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with *Section 16.2(a)*.

(c) If, within 30 days after receiving written notice of a breach of this Agreement for violating the HCAO, Developer fails to cure such breach or, if such breach cannot reasonably be cured within such 30-day period, Developer fails to commence efforts to cure within such period, or thereafter fails to diligently pursue such cure to completion, the City shall

have the remedies set forth in Section 12Q.5(f). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

(d) Any Sublease or Contract regarding services to be performed on the Site entered into by Developer shall require the Subtenant or Contractor and Subcontractors, as applicable, to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in Chapter 12Q of the Administrative Code. Developer shall notify the Office of Contract Administration when it enters into such a Sublease or Contract and shall certify to the Office of Contract Administration that it has notified the Subtenant or Contractor of the obligations under the HCAO and has imposed the requirements of the HCAO on the Subtenant or Contractor through written agreement with such Subtenant or Contractor. Developer shall be responsible for ensuring compliance with the HCAO for each Subtenant, Contractor and Subcontractor performing services on the Site. If any Subtenant, Contractor or Subcontractor fails to comply, the City may pursue the remedies set forth in Section 12Q.5 of the Administrative Code against Developer based on the Subtenant's, Contractor's, or Subcontractor's failure to comply, provided that the Contracting Department has first provided Developer with notice and an opportunity to cure the violation.

(e) Developer shall not discharge, reprimand, penalize, reduce the compensation of, or otherwise discriminate against, any employee for notifying the City of any issue relating to the HCAO, for opposing any practice proscribed by the HCAO, for participating in any proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(f) Developer represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the requirements of the HCAO.

(g) Developer shall keep itself informed of the requirements of the HCAO, as they may change from time to time.

(h) Upon request, Developer shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subtenants, Contractors, and Subcontractors.

(i) Within ten (10) business days of any request, Developer shall provide the City with access to pertinent records relating to any Developer's compliance with the HCAO. In addition, the City and its agents may conduct random audits of Developer at any time during the Term. Developer agrees to cooperate with City in connection with any such audit.

(j) If a Contractor or Subcontractor is exempt from the HCAO because the amount payable to such Contractor or Subcontractor under all of its contracts with the City or relating to City-owned property is less than \$25,000.00 (or \$50,000.00 for nonprofits) in that fiscal year, but such Contractor or Subcontractor later enters into one or more agreements with the City or relating to City-owned property that cause the payments to such Contractor or Subcontractor to equal or exceed \$75,000.00 in that fiscal year, then all of the Contractor's or Subcontractor's contracts with the City and relating to City-owned property shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements to equal or exceed \$75,000.00 in the fiscal year.

16.3. First Source Hiring. The City has adopted a First Source Hiring Program (Administrative Code Sections 83.1 et seq.) which establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry-level positions as those terms are defined by the ordinance. Developer acknowledges receiving and reviewing the First Source Hiring Program materials and requirements and agrees to comply with requirements of the ordinance as implemented by the Port and/or City, including without limitation, notification of vacancies throughout the Term and entering into a First Source Hiring Agreement, if applicable. Developer acknowledges and agrees that it may be subject to monetary penalties for failure to comply with the ordinance or a First Source Hiring Agreement

and that such non-compliance shall be a default of this Agreement. **[Note: This Section subject to revision based on agreed format between Developer and City. Requirements will include compliance with Chapter 83, First Source Hiring Program for end use jobs – good faith effort working with OEWD for the operations of the hotel and any entry-level position.]**

16.4. Local Business Enterprises. The Port Commission encourages the participation of local business enterprises (“LBEs”) in Developer’s operations. Developer is committed to affording opportunities to LBEs to participate in the architecture, design, engineering, and construction of the Improvements, and in the operation of the Project and agrees to consult with the CMD of the City’s General Services Agency to determine appropriate methods for promoting participation by LBEs. Architecture, Engineering, Laboratory Services (Materials Testing), Trucking and Hauling, and Security Guard Services are categories of services that may provide opportunities for certified LBE participation. City maintains a list of certified LBEs at: <http://sfgov.org/cmd/lbe-certification-0>. **[Note: This Section subject to revision based on agreed format between Developer and City. LBE goals 17% SF Small and Micro LBE sub goal across the board for non-construction and construction; 17% SF Small and Micro LBE participation for operations; Standard Good Faith Outreach Efforts including advance notice, outreach, and record keeping provisions; Port and TZK will seek to, whenever practicable, engage contracting teams to reflect the diversity of the City and include participation of both businesses and residents from the City’s most disadvantaged communities including, but not limited to the Bayview/Hunters Point, Chinatown, Mission, South of Market, Tenderloin, Visitacion Valley and Western Addition neighborhoods.]**

16.5. Indoor Air Quality. Tenant agrees to comply with Section 711(g) of the Environment Code and any additional regulations adopted by the Director of the Department of the Environment pursuant to Environment Code Section 703(b) relating to construction and maintenance protocols to address indoor air quality.

16.6. Prohibition Against Tobacco Advertising; Prohibition Against Tobacco Product Sales, Manufacture, and Distribution. Developer acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on the Premises. This advertising prohibition includes the placement of the name of a company producing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. In addition, Developer acknowledges and agrees that no Sales, Manufacture, or Distribution of Tobacco Products (as such capitalized terms are defined in Health Code Section 19K.1) is allowed on the Premises and such prohibition must be included in all subleases or other agreements allowing use of the Premises. The prohibition against Sales, Manufacture, or Distribution of Tobacco Products does not apply to persons who are affiliated with an accredited academic institution where the Sale, Manufacture, and/or Distribution of Tobacco Products is conducted as part of academic research.

16.7. Prohibition of Alcoholic Beverages Advertising. Developer acknowledges and agrees that no advertising of alcoholic beverages is allowed on the Site. For purposes of this section, “alcoholic beverage” shall be defined as set forth in California Business and Professions Code Section 23004, and shall not include cleaning solutions, medical supplies and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing, selling or distributing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of alcoholic beverages, (ii) encourage people not to drink alcohol or to stop drinking alcohol, or (iii) provide or publicize drug or alcohol treatment or rehabilitation services. This advertising prohibition does not apply to any restaurant within the Premises or to Developer or any Subtenant operating a business where the sale, production or consumption of alcoholic beverages is legally permitted and that complies with applicable City sign ordinances.

16.8. Graffiti Removal. Developer will remove all graffiti from the Site (including any construction fencing, barriers and Signs) within forty-eight (48) hours of the earlier of Developer's (i) discovery or notification of the graffiti or (ii) receipt of notification of the graffiti from the Department of Public Works or Port. This *Section 16.8* is not intended to require Developer to breach any lease or other agreement that it may have concerning its use of the Site. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only any of the Exterior Improvements, whether public or private, without the consent of the owner of the property or the owner's authorized Agent, and which is visible from the public right-of-way. "Graffiti" does not include: (1) any Sign that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code, the Port Building Code, the Port's Sign Guidelines, or the San Francisco Building Code; or (2) any mural or other painting or marking on the Site that is protected as a work of fine art under the California Art Preservation Act (Calif. Civil Code §§ 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

16.9. Restrictions on the Use of Pesticides. Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or "IPM Ordinance") describes an integrated pest management ("IPM") policy to be implemented by all City departments. Developer will not use or apply or allow the use or application of any pesticides on the Site, and will not contract with any party to provide pest abatement or control services to the Site, without first receiving City's written approval of an integrated pest management plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Developer may need to apply to the Site during the term of this Agreement, (ii) describes the steps Developer will take to meet the City's IPM Policy described in Section 300 of the IPM Ordinance, and (iii) identifies, by name, title, address and telephone number, an individual to act as the Developer's primary IPM contact person with the City. Developer will comply, and will require all of Developer's contractors to comply, with the IPM plan approved by the City and will comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if Developer were a City department. Among other matters, such provisions of the IPM Ordinance: (a) provide for the use of pesticides only as a last resort, (b) prohibit the use or application of pesticides on property owned by the City, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most current Reduced Risk Pesticide List compiled by City's Department of the Environment), (c) impose certain notice requirements, and (d) require Developer to keep certain records and to report to City all pesticide use by Developer's staff or contractors. If Developer or Developer's contractor will apply pesticides to outdoor areas, Developer must first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation and any such pesticide application will be made only by or under the supervision of a person holding a valid Qualified Applicator certificate or Qualified Applicator license under state law. City's current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the San Francisco Department of the Environment website, <http://sfenvironment.org/ipm>.

16.10. MacBride Principles - Northern Ireland. The City and Port urge companies doing business in Northern Ireland to move towards resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in Administrative Code Section 12F.1, et seq. The City and Port also urge San Francisco companies to do business with corporations that abide by the MacBride Principles.

16.11. Tropical Hardwood and Virgin Redwood Ban. The City and Port urge companies not to import, purchase, obtain or use for any purpose, any tropical hardwood or tropical hardwood wood product, or any virgin redwood or virgin redwood wood product. Developer agrees that, except as permitted by the application of Sections 802(b) and 803(b) of

the San Francisco Environment Code, Developer shall not use or incorporate any tropical hardwood or virgin redwood in the Construction of the Improvements. Developer shall not provide any items to the construction of the Improvements, or otherwise in the performance of this Agreement which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event Developer fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environment Code, Developer shall be liable for liquidated damages for each violation in any amount equal to the contractor's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

16.12. Preservative Treated Wood Containing Arsenic. Developer may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the Environment Code is obtained from the Department of the Environment under Section 1304 of the Environment Code. The term "preservative-treated wood containing arsenic" means wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Developer may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Developer from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" means a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

16.13. Notification of Limitations on Contributions. Through its execution of this Agreement, Developer acknowledges its obligations under Section 1.126 of the San Francisco Campaign and Governmental Conduct Code which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making a contribution to such an officer, or candidate for such an office, or committee controlled by such officer or candidate at any time from the submission of a proposal for such contract until the termination of negotiations for such contract or twelve (12) months has elapsed from the date the contract is approved.

Developer acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of one hundred thousand dollars (\$100,000) or more. Developer further acknowledges that, if applicable, (i) the prohibition on contributions applies to each Developer; each member of Developer's board of directors, and Developer's principal officers, including its chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten percent (10%) in Developer; and any subcontractor listed in the Developer's bid or contract; and (ii) within thirty (30) days of the submission of a proposal for the contract, the Port is obligated to submit to the Ethics Commission the parties to this Agreement. Additionally, Developer certifies that Developer must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 by the time it submitted a proposal for the contract, and has provided to City the names of the persons required to be informed.

San Francisco Ethics Commission Regulation 1.126-1 provides that negotiations are commenced when a prospective contractor first communicates with a City officer or employee about the possibility of obtaining a specific contract. This communication may occur in person, by telephone or in writing, and may be initiated by the prospective contractor or a City officer or employee. Negotiations are completed when a contract is finalized and signed by the City and the contractor. Negotiations are terminated when the City and/or the prospective contractor end the negotiation process before a final decision is made to award the contract.

16.14. *Sunshine Ordinance.* In accordance with Section 67.24(e) of the Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between Port and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided which this Section covers will be made available to the public upon request.

16.15. *Developer Conflicts of Interest.* Through its execution of this Agreement, Developer acknowledges that it is familiar with the provisions of Article III, Chapter 2 of the Campaign and Governmental Conduct Code, and Sections 87100 et seq. and Sections 1090 et seq. of the California Government Code, certifies that it does not know of any facts which would constitute a violation of these provisions and agrees that if Developer becomes aware of any such fact during the LDDA Term Developer shall immediately notify the Port and City.

16.16. *Drug-Free Workplace.* Developer acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. Ch. 81), the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City property (including the Site). Developer and its Agents or assigns shall comply with all terms and provisions of such Act and the rules and regulations promulgated thereunder. Developer agrees that any violation of this prohibition by Developer, its Agents or assigns shall be deemed a material breach of this Agreement.

16.17. *Prevailing Wages and Working Conditions.*

(a) Prevailing Wage Rate Requirement For Construction. Developer agrees that any person performing (i) labor in the Construction of the Improvements, including any "public work" as defined under California Labor Code Section 1720 et seq. (which includes certain construction, alteration, maintenance, demolition, installation, repair, carpet laying, or refuse hauling work if paid for in whole or part out of public funds) or (ii) Covered Construction to: (A) pay workers performing such work not less than the highest prevailing rate of wages (B) provide the same hours, working conditions, and benefits as in each case are provided for similar work performed in San Francisco County, and (C) employ apprentices in accordance with Administrative Code Section 23.61 (collectively, "**Prevailing Wage Requirements**"). Developer agrees to cooperate with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Prevailing Wage Requirements.

Developer will include, and will require its subtenants, Agents, and contractors and subcontractors (regardless of tier), to include the Prevailing Wage Requirements and the agreement to cooperate in City enforcement actions in any Construction Contract with specific reference to Administrative Code Section 23.61. Each such Construction Contract will name the City and County of San Francisco, affected workers, and employee organizations formally representing affected workers as third party beneficiaries for the limited purpose of enforcing the Prevailing Wage Requirements, including the right to file charges and seek penalties against any contractor or subcontractor in accordance with Administrative Code Section 23.61. Developer's failure to comply with its obligations under this section constitutes a material breach of this Agreement. A contractor's or subcontractor's failure to comply with this Section will enable the City to seek the remedies specified in Administrative Code Section 23.61 against the breaching party.

Developer will also pay, and shall require its subtenants, Agents, and contractors and subcontractors (regardless of tier) to pay, the Prevailing Rate of Wage for the following activities on the Site as set forth in and to the extent required by Administrative Code Chapter 21C: a Public Off-Street Parking Lot, Garage or Automobile Storage Facility (as defined in

Section 21C.3), a Show (as defined in Section 21C.4), a Special Event (as defined in Section 21C.8), and Broadcast Services (as defined in Section 21C.9).

(b) Prevailing Wage Rate Requirement For Theatrical Workers. City law entitles individual engaged in theatrical or technical services related to the presentation of a Show at the Site, including individuals engaged in rigging, sound, projection, theatrical lighting, videos, computers, draping, carpentry, special effects, and motion picture services, to be paid not less than the Prevailing Rate of Wages (including fringe benefits or matching equivalents) fixed by the Board of Supervisors, unless the Show is free and open to the public or meets any of the other exemptions in Administrative Code Section 21C.4(b). Capitalized terms in this Section shall have the meanings provided in Section 21.C4. Accordingly, Developer, as a condition of this Agreement, agrees that:

(i) Developer shall comply with the obligations in Administrative Code Section 21C.4, and shall require Developer's subtenants, Agents, contractors, and any subcontractors, to comply with the obligations in Section 21C.4, including the payment of Prevailing Rate of Wages to individuals engaged in theatrical or technical services related to the presentation of a Show. In addition, if Developer or its subtenant, Agent, contractor (or any subcontractor) fails to comply with these obligations, the City shall have all available remedies against Developer to secure compliance and seek redress for workers who provided the services as described in Section 21C.7, together with the remedies set forth in this Agreement.

(ii) The City may inspect and/or audit any workplace, job site, books and records pertaining to the presentation of a Show at the Site, and may interview any individual who provides, or has provided, work involving theatrical or technical services for the Show at the Site; provided that the City agrees it will not conduct any such inspection or interview at a time or in a manner that would unreasonably interfere with performances at the Site.

(iii) Developer shall provide to the City (and to require any subtenant, contractor or subcontractor who maintains such records to provide to the City), upon request, immediate access to all workers' time sheets, payroll records, and paychecks for inspection in so far as they relate the presentation of a Show at the Site.

For current Prevailing Wage rates, see www.sfgov.org/olse/prevailingwages or call the Office of Labor Standard Enforcement at 415-554-6235.

(c) Prevailing Wage Rate Requirement For Special Event or Trade Show Work. City law entitles individuals engaged in work involving the on-site installation, set-up, assembly, and dismantling of temporary exhibits, displays, booths, modular systems, signage, drapery, specialty furniture, floor coverings, and decorative materials in connection with trade shows, conventions, expositions, and other special events on City property to receive the Prevailing Rate of Wages (including fringe benefits or matching equivalents) fixed by the Board of Supervisors, unless the event is free and open to the public or meets any of the other exemptions in Administrative Code Section 21C.8(b). Capitalized terms in this Section shall have the meanings provided in Sections 21.C8. Accordingly, Developer, as a condition of this Agreement, agrees that:

(i) Developer will comply with the obligations in Administrative Code Section 21C.8, and will require Developer's subtenants, Agents, contractors, and any subcontractors, to comply with the obligations in Section 21C.8, including the payment of Prevailing Wage Rates to workers engaged in On-site work on Trade Shows or Special Events. In addition, if Developer or its subtenant, Agent, contractor (or any subcontractor) fails to comply with these obligations, the City shall have all available remedies against Developer to secure compliance and seek redress for workers who provided the services as described in Section 21C.7, together with the remedies set forth in this Agreement.

(ii) The City may inspect and/or audit any workplace, job site, books and records pertaining to On-site work on Trade Shows or Special Events at the Site, and may interview any individual who provides, or has provided, On-site work on Trade Shows or Special Events at the Site.

(iii) Developer shall provide to the City (and to require any subtenant, Agent, contractor or subcontractor who maintains such records to provide to the City), upon request, immediate access to all workers' time sheets, payroll records, and paychecks for inspection in so far as they relate a Trade Show or Special Event at the Site.

For current Prevailing Wage rates, see www.sfgov.org/olse/prevailingwages or call the Office of Labor Standard Enforcement at 415-554-6235.

16.18. Prohibition of Political Activity with City Funds. In accordance with Administrative Code Chapter 12.G, no funds appropriated by Port for this Agreement may be expended for organizing, creating, funding, participating in, supporting, or attempting to influence any political campaign for a candidate or for a ballot measure.

16.19. Compliance with Disabled Access Laws. Developer acknowledges that, pursuant to the Disabled Access Laws, programs, services and other activities provided by a public entity to the public, whether directly or through Developer or contractor, must be accessible to the disabled public. Developer shall not discriminate against any person protected under the Disabled Access Laws in connection with the use of all or any portion of the Property and shall comply at all times with the provisions of the Disabled Access Laws.

16.20. Protection of Private Information. Developer agrees to comply fully with and be bound by all of the provisions of Chapter 12M of the Administrative Code (the "Protection of Information Ordinance"), including the remedies provided therein. Consistent with the requirements of the Protection of Information Ordinance, Developer agrees to all of the following:

(a) Neither Developer nor any of its Contractors or Subcontractors who receive Private Information from the City in the performance of a Contract may disclose that information to a Subcontractor or any other person or entity, unless one of the following is true:

(i) The disclosure is authorized by this Agreement;

(ii) Developer receives advance written approval from the Contracting Department to disclose the information; or

(iii) The disclosure is required by judicial order.

(b) Any disclosure or use of Private Information authorized by this Agreement shall be in accordance with any conditions or restrictions stated in this Agreement or the Contracting Department's approval and shall not be used except as necessary in the performance of the obligations under the Contract. Any disclosure or use of Private Information authorized by a Contracting Department shall be in accordance with any conditions or restrictions stated in the approval.

(c) "Private Information" shall mean any information that (1) could be used to identify an individual, including name, address, social security number, medical information, financial information, date and location of birth, and names of relative; or (2) the law forbids any person from disclosing.

(d) Any failure of Developer to comply with the Protection of Information Ordinance shall be a material breach of this Agreement. In such an event, in addition to any other remedies available to it under equity or at law, Port may terminate this Agreement, debar Developer, or bring a false claim action against Developer.

16.21. Diesel Fuel Measures. Developer must minimize exhaust emissions from operating equipment and trucks during construction. At a minimum, Developer will maintain vehicles and equipment in good condition and well-tuned to minimize emissions, ensure that vehicles and equipment run only when necessary, and prohibit running engines when vehicles and equipment are not in use or when queuing. Developer must also make good faith efforts to use low-emission diesel fuel or alternative low-emission fuels for all petroleum hydrocarbon-powered equipment used on the Site, and to explore emerging new technologies for reducing diesel particulate matter, such as catalytic particulate traps, which currently are under study by the California Air Resources Board. Identifying sources of viable alternative low-emission fuels, retrofitting or purchasing new or late-model equipment to use such fuels to the extent reasonably feasible, and using low-emission fuels to the extent reasonably practicable are examples of "good faith efforts." In addition, Developer will encourage independent truckers contracting with Developer to move materials to and from the Site to use low-emission fuels if possible, including if reasonably feasible, providing the truckers with economic incentives to retrofit equipment or take other measures necessary to use low-emission fuels.

16.22. Charter Provisions. This Agreement is governed by and subject to the provisions of the Charter of the City and County of San Francisco.

16.23. Card Check Agreement. Article 6 of Chapter 23 of the Administrative Code presently requires employers of employees in projects that include hotels or restaurants on public property with more than fifty (50) employees to enter into a "card check" agreement with a labor union regarding the preference of employees to be represented by a labor union to act as their exclusive bargaining representative. The Lease will require Developer and Developer's subtenants to comply with these requirements to the extent applicable to restaurant and hotel operations within the Site.

16.24. Food Service Waste Reduction Ordinance. Developer agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided therein and implementing guidelines and rules. By entering into this Agreement, Developer agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Developer agrees that the sum of one hundred dollars (\$100.00) liquidated damages for the first breach, two hundred dollars (\$200.00) liquidated damages for the second breach in the same year, and five hundred dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Developer's failure to comply with this provision.

16.25. Consideration Of Criminal History In Hiring And Employment Decisions.

(a) Developer agrees to, and will cause its contractors, subcontractors, and Agents to comply with and be bound by all of the provisions of Administrative Code Chapter 12T (Criminal History in Hiring and Employment Decisions; "Chapter 12T"), which are hereby incorporated, including the remedies and implementing regulations as may be amended from time to time, with respect to applicants and employees of Developer, its contractors, subcontractors, and Agents, who would be or are performing work at the Site.

(b) Developer must incorporate by reference the provisions of Chapter 12T in the Construction Contract, all contracts, subcontracts, and subleases of some or all of the Site, and must require all its contractors, subcontractors, Agents and subtenants to comply with such provisions. Developer's failure to comply with the obligations in this subsection will constitute a material breach of this Agreement.

(c) Developer, its contractors, subcontractors, Agents and subtenants will not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant's or potential applicant for employment, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

(d) Developer, its contractors, subcontractors, Agents and subtenants will not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection (c) above. Developer, its contractors, subcontractors, Agents and subtenants will not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

(e) Developer, its contractors, subcontractors, Agents and subtenants must state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with Developer, its contractors, subcontractors, Agents, or subtenant at the Site, that the Developer, its contractors, subcontractors, Agents, or subtenant will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

(f) Developer, its contractors, subcontractors, Agents and subtenants must post the notice prepared by the Office of Labor Standards Enforcement ("OLSE"), available on OLSE's website, in a conspicuous place at the Premises and at other workplaces within San Francisco where interviews for job opportunities at the Premises occur. The notice must be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the Premises or other workplace at which it is posted.

(g) Developer, its contractors, subcontractors, Agents and subtenants understand and agree that upon any failure to comply with the requirements of Chapter 12T, the City has the right to pursue any rights or remedies available under Chapter 12T or this Agreement, including but not limited to a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Agreement.

(h) If Developer has any questions about the applicability of Chapter 12T, it may contact Port for additional information. Port may consult with the Director of the City's Office of Contract Administration who may also grant a waiver, as set forth in Section 12T.8.

16.26. Local Hire. Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in Administrative Code Section 23.62 (the "Local Hiring Requirements"). The Construction of the Project is subject to the Local Hiring Requirements unless the cost for such work is (i) estimated to be less than \$750,000 per building permit; (ii) is in connection with the set-up, execution and strike of special events of three (3) or fewer days costing in excess of the Threshold Amount; or (iii) meets any of the other exemptions in the Local Hiring Requirements. Developer agrees that it will comply with the Local Hiring Requirements to the extent applicable. Before starting any Developer Improvements or Alterations, Developer shall contact City's Office of Economic Workforce and Development ("OEWD") to determine whether the work is a Covered Project subject to the Local Hiring Requirements.]

Developer will include, and will require its contractors, subcontractors, Agents and subtenants to include, a requirement to comply with the Local Hiring Requirements in any

contract for a Covered Project with specific reference to Administrative Code Section 23.62. Each such contract will name the City and County of San Francisco as a third party beneficiary for the limited purpose of enforcing the Local Hiring Requirements, including the right to file charges and seek penalties. Developer will cooperate, and require its contractors, subcontractors, Agents and subtenants to cooperate, with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Local Hiring Requirements when required. Developer's failure to comply with its obligations under this Section will constitute a material breach of this Agreement. A contractor's, subcontractor's, Agent's, or subtenants failure to comply with this Section will enable the City to seek the remedies specified in Administrative Code Section 23.62 against the breaching party. **[Note: This Section subject to revision based on agreed format between Developer and City. Requirements will include compliance with Chapter 82, Mandatory Local Hire policy for construction – 30% by trade; and Chapter 83, First Source Hiring Program for end use jobs – good faith effort working with OEWD for the operations of the hotel and any entry-level position.]**

16.27. *San Francisco Bottled Water Ordinance.* Tenant is subject to all applicable provisions of Environment Code Chapter 24 (which are hereby incorporated) prohibiting the sale or distribution of drinking water specified containers at City-permitted events held on the Premises with attendance of more than 100 people, except as otherwise set forth in Environmental Code Chapter 24.

16.28. *Vending Machines; Nutritional Standards and Calorie Labeling Requirements; Offerings.* Developer must not install or permit any vending machine on the Site without the prior written consent of Port. Any permitted vending machine must comply with the food and beverage nutritional standards and calorie labeling requirements set forth in Administrative Code Section 4.9- 1(c), as may be amended from time to time (the "**Nutritional Standards Requirements**"). Developer agrees to incorporate the Nutritional Standards Requirements into any contract for the installation of a vending machine on the Site or for the supply of food and beverages to that vending machine. Failure to comply with the Nutritional Standards Requirements or to otherwise comply with this Section will be deemed a material breach of this Agreement. Without limiting Port's other rights and remedies under this Agreement, Port has the right to require the immediate removal of any vending machine on the Site that is not permitted or that violates the Nutritional Standards Requirements. In addition, any Restaurant including any employee eating establishment located on the Site is encouraged to ensure that at least twenty-five percent (25%) of Meals (as capitalized terms are defined in Administrative Code Section 4.9-1) offered on the menu meet the nutritional standards set forth in Administrative Code Section 4.9-1(e), as may be amended.

16.29. *All-Gender Toilet Facilities.* Developer must comply with Administrative Code Section 4.1-3 which requires at least one all-gender toilet facility on each floor of any new building on City-owned land and within existing buildings leased by the City, including the Site, where extensive renovations are made. An "**all-gender toilet facility**" means a toilet that is not restricted to use by persons of a specific sex or gender identity by means of signage, design, or the installation of fixtures. "**Extensive renovations**" means any renovation where the construction cost exceeds 50% of the cost of providing the toilet facilities required by this section.

16.30. *Consideration of Salary History.* Tenant shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or "**Pay Parity Act.**" For each employment application to Tenant for work that relates to this Agreement or for work to be performed in the City or on City property, Tenant is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant. Tenant shall not (1) ask such applicants about their current or past salary or (2) disclose a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Tenant is subject to the enforcement and penalty provisions in Chapter 12K. Information about Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>.

17. FORCE MAJEURE.

(a) Effect of Force Majeure. For the purpose of this Agreement, neither Developer, Port, nor any successor in interest (the "Delayed Party," as applicable) will be considered in breach of or default in any obligation or satisfaction of a condition to an obligation of the other Party in the event of Force Majeure, and the time fixed for performance of any such obligation or satisfaction of conditions shall be extended by a period of time equal to the duration of the Force Majeure event; provided, however, within thirty (30) days after the beginning of any such Force Majeure event, the Delayed Party shall have first notified the other Party of the cause or causes of such delay and claimed an extension for the reasonably estimated period of the enforced delay.

(b) Definition of Force Majeure. "Force Majeure" means events that cause delays in the Delayed Party's performance of its obligations under this Agreement, or in the satisfaction of a condition to the other Party's performance under this Agreement, due to causes beyond the Delayed Party's control and not caused by the acts or omissions of the Delayed Party (excluding, in any case, a Delayed Party's performance of the payment of money required under the terms of this Agreement), including: acts of nature or of the public enemy; war; invasion; insurrection; riots; any general moratorium in the issuance of governmental or regulatory permits applicable to the Site or the Improvements (but in the absence of such a moratorium, acts of the government relating to issuance of building permits or other Regulatory Approvals are governed by *Section 17(d)*); fires; floods; tidal waves; epidemics; quarantine restrictions; freight embargoes; earthquakes; unusually severe weather (but only if such unusually severe weather causes actual delays); delays of contractors or subcontractors due to any of the foregoing causes; the unanticipated presence of Hazardous Materials or other concealed conditions on the Site that would not have reasonably been discovered through due diligence and that would actually delay or materially and adversely impair or delay Developer's ability to Construct the Improvements; archeological finds on the Site; strikes and substantial interruption of work because of labor disputes (excluding strikes and labor disputes directly related to any contracts between Developer and its contractors or work performed on behalf of Developer); inability to obtain materials or reasonably acceptable substitute materials (provided that Developer has ordered such materials on a timely basis and Developer is not otherwise at fault for such inability to obtain materials); or any Litigation Force Majeure (provided that the Delayed Party proceeds with due diligence to defend or commence, as applicable, such action or proceeding or take other appropriate measures to resolve any dispute that is the subject of such action or proceeding). The following are excluded from the definition of Force Majeure: (1) Developer's failure to secure anticipated financing for the Improvements unless caused by a direct result of some other event of Force Majeure; (2) sea level rise; and (3) any event that does not cause an actual delay.

(c) Definition of Litigation Force Majeure. "Litigation Force Majeure" means any action or proceeding before any court, tribunal, or other judicial, adjudicative or legislative decision-making body, including any administrative appeal, brought by a third party that challenges, (a) the validity of any action taken by the City in connection with the Construction of the Improvements or any findings upon which any action is predicated, or (b) the failure of any Regulatory Agency to impose conditions to a Regulatory Approval or the validity of any other Regulatory Approval required in connection with Construction of the Improvements. With respect to an event of Litigation Force Majeure occurring after the Close of Escrow, such event will not be considered Litigation Force Majeure unless such event would enjoin construction or other work on the Site or any portion thereof, cause a lender to refuse to commit, close, fund, disburse or cause an acceleration of payment on a loan, or prevent or suspend construction work on the Site except to the extent caused by the Party claiming an extension.

Notwithstanding anything to the contrary contained in this Agreement, Litigation Force Majeure excludes any action or proceeding brought by an Affiliate of Developer, any of Developers' members or their Affiliates, any consultant of Developer, or any other Third Party assisted by Developer, directly or indirectly, in such action or proceeding. Performance by a

party hereunder shall be deemed delayed or made impossible by virtue of Litigation Force Majeure during the pendency thereof, and until a judgment, order, or other decision resolving such matter in favor of the party whose performance is delayed has become final and unappealable.

The Parties will each proceed with due diligence and shall cooperate with one another to defend the action or proceeding or take other measures to resolve the dispute that is the subject of such action or proceeding.

(d) Permit Force Majeure. If Developer is diligently proceeding to obtain necessary Building Permits as required by *Section 9.11* or Port or Developer are diligently proceeding to obtain other necessary Regulatory Approvals for the Improvements as required hereunder, Force Majeure includes such party's inability to obtain in a timely manner Building Permits or other Regulatory Approvals. With respect to such event of Force Majeure, time for Close of Escrow and for commencement and Completion of Construction of the Improvements will be tolled for the period equal to the number of days a delay in issuing such permits or other Regulatory Approvals directly results in the delaying of the Close of Escrow or the commencement of Construction of the Improvements in accordance with the Schedule of Performance.

(e) Limitations on Force Majeure. Under no circumstances shall the delay attributable to an event of Force Majeure or Litigation Force Majeure extend beyond 24 months after the start of the event of Force Majeure or Litigation Force Majeure.

18. GENERAL PROVISIONS.

18.1. Notices.

(a) Manner of Delivery. Except as otherwise expressly provided in this Agreement, all notices, demands, approvals, consents and other formal communications between Port and Developer required or permitted under this Agreement shall be in writing and shall be deemed given and effective (i) upon the date of receipt if given by personal delivery on a business day (or the next business day if delivered personally on a day that is not a business day) or (ii) if mailed by (x) the U.S. Postal Service, two (2) business days after deposit with the U.S. Postal Service for delivery by United States mail, first class postage prepaid, or (y) a nationally recognized overnight courier, one (1) business day after deposit with such nationally recognized overnight courier, to Port or Developer at their respective addresses for notice designated below.

(b) Request for Approval. In order for a request for any approval required under the terms of this Agreement to be effective, it shall be clearly marked "**Request for Approval**" and state (or be accompanied by a cover letter stating) substantially the following:

(i) the section of this Agreement under which the request is made and the action or response required;

(ii) if applicable, the period of time as stated in this Agreement within which the recipient of the notice shall respond; and

(iii) if applicable, that the failure to object to the notice within the stated time period will be deemed to be the equivalent of the recipient's approval of or consent to the request for approval which is the subject matter of the notice.

In the event that a request for approval states a period of time for approval that is less than the time period provided for in this Agreement for such approval, the time period stated in this Agreement shall be the controlling time period.

In no event shall a recipient's approval of or consent to the subject matter of a notice be deemed to have been given by its failure to object to such notice if such notice (or the accompanying cover letter) does not comply with the requirements of this Section.

(c) Addresses for Notices. All notices shall be properly addressed and delivered to the Parties at the addresses set forth below or at such other addresses as either Party may designate by written notice given in the manner provided in this Section:

All notices, demands, consents, approvals, and requests that may or are to be given by any Party to the other will be in writing, except as otherwise provided herein. All notices, demands, consents, approvals, and requests to be provided hereunder will be deemed to have been properly given on the date of receipt if served personally on a day that is a business day (or on the next business day if served personally on a day that is not a business day) or if mailed, the next business day after being deposited with an overnight courier or two business days after being deposited with the U.S. Postal Service (as evidenced by a postmark date), postage prepaid, in each case, addressed as follows:

To Port: San Francisco Port Commission
Pier 1
San Francisco, California 94111
Attention: Director of Planning &
Development (Reference: Teatro)
Telephone: (415) 274-0400

With a copy to: Port General Counsel
Pier 1
San Francisco, California 94111
Telephone: (415) 274-0486

To Developer: TZK Broadway, LLC
1215 K Street, Suite 1150
Sacramento, CA 95814
Attention: Darius Anderson, Manager
Telephone: (916) 443-8891

PresidioCo Bay Area LLC
631 Folsom Street, 11F
San Francisco, CA 94107
Attn: Rikesh Patel, Manager
Telephone: 415-264-7298

TZZ San Francisco, LLC
14200 NE 145th Street
Woodinville, WA 98072
Attn: Norm Langill, Manager
Telephone: (206) 802-0015

18.2. Conflict of Interest. No member, official or employee of the City, including its Port, may have any personal interest, direct or indirect, in this Agreement nor shall any such member, official or employee participate in any decision relating to this Agreement which affects her or his personal interest or the interests of any corporation, partnership or association in which she or he is interested directly or indirectly.

18.3. Inspection of Books and Records. Port, including its Agents, has the right at all reasonable times and from time to time to inspect the books and records of Developer in a

location within San Francisco during regular business hours pertaining to Developer's compliance with its obligations under this Agreement, provided that Port shall, to the maximum extent allowed by applicable law, keep strictly confidential any such information which Developer reasonably and in good faith determines is proprietary and clearly and conspicuously so designates.

18.4. Time of Performance.

(a) Expiration. All performance dates (including cure dates) expire at 5:00 p.m., San Francisco, California time, on the performance or cure date.

(b) Weekends and Holidays. A performance date that falls on a Saturday, Sunday or City holiday is deemed extended to the next business day.

(c) Days for Performance. All periods for performance specified in this Agreement in terms of days shall be calendar days, and not business days, unless otherwise expressly provided in this Agreement.

(d) Time of the Essence. Time is of the essence with respect to each required completion date in the Schedule of Performance.

18.5. Interpretation of Agreement.

(a) Exhibits. Whenever an "Exhibit" is referenced, it means an exhibit or attachment to this Agreement unless otherwise specifically identified. All such Exhibits are incorporated in this Agreement by reference.

(b) Captions. Whenever a section or paragraph is referenced, it refers to this Agreement unless otherwise specifically identified. The captions preceding the sections of this Agreement and in the table of contents have been inserted for convenience of reference only. Such captions shall not define or limit the scope or intent of any provision of this Agreement.

(c) Words of Inclusion. The use of the term "including", "include", "such as" or words of similar import when following any general term, statement or matter shall not be construed to limit such term, statement or matter to the specific items or matters, whether or not language of non-limitation is used with reference thereto. Rather, such terms shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter.

(d) No Presumption Against Drafter. This Agreement has been negotiated at arm's length and between Persons sophisticated and knowledgeable in the matters dealt with herein. In addition, experienced and knowledgeable legal counsel has represented each Party. Accordingly, this Agreement shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this Agreement (including California Civil Code Section 1654).

(e) Costs and Expenses. The Party on which any obligation is imposed in this Agreement shall be solely responsible for paying all costs and expenses incurred in the performance of such obligation, unless the provision imposing such obligation specifically provides to the contrary.

(f) Agreement References. Wherever reference is made to any provision, term or matter "in this Agreement," "herein" or "hereof" or words of similar import, the reference shall be deemed to refer to any and all provisions of this Agreement reasonably related thereto in the context of such reference, unless such reference refers solely to a specific numbered or lettered section or paragraph of this Agreement or any specific subdivision of this Agreement.

(g) Approvals. Unless this Agreement otherwise expressly provides or unless the City's Charter otherwise requires, all approvals, consents or determinations to be made by or

on behalf of the City or Port under this Agreement shall be made by Port's Executive Director and shall not be unreasonably withheld, conditioned, or delayed.

18.6. Successors and Assigns. This Agreement is binding upon and will inure to the benefit of the successors and assigns of Port and Developer, subject to the limitations on assignment set forth in *Section 14*. Where the term "**Developer**," or "**Port**" is used in this Agreement, it means and includes their respective successors and assigns. Whenever this Agreement specifies Port as a Party or the holder of the right or obligation to give approvals or consents, if Port or a comparable public body which has succeeded to Port's rights and obligations no longer exists, then the City (or the State, if applicable) will be deemed to be the successor and assign of Port for purposes of this Agreement.

18.7. Technical Corrections. The parties reserve the right, upon mutual agreement of Port's Executive Director and Developer, to enter into memoranda of technical corrections hereto to reflect any non-material changes in the actual legal description and square footages of the Site and the Improvements, and upon full execution thereof, such memoranda shall be deemed to become a part of this Agreement.

18.8. No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of Port and Developer and their successors and assigns. No other Person shall have or acquire any right or action based upon any provisions of this Agreement.

18.9. Real Estate Commissions. Developer and Port each represents that it engaged no broker, agent or finder in connection with this transaction. In the event any broker, agent or finder makes a claim, the Party through whom such claim is made agrees to Indemnify the other Party from any Losses arising out of such claim.

18.10. Counterparts. This Agreement may be executed in counterparts, each of which is deemed to be an original, and all such counterparts constitute one and the same instrument.

18.11. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the terms and conditions mentioned in or incidental to this Agreement (other than as set forth in other Transaction Documents fully executed by the Parties). No parol evidence of any prior draft of this Agreement, or of any other agreement shall be permitted to contradict or vary the terms of this Agreement.

18.12. Amendment. Neither this Agreement nor any of its terms may be terminated, amended or modified except by a written instrument executed by the Parties.

18.13. Governing Law. The Laws of the State of California shall govern the interpretation and enforcement of this Agreement. As part of the consideration for Port's entering into this Agreement, Developer agrees that all actions or proceedings arising directly or indirectly under this Agreement may, at the sole option of Port, be litigated in courts having sites within the State of California.

18.14. Recordation. A memorandum of this Agreement will be recorded by Developer in the Official Records on or after the Effective Date. Developer shall promptly upon request deliver to Port a duly executed and acknowledged quitclaim deed, suitable for recordation in the Official Records and in form and content reasonably satisfactory to Port and the City Attorney, for the purpose of effectuating the termination of Developer's interest under this Agreement upon the termination of this Agreement. Port may record such quitclaim deed at any time on or after the termination of this Agreement, without the need for any approval or further act of Developer.

18.15. Extensions by Port. Upon the request of Developer, Port, acting through its Executive Director, may, by written instrument, extend the time for Developer's performance of any term, covenant or condition of this Agreement or permit the curing of any default upon such

terms and conditions as it determines appropriate, including the time within which Developer shall agree to such terms or conditions, provided, however, that any such extension or permissive curing of any particular default will not operate to release any of Developer's obligations nor constitute a waiver of Port's rights with respect to any other term, covenant or condition of this Agreement or any other default in, or breach of, this Agreement or otherwise effect the time of the essence provisions with respect to the extended date or the other dates for performance under this Agreement.

18.16. *Extensions by Developer.* Upon the request of Port, Developer may, by written instrument, extend the time for Port's performance of any term, covenant or condition of this Agreement or permit the curing of any default upon such terms and conditions as it determines appropriate, including the time within which Port shall agree to such terms or conditions, provided, however, that any such extension or permissive curing of any particular default will not operate to release any of Port's obligations nor constitute a waiver of Developer's rights with respect to any other term, covenant or condition of this Agreement or any other default in, or breach of, this Agreement or otherwise effect the time of the essence provisions with respect to the extended date or the other dates for performance under this Agreement.

18.17. *Further Assurances.* The Parties agree to execute and acknowledge such other and further documents and take such other reasonable actions as may be necessary or reasonably required to effectuate the terms of this Agreement. Port's Executive Director is authorized to execute on behalf of Port any closing or similar documents and any contracts, agreements, memoranda or similar documents with State, regional or local entities or other Persons that are necessary or proper to achieve the purposes and objectives of this Agreement and do not materially increase the obligations of Port under this Agreement, if the Executive Director determines, in consultation with the City Attorney, that the document is necessary or proper and in Port's best interests. The Executive Director's signature on any such document shall conclusively evidence such a determination by him or her.

18.18. *Attorneys' Fees.* If either Party fails to perform any of its respective obligations under this Agreement or if any dispute arises between the Parties hereto concerning the meaning or interpretation of any provision of this Agreement, then the defaulting Party or the Party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other Party on account of such default or in enforcing or establishing its rights under this Agreement, including Attorneys' Fees and Costs. Any such Attorneys' Fees and Costs incurred by either Party in enforcing a judgment in its favor under this Agreement shall be recoverable separately from and in addition to any other amount included in such judgment, and such Attorneys' Fees and Costs obligation is intended to be severable from the other provisions of this Agreement and to survive and not be merged into any such judgment. For purposes of this Agreement, the reasonable fees of attorneys of the Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the City Attorney's Office.

18.19. *Relationship of Parties.* The subject matter of this Agreement is a private development with neither Party acting as the agent of the other Party in any respect. None of the provisions in this Agreement shall be deemed to render Port a partner in Developer's business, or joint venturer or member in any joint enterprise with Developer.

18.20. *Severability.* If any provision of this Agreement, or its application to any Person or circumstance, is held invalid by any court, the invalidity or inapplicability of such provision shall not affect any other provision of this Agreement or the application of such provision to any other Person or circumstance, and the remaining portions of this Agreement shall continue in full force and effect, unless enforcement of this Agreement as so modified by and in response to such

invalidation would be grossly inequitable under all of the circumstances, or would frustrate the fundamental purposes of this Agreement.

18.21. *Representations and Warranties of Developer.* Developer represents and warrants as follows as of the Effective Date and as of the date of the Close of Escrow:

(a) Valid Existence; Good Standing. Developer is a Delaware limited liability company duly organized and validly existing and is in good standing under the laws of the State of Delaware. Developer has all requisite power and authority to conduct its business as presently conducted.

(b) Authority. Developer has all requisite power and authority to execute and deliver the Transaction Documents and to carry out and perform all of the terms and covenants of the Transaction Documents.

(c) No Limitation on Ability to Perform. Neither Developer's articles of formation, operating agreement, nor any other agreement or Law in any way prohibits, limits or otherwise affects the right or power of Developer to enter into and perform all of the terms and covenants of the Transaction Documents. Developer is not party to or bound by any contract, agreement, indenture, trust agreement, note, obligation or other instrument that could prohibit, limit or otherwise affect the same. Other than the Regulatory Approvals required to Construct the Improvements, no consent, authorization or approval of, or other action by, and no notice to or filing with, any governmental authority, regulatory body or any other Person is required for the due execution, delivery and performance by Developer of the Transaction Documents or any of the terms and covenants contained therein. There are no pending or threatened lawsuits or proceedings or undischarged judgments affecting Developer before any court, governmental agency, or arbitrator that might materially and adversely affect the enforceability of the Transaction Documents or the business, operations, assets or condition of Developer.

(d) Valid Execution. The execution and delivery of the Transaction Documents by Developer has been duly and validly authorized by all necessary action. The Transaction Documents will be a legal, valid and binding obligation of Developer, enforceable against Developer in accordance with its terms.

(e) Defaults. The execution, delivery and performance of the Transaction Documents (i) do not and will not violate or result in a violation of, contravene or conflict with, or constitute a default under (A) any agreement, document or instrument to which Developer or by which Developer's assets may be bound or affected, (B) any Law, or (C) the articles of formation or Developer's operating agreement, and (ii) do not and will not result in the creation or imposition of any lien or other encumbrance upon the assets of Developer.

(f) Meeting Financial Obligations. There is no material adverse change in Developer's financial condition and Developer is meeting its current liabilities as they mature; no federal or state tax liens have been filed against it; and Developer is not in default or claimed default under any agreement for borrowed money.

The representations and warranties in this Section shall survive any expiration or earlier termination of this Agreement.

18.22. *Effective Date.* This Agreement shall become effective on the date the Parties duly execute and deliver this Agreement following approval by the Port Commission of the Transaction Documents, approval by the Board of Supervisors and the Mayor of the Lease, all in their respective sole and absolute discretion, and payment by Developer of any outstanding Transaction Costs (as defined in the ENA) incurred during the ENA term. The Effective Date of this Agreement will be inserted by Port on the cover page and on Page 1 of this Agreement; provided, however, failure by Port to do so shall in no way invalidate this Agreement. Where used in this Agreement or in any of its exhibits, references to "the date of this Agreement," the

“reference date of this Agreement,” “Agreement date” or “Effective Date” shall mean the Effective Date determined as set forth above and shown on Page 1 of this Agreement.

19. DEFINITIONS.

For purposes of this Agreement, initially capitalized terms shall have the meanings ascribed to them in this Section:

“Affiliate” is defined in the Lease.

“Agents” means, when used with reference to either Party to this Agreement or any other Person, the members, managers, officers, directors, commissioners, employees, agents and contractors of such Party or other Person, and their respective heirs, legal representatives, successors and assigns.

“Agreed Total Project Cost and Developer Equity Amount” is defined in *Section 11.2(b)*.

“Agreement” means this Lease Disposition and Development Agreement, including its exhibits, as it may be amended in accordance with its terms.

“alcoholic beverage” is defined in *Section 16.7*.

“All-gender toilet facility” is defined in *Section 16.29*.

“Annual Project Cost and Equity Statement” is defined in *Section 9.8(b)*.

“Anticipated Development Budget” means the anticipated budget for the Improvements based on the Preliminary Construction Documents and the Anticipated Pro-Forma. The Anticipated Development Budget will show a balanced sources and uses of funds that include the total development cost for Construction of the Improvements, including line items for Pre-LDDA Costs, permits, fees, exactions, architectural and engineering costs, Hard Costs, Permissible Financing Costs, insurance and bonding costs, and other Soft Costs, along with the sources of funds. The Anticipated Development Budget is attached hereto as *Exhibit J*.

“Anticipated Pro-Forma” is attached hereto as *Exhibit D*.

“As Is With All Faults” is defined in *Section 5.2*.

“Attorneys’ Fees and Costs” means any and all attorneys’ fees, costs, expenses and disbursements, including consultants and experts, expert witness fees and costs, laboratory costs, travel time and associated costs, transcript preparation fees and costs, document copying, exhibit preparation, courier, postage, facsimile, long-distance and communications expenses, court costs and the costs and fees associated with any other legal, administrative or alternative dispute resolution proceeding, fees and costs associated with execution upon any judgment or order, and costs on appeal.

“Audited Total Project Cost and Equity Statement” is defined in *Section 11.1*.

“Board” or “Board of Supervisors” means the Board of Supervisors of the City and County of San Francisco.

“Building Permit(s)” means a permit or permits issued by Port, in its regulatory capacity, which will allow Developer to commence Construction of the Improvements.

“Burton Act” means the provisions of Chapter 1333 of the Statutes of 1968 of the California Legislature, as amended, providing for the transfer to the City from the State, subject to specified terms, conditions and reservations, of the control and management of the certain tide and submerged lands comprising the Harbor of San Francisco.

“Certificate of Completion” is described in *Section 12*.

“Certified Total Project Cost and Equity Statement” is defined in *Section 11.2(a)*.

“Chapter 12T” is defined in *Section 16.25(a)*.

“City” means the City and County of San Francisco, a municipal corporation. City shall refer to the City operating by and through its Port Commission, where appropriate. All references to the City includes Port.

“City Projects” is defined in *Section 9.14*.

“Close of Escrow” means the Delivery of the Site by Port to Developer through the Escrow.

“Closing Costs” is defined in *Section 4.2(c)*.

“CMD” means the Contract Monitoring Division of the City’s General Services Agency.

“Completion” or “Completed” is defined in *Section 12.1(c)*.

“Conditional Use Permit” means the Conditional Use Authorization for the Project issued by the Planning Commission on May 2, 2019 by Motion No. 20444, including all the conditions attached in *Exhibit A* to such motion.

“Construction” means all new construction, replacement, rehabilitation, and demolition occurring on the Site, or where applicable, off-Site, pursuant to this Agreement and the Lease. “Construct” will have a correlative meaning.

“Construction Contract” is defined in *Section 4.4(a)(xv)*.

“Construction Documents” is defined in *Section 9.2*.

“Consultant Invoice” is defined in *Section 2.5(c)*.

“Control” means the ownership (indirect or direct) by one Person of more than fifty percent (50%) of the profits, capital, or beneficial interest of another Person, and “Controlled” and “Controlling” have correlative meanings.

“Core Benefits” is defined in *Section 16.1(c)*.

“Deferred ENA Negotiation Fee” is defined in *Section 2.3*.

“Deferred Items” is defined in *Section 12.1(b)*.

“Delayed Completion Fee” is defined in *Section 2.7*.

“Delayed Party” is defined in *Section 17(a)*.

“Deliver” or “Delivery” means execution and delivery through Escrow by Port to Developer, of a leasehold estate in the Site.

“Developer” means TZK Broadway, LLC, a California limited liability company, or any successor permitted under this Agreement.

“Developer Event of Default” is defined in *Section 15.1*.

“Developer’s Certified Total Project Cost and Equity Statement” is defined in *Section 11.2(a)*.

“Development Budget” means the budget for the Improvements based on the Final Construction Documents and the Final Pro-Forma. The Development Budget will show a balanced sources and uses of funds that include the total development cost for Construction of the Improvements, including line items for Pre-LDDA Costs, permits, fees, exactions, architectural and engineering costs, Hard Costs, other Soft Costs, Permissible Financing Costs, and insurance and bonding costs, along with the sources of funds. The Development Budget will be substantially in the form of the Anticipated Development Budget attached hereto as *Exhibit J*.

“**Disabled Access Laws**” means all Laws related to access for persons with disabilities including the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq. and disabled access laws under Port’s building code.

“**Effective Date**” is defined in *Section 18.22*.

“**ENA**” means the Exclusive Negotiation Agreement between the Parties and dated September 10, 2015.

“**ENA Negotiation Fee**” is defined in *Section 2.3*.

“**Environmental Financial Performance Deposit**” is defined in the Lease.

“**Environmental Laws**” means any present or future federal, state or local Laws or policies relating to Hazardous Material (including the Handling, Release, or Remediation) or to human health and safety, industrial hygiene or environmental conditions in the environment, including structures, soil, air, air quality, water, water quality and groundwater conditions, and any environmental mitigation measure adopted under Environmental Law affecting any portion of the Site.

“**Environmental Notice**” is defined in *Section 7(b)*.

“**Environmental Oversight Deposit**” is defined in the Lease.

“**Environmental Protection Plan**” means the environmental protection plan described in *Section 9.1(f)*.

“**Environmental Regulatory Action**” when used with respect to Hazardous Materials means any inquiry, investigation, enforcement, Remediation, agreement, order, consent decree, compromise, or other action that is threatened, instituted, filed, or completed by an Environmental Regulatory Agency in relation to a Release of Hazardous Materials, including both administrative and judicial proceedings.

“**Environmental Regulatory Agency**” means the EPA, OSHA, any California Environmental Protection Agency board, department, or office, including the Department of Toxic Substances Control and the San Francisco Bay Regional Water Quality Control Board, Cal-OSHA, the Bay Area Air Quality Management District, the San Francisco Department of Public Health, the San Francisco Fire Department, SFPUC, Port, or any other Regulatory Agency now or later authorized to regulate Hazardous Materials.

“**EPA**” means the United States Environmental Protection Agency.

“**Escrow**” is defined in *Section 4.2(a)*.

“**Exacerbate**” or “**Exacerbating**” when used with respect to Hazardous Materials means any act or omission that increases the quantity or concentration of Hazardous Materials in the affected area, causes the increased migration of a plume of Hazardous Materials in soil, groundwater, or bay water, causes a Release of Hazardous Materials that had been contained until the act or omission, or otherwise requires Investigation or Remediation that would not have been required but for the act or omission. Exacerbate also includes the disturbance, removal or generation of Hazardous Materials in the course of Developer’s operations, Investigations, maintenance, repair, and Construction. “**Exacerbation**” has a correlating meaning.

“**Executive Director**” means the Executive Director of Port or his or her designee.

“**Extended Target Close Date**” is defined in *Section 4.3(b)*.

“**Extended Target Final Inspection Date**” is defined in *Section 10.2(a)*.

“**Extensive renovations**” is defined in *Section 16.29*.

“**Exterior Improvements**” means any improvements, furnishings, fixtures, or equipment located in the exterior areas of the Site (whether public access or not and including the roof)

and/or located in the public access areas of the Buildings, which may include mechanical equipment, photovoltaic panels, satellite dishes, antennae and other communication equipment, public art, bollards, flower baskets, benches, tables, chairs, umbrellas, heaters, railings, gates, trash receptacles, cleats, Signs, kiosks, flagpoles, canopies, awnings, landscaping, planter boxes, light poles, lighting fixtures, fountains, ticket booths, bicycle racks, plaques, markers, tents, models, other street furniture, and paving or other surface treatments.

"Final Certificate of Occupancy" means issuance by Port's building department of a Certificate of Final Completion and Occupancy for the applicable Improvements [that will permit occupancy of the Improvements/ will allow the hotel and Teatro to open to the public/commence operations].

"Final Construction Documents" is defined in *Section 9.2(a)(iii)*.

"Finally Granted" means that the action is final, binding and non-appealable and all applicable statutes of limitation relating to such action, including with respect to CEQA, shall have expired without the filing or commencement of any judicial or administrative action or proceeding in a court of competent jurisdiction with regard to such action.

"Force Majeure" is defined in *Article 17*.

"graffiti" is defined in *Section 16.8*.

"Handle" or **"Handling"** when used with reference to Hazardous Materials means to use, generate, manufacture, process, produce, package, treat, transport, store, emit, discharge, or dispose of any Hazardous Material.

"Hard Costs" is defined in *Section 11.1*.

"Hazardous Material" means any substance, waste, or material that is now or in the future designated by any Regulatory Agency to be capable of posing a present or potential risk of injury to human health or safety, the environment, or property. This definition includes anything designated or defined in any Environmental Law as hazardous, hazardous substance, hazardous waste, toxic, pollutant, or contaminant; any asbestos, asbestos containing materials, and PACMs, whether or not part of the structure of any existing improvements, buildings or structures on the Site, any Improvements to be constructed on the Site by or on behalf of Developer, or occurring in nature; and other naturally-occurring substances such as petroleum, including crude oil or any fraction, and natural gas or natural gas liquids and lead containing materials.

"Hazardous Material Claim" means any Environmental Regulatory Action or any Claim made or threatened by any third party against the Indemnified Parties, or the Site, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence or Release of any Hazardous Materials, including Losses based in common law. Hazardous Materials Claims include Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the Site or other Port property, the loss or restriction of the use or any amenity of the Site or other Port property, and Attorneys' Fees and Costs, and consultants' fees and experts' fees and costs.

"Hotel" means a public, independent lodging establishment having approximately 100-200 separately keyed guest rooms that provides superior services, facilities and amenities for its guests at the Approved Operating Standards (as defined in the Lease), who are primarily short-term destination and business travelers looking for design, service, location and amenities, but which do not necessarily provide all of the services of a full-service hotel, such as full-service conference, meeting and catering facilities, a full-service health club and spa, or other full-service recreational facilities.

"Hotel Opening Date" is defined in *Section 11.1*.

"Improvements" mean all physical Construction on the Site (and off-Site where so designated in the Scope of Development) and all buildings, structures, fixtures and other

improvements erected, built, renovated, rehabilitated, restored, placed, installed or constructed upon or within the Site on or after the Effective Date, as further described in the Scope of Development and elsewhere in this Agreement.

"Indemnified Parties" means City, including all of its boards, commissions, departments, agencies and other subdivisions, including Port, all of the Agents of the City, and their respective heirs, legal representatives, successors and assigns, and each of them.

"Indemnify" means indemnify, protect, defend and hold harmless. **"Indemnification"** and **"Indemnity"** have correlative meanings.

"Initial Period to Close Escrow" is defined in *Section 2.1*.

"Investigate" or **"Investigation"** when used with reference to Hazardous Materials means any activity undertaken to determine and/or characterize the nature and extent of Hazardous Materials that may be located in, on, under, around, or about the Site or any Improvements thereon, or which have been, are being, or threaten to be Released into the environment. Investigation shall include preparation of site history reports, performing equipment and facility testing such as testing the integrity of secondary containment and above and underground tanks or pipes, and sampling and analysis of environmental conditions in, on, under, around, or about the Site or any Improvements thereon and continuing until the appropriate Regulatory Agency has-issued a no further action letter, lifted a clean-up order, or taken similar action.

"Invitees" when used with respect to Developer means the customers, patrons, invitees, guests, members, licensees, assignees and subtenants of the tenant under the Lease and the customers, patrons, invitees, guests, members, licensees, assignees and sub-tenants of subtenants.

"Joint Escrow Instructions" is defined in *Section 4.2(b)*.

"IPM" is defined in *Section 16.9*.

"IPM Ordinance" is defined in *Section 16.9*.

"Kenwood" means Kenwood Investments No. 6, LLC.

"Laws" means all present and future applicable laws, ordinances, rules, regulations, permits, codes, authorizations, orders and requirements, whether or not foreseen or unforeseen, or in the contemplation of the Parties, which may affect or be applicable to the Site or any part of the Site (including use of the Site and the buildings and Improvements on or affixed to the Site), including all consents or approvals (including Regulatory Approvals) required to be obtained from or issued by, and all rules and regulations of, and all building and zoning laws (including the Waterfront Plan) of, all federal, state, county and municipal governments, the departments, bureaus, agencies or commissions thereof, authorities, board of officers, any national or local board of fire underwriters, or any other body or bodies exercising similar functions, having or acquiring jurisdiction of the Site or any part thereof, the use thereof and of the buildings and Improvements thereon; and similarly the phrase "Law" shall be construed to mean the same as the above in the singular as well as the plural.

"LBEs" is defined in *Section 16.4*.

"LDDA Fee" is defined in *Section 2.1*.

"LDDA Term" is defined in *Section 1.2*.

"LDDA Termination Fee" is defined in *Section 2.4*.

"Lease" means the Lease No. L-16585 of the Site to be entered into by the Parties, effective as of the Close of Escrow, substantially in the form of Lease attached hereto as *Exhibit B*.

"LEED" means the Leadership in Energy and Environmental Design Green Building Rating System, developed by the U.S. Green Building Council.

“**LEED Gold Certification**” means issuance by the U.S. Green Building Council of a LEED certification of gold or higher for the Improvements.

“**Litigation Force Majeure**” is defined in *Section 17(c)*.

“**Local Hiring Requirements**” is defined in *Section 16.26*.

“**Loss**” or “**Losses**” when used with reference to any Indemnity means any and all claims, demands, losses, liabilities, damages (including foreseeable and unforeseeable consequential damages), liens, obligations, interest, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses (including reasonable Attorneys’ Fees and Costs, and consultants’ fees and costs) of whatever kind or nature, known or unknown, contingent or otherwise.

“**Memorandum of Agreement**” means the memorandum of this Agreement, suitable for recordation in the Official Records and in the form of *Exhibit K*.

“**Memorandum of Lease**” means the memorandum of the Lease, suitable for recordation in the Official Records and in the form of *Exhibit L*.

“**Mitigation Monitoring and Reporting Program**” means the mitigation and improvement measures relating to Construction of the Improvements by Developer, as described in *Exhibit L*.

“**Mobilization and Staging Plan**” means Developer’s plan for construction vehicle routing, parking, and staging during Construction of the Improvements.

“**Mortgage**” means a mortgage, deed of trust, or similar security instrument of tenant’s leasehold interest under the Lease permitted in accordance with the terms of the Lease and that is recorded in the Official Records.

“**Mortgagee**” means the holder or holders of a Mortgage and as defined in the Lease.

“**Mutual Termination Agreement**” is defined in *Recital E*.

“**Nondiscrimination in Contracts and Benefits**” is defined in *Section 16.1(d)*.

“**Nutritional Standards Requirements**” is defined in *Section 16.28*.

“**Official Records**” means, with reference to the recordation of documents, the Official Records of the City and County of San Francisco.

“**OLSE**” means the City’s Office of Labor Standards Enforcement.

“**Outside Close Date**” is defined in *Section 4.3(f)*.

“**Outside Transaction Costs**” is defined in *Section 2.5(c)*.

“**Overpayment**” is defined in *Section 2.5(c)*.

“**Party**” means Port or Developer, as a party to this Agreement; Parties means both Port and Developer, as parties to this Agreement.

“**Payment Advance**” is defined in *Section 2.5(c)*.

“**Performance Bond**” means a payment and performance bond issued by a responsible surety company licensed to do business in the State and in form acceptable to Port from Developer’s contractors naming Port as co-obligee, in a principal amount no less than one hundred percent (100%) of the estimated cost of the Improvements, to ensure Port against any liability for mechanics’ and materialmen’s liens, stop notices and to ensure completion of the Improvements.

“**Performance Dates**” is defined in *Section 4.3(d)*.

“**Permissible Financing Costs**” is defined in *Section 11.1*.

"Permitted Title Exceptions" is defined in *Section 4.7(a)* and includes the items set forth in *Exhibit F*.

"Person" means any individual, partnership, corporation (including any business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture or any other entity or association, the United States, or a federal, state or political subdivision thereof.

"Personal Property" is defined in the Lease.

"Port" means the City and County of San Francisco acting by and through the San Francisco Port Commission.

"Port Event of Default" is defined in *Section 15.3*.

"Port's Sign Guidelines" is defined in *Exhibit M*.

"Port Statement" is defined in *Section 2.5(c)*.

"Pre-LDDA Costs" is defined in *Section 11.1*.

"Preliminary Construction Documents" is defined in *Section 9.2(a)(ii)*.

"preservative-treated wood containing arsenic" is defined in *Section 16.12*.

"Prevailing Wage Requirements" is defined in *Section 16.17(a)*.

"Prior Theater Lease" is defined in *Recital E*.

"Project" is defined in *Recital J*.

"Project Cost" is defined in *Section 11.1*.

"Project Materials" is defined in *Section 15.6*.

"Project Requirements" is defined in *Section 9.1(b)*.

"Public Trust" means the public trust for commerce, navigation and fisheries, including the statutory trust imposed by the Burton Act.

"Qualification Determination" is defined in *Recital M*.

"Quarterly Project Cost and Equity Statement" is defined in *Section 9.8(a)*.

"Record Drawings" is defined in *Section 9.9(a)*.

"Regulatory Agency" and "Regulatory Agencies" means any local, regional, state or federal governmental agency or political subdivision having jurisdiction over the Site, Construction of the Improvements, including EPA, the California Environmental Protection Agency, RWQCB, the Army Corps of Engineers, SFPUC, and Port's Chief Harbor Engineer.

"Regulatory Approval" means any authorization, approval, endorsement, amendment of any existing plans (including the Waterfront Plan), or permit required by any Regulatory Agency to Construct the Improvements, or determination of trust consistency by State Lands that Developer's Construction of the Improvements and its proposed use of the Site is consistent with the Public Trust.

"Release" when used with respect to Hazardous Materials means any actual or imminent introduction, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, Exacerbation, escaping, leaching, dumping, or disposing into or inside any existing improvements, buildings or structures, or any Improvements constructed under this Agreement by or on behalf of Developer, or in, on, under or about the Site or any portion of the Site, other Port property, or the environment.

"Remediate" or "Remediation" when used with reference to Hazardous Materials means any activities undertaken to clean up, remove, contain, treat, stabilize, monitor, abate, remediate, remedy, or otherwise control Hazardous Materials, or to restore the affected area to the standard required by the applicable Environmental Regulatory Agency in accordance with applicable Environmental Laws and any additional Port requirements. "Remediation" includes those actions included within the definition of "remedy" or "remedial action" in California Health and Safety Code Section 25322, "remove" or "removal" in California Health and Safety Code Section 25323, and the creation of a remedial work plan to be approved by the appropriate Regulatory Agency when required.

"Request for approval" is defined in *Section 18.1(b)*.

"Required Element" is defined in *Section 9.5(a)*.

"ROWS" defined in *Recital C*.

"RWQCB" means the State of California Regional Water Quality Control Board.

"saltwater immersion" is defined in *Section 16.12*.

"Schedule of Performance" means the Schedule of Performance attached hereto as *Exhibit N*, as may be subsequently amended and approved in writing by Port from time to time.

"Schematic Drawings" generally means: (a) perspective drawings sufficient to illustrate the Improvements; (b) a site plan at appropriate scale showing relationships of the Improvements and their respective uses, designating public access areas, open spaces, walkways, loading areas, streets, parking, and adjacent uses--adjacent existing and proposed streets, arcades and structures also should be shown; (c) building plans, floor plans and elevations at appropriate scale and in detail sufficient to describe the Improvements, the general architectural character, and the location and size of uses; and (d) building sections showing all typical cross sections at appropriate scale and height relationships of those areas noted above. Schematic Drawings for the Improvements include the Schematic Drawings dated August 23, 2018, which were reviewed and approved by the Port Commission at its September 10, 2019 public meeting pursuant to Resolution No. 19-36, a copy of which is attached as *Exhibit O*.

"Scope of Development" means the narrative document attached hereto as *Exhibit A*.

"Second Notice" is defined in *Section 9.5(b)*.

"Security Deposit" is defined in the Lease.

"SFPUC" means the San Francisco Public Utilities Commission.

"SHPO" means the State's Historic Preservation Officer.

"Sign" means any sign, whether free-standing or affixed to a structure, flag, advertisement, poster, or banner.

"Significant Change" has the same meaning as the meaning in the Lease.

"Site" is defined in *Section 1.1*.

"Soft Costs" is defined in *Section 11.1*.

"Sole Source Resolution" is defined in *Recital L*.

"Special City Requirements" is defined in *Section 15.1(g)*.

"State" means the State of California.

"State Lands" means the California State Lands Commission, a State agency.

"SWL" means seawall lot.

"Target Close Date" is defined in *Section 4.3(a)*.

"Target Close Date Extension Fee" is defined in *Section 2.2*.

"Target CO Date Extension Fee" is defined in *Section 2.6*.

"Teatro" is defined in *Recital G*.

"Term Sheet" is defined in *Recital O*.

"Third Party" means against any Person other than Port, the City, any Indemnified Party, or against any Person other than Developer and its respective Agents, or both, as the context requires.

"Title Company" is defined in *Section 4.2(a)*.

"Title Defect" is defined in *Section 4.7(b)*.

"Title Defect Cure Period" is defined in *Section 4.7(b)*.

"Total Project Cost" is defined in *Section 11.1*.

"Transaction Costs" is defined in *Section 2.5(a)*.

"Transaction Documents" means this Agreement, the Lease, and any other agreements contemplated by such documents.

"Transfer" is defined in *Section 14.1*.

"Underpayment" is defined in *Section 2.5(c)*.

"Unmatured Developer Event of Default" means any default that, with the giving of notice or the passage of time, or both, would constitute a Developer Event of Default under this Agreement.

"Unmatured Port Event of Default" means any default that, with the giving of notice or the passage of time, or both, would constitute a Port Event of Default under this Agreement.

"WDAC" means the Waterfront Design Advisory Committee authorized under Planning Code Section 240, whose members are appointed by the City and Port, and that is advisory to the Port Commission and to the City's Planning Commission.

"WLUP" means the Port of San Francisco Waterfront Land Use Plan, including the Waterfront Design and Access Element, for the approximately 7-1/2 miles of waterfront property under Port jurisdiction.

[REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF the Parties have caused this Agreement to be executed by their duly appointed representatives as of the date first above written.

Port: CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation act by and through the
SAN FRANCISCO PORT COMMISSION

By: _____
Name: _____
Title: Executive Director
Date Signed: _____

Developer: TZK BROADWAY, LLC,
a California limited liability company

By: _____
Name: _____
Title: _____
Date Signed: _____

APPROVED AS TO FORM:
DENNIS HERRERA, City Attorney

By: _____
Name: _____
Deputy City Attorney

Port Resolution No.: 19-36 on September 10, 2019
Board Resolution No.: [] on [], 2019]

EXHIBIT

Exhibit Test START HERE

DRAFT

Legal Description Exhibit A-1

**PARCEL A
ASSESSOR'S BLOCK 139
LOT 2-50 VARA BLOCK M (SEAWALL LOT 324)**

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, SAID REAL PROPERTY BEING ASSESSOR'S BLOCK 139, (ALSO BEING SEAWALL LOT 324 OF THE SAN FRANCISCO PORT COMMISSION AND ALSO BEING LOT 2, 50 VARA BLOCK M), SAID REAL PROPERTY LYING SOUTHWESTERLY OF INNER LINE OF THE EMBARCADERO (FORMERLY EAST STREET), SOUTHERLY OF VALLEJO STREET (68.75' WIDE), EASTERLY OF DAVIS STREET (68.79' WIDE) AND NORTHERLY OF BROADWAY (82.50' WIDE), SAID REAL PROPERTY BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWESTERLY CORNER OF ABOVEMENTIONED ASSESSOR'S BLOCK 139, SAID CORNER BEING A POINT OF INTERSECTION OF THE SOUTHERLY LINE OF VALLEJO STREET WITH THE EASTERLY LINE OF DAVIS STREET; THENCE FROM SAID POINT OF BEGINNING ALONG THE SAID EASTERLY LINE OF DAVIS STREET, SAID LINE BEING COMMON WITH THE WESTERLY LINE OF SAID ASSESSOR'S BLOCK 139, SOUTH 9° 08' 14" EAST, A DISTANCE OF 275.368 FEET, TO A POINT ON THE NORTHERLY LINE OF BROADWAY, SAID POINT BEING THE SOUTHWESTERLY CORNER OF SAID ASSESSOR'S BLOCK 139; THENCE LEAVING SAID COMMON LINE, ALONG THE SOUTHERLY LINE OF SAID ASSESSOR'S BLOCK 139, SAID LINE BEING COMMON WITH THE SAID NORTHERLY LINE OF BROADWAY AND ITS EASTERLY PROLONGATION, NORTH 80° 52' 13" EAST, A DISTANCE OF 222.812 FEET TO A POINT ON THE SOUTHWESTERLY LINE OF SAID INNER LINE OF THE EMBARCADERO (FORMERLY EAST STREET); THENCE LEAVING LAST SAID COMMON LINE, ALONG THE SAID SOUTHWESTERLY LINE OF SAID INNER LINE OF THE EMBARCADERO (FORMERLY EAST STREET), NORTH 35° 16' 19" WEST, A DISTANCE OF 306.813 FEET, TO A POINT ON THE SAID SOUTHERLY LINE OF VALLEJO STREET, SAID POINT BEING THE NORTHEASTERLY CORNER OF SAID ASSESSOR'S BLOCK 139; THENCE ALONG SAID SOUTHERLY LINE OF VALLEJO STREET, SAID LINE BEING COMMON WITH THE NORTHERLY LINE OF SAID ASSESSOR'S BLOCK 139, SOUTH 80° 49' 54" WEST, A DISTANCE OF 87.667 FEET, TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THE REAL PROPERTY DEPICTED ON THE "MAP SHOWING THE WIDENING OF BROADWAY BETWEEN DAVIS STREET AND THE EMBARCADERO," DRAWING NO. A-17-129 AND FILED JANUARY 13, 1984 IN BOOK X OF MAPS AT PAGE 33, CITY AND COUNTY OF SAN FRANCISCO RECORDER'S

OFFICE;

SAID PARCEL "A"-CONTAINING 39,532 SQUARE FEET OF LAND, MORE OR LESS.

TOGETHER WITH:

VALLEJO STREET STUB - PARCEL B

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, SAID REAL PROPERTY BEING A PORTION OF VALLEJO STREET, (68.75 FEET WIDE), LYING SOUTHWESTERLY OF INNER LINE OF THE EMBARCADERO (FORMERLY EAST STREET), EASTERLY OF DAVIS STREET, SOUTHERLY OF ASSESSOR'S BLOCK 138, (LOT 1, 50 VARA BLOCK N, SEAWALL LOT 323) AND NORTHERLY OF ASSESSOR'S BLOCK 139, (LOT 2, 50 VARA BLOCK M, SEAWALL LOT 324), SAID REAL PROPERTY BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHERLY LINE OF VALLEJO STREET WITH THE EASTERLY LINE OF DAVIS STREET, (68.75 FEET WIDE), SAID POINT ALSO BEING THE SOUTHWESTERLY CORNER OF ABOVEMENTIONED ASSESSOR'S BLOCK 138; THENCE FROM SAID **POINT OF BEGINNING** ALONG THE SAID NORTHERLY LINE OF VALLEJO STREET, SAID LINE BEING COMMON WITH THE SOUTHERLY LINE OF SAID ASSESSOR'S BLOCK 138, **NORTH 80° 49' 54" EAST, A DISTANCE OF 54.094 FEET**, TO A POINT ON THE SOUTHWESTERLY LINE OF SAID INNER LINE OF THE EMBARCADERO (FORMERLY EAST STREET); THENCE LEAVING SAID COMMON LINE, ALONG SAID SOUTHWESTERLY LINE OF INNER LINE OF THE EMBARCADERO (FORMERLY EAST STREET), **SOUTH 35° 07' 34" EAST, A DISTANCE OF 76.464 FEET**, TO A POINT ON THE SOUTHERLY LINE OF SAID VALLEJO STREET. SAID LINE BEING COMMON WITH THE NORTHERLY LINE OF THE ABOVEMENTIONED ASSESSOR'S BLOCK 139; THENCE ALONG LAST SAID COMMON LINE, **SOUTH 80° 49' 54" WEST, A DISTANCE OF 87.667 FEET**, TO A POINT OF INTERSECTION OF THE SOUTHERLY LINE OF VALLEJO STREET WITH THE EASTERLY LINE OF DAVIS STREET, SAID POINT ALSO BEING THE NORTHWESTERLY CORNER OF ABOVEMENTIONED ASSESSOR'S BLOCK 139; THENCE LEAVING SAID COMMON LINE, CROSSING SAID VALLEJO STREET, **NORTH 9° 04' 55" WEST, A DISTANCE OF 68.75 FEET**, TO THE **POINT OF BEGINNING**.

SAID PARCEL "B"- CONTAINING 4,873 SQUARE FEET OF LAND, MORE OR LESS.

TOGETHER WITH:

PARCEL C

ASSESSOR'S BLOCK 138,

LOT 1-50 VARA BLOCK N-SEAWALL LOT 323,

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, SAID REAL PROPERTY BEING ASSESSOR'S BLOCK 138, (ALSO BEING SEAWALL LOT 323 OF THE SAN FRANCISCO PORT COMMISSION AND ALSO BEING LOT 1, 50 VARA BLOCK N), SAID REAL PROPERTY LYING SOUTHWESTERLY OF INNER LINE OF THE EMBARCADERO (FORMERLY EAST STREET), EASTERLY OF DAVIS STREET (68.75' WIDE) AND NORTHERLY OF VALLEJO STREET (68.75' WIDE), SAID REAL PROPERTY BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWESTERLY CORNER OF ABOVEMENTIONED ASSESSOR'S BLOCK 138, SAID CORNER BEING A POINT OF INTERSECTION OF THE NORTHERLY LINE OF VALLEJO STREET WITH THE EASTERLY LINE OF DAVIS STREET; THENCE FROM SAID POINT OF BEGINNING ALONG THE SAID NORTHERLY LINE OF VALLEJO STREET, SAID LINE BEING COMMON WITH THE SOUTHERLY LINE OF SAID ASSESSOR'S BLOCK 138, NORTH 80° 49' 54" EAST, A DISTANCE OF 54.094 FEET, TO THE SOUTHWESTERLY LINE OF ABOVEMENTIONED INNER LINE OF THE EMBARCADERO (FORMERLY EAST STREET); THENCE LEAVING SAID COMMON LINE, ALONG THE SAID SOUTHWESTERLY LINE OF SAID INNER LINE OF THE EMBARCADERO (FORMERLY EAST STREET), NORTH 35° 15' 36" WEST, A DISTANCE OF 122.726 FEET, TO A POINT ON THE EASTERLY LINE OF SAID DAVIS STREET. SAID POINT BEING THE MOST NORTHERLY CORNER OF SAID ASSESSOR'S BLOCK 138; THENCE ALONG SAID EASTERLY LINE OF DAVIS STREET, SAID LINE BEING COMMON WITH THE WESTERLY LINE OF SAID ASSESSOR'S BLOCK 138, SOUTH 9° 06' 25" EAST, A DISTANCE OF 110.219 TO THE POINT OF BEGINNING.

SAID PARCEL "C" - CONTAINING 2,981 SQUARE FEET OF LAND, MORE OR LESS.

TOGETHER WITH:

DAVIS STREET STUB - PARCEL D

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, SAID REAL PROPERTY BEING A PORTION OF DAVIS STREET, (68.75 FEET WIDE), LYING SOUTHWESTERLY OF INNER LINE OF THE EMBARCADERO (FORMERLY EAST STREET), NORTHERLY OF VALLEJO STREET (68.75' WIDE), WESTERLY OF ASSESSOR'S BLOCK 138, (LOT 1, 50 VARA BLOCK N, SEAWALL LOT 323) AND EASTERLY OF ASSESSOR'S BLOCK 137, SAID REAL PROPERTY BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE EASTERLY LINE OF DAVIS STREET WITH THE NORTHERLY LINE OF VALLEJO STREET, SAID POINT BEING THE SOUTHWESTERLY CORNER OF ABOVEMENTIONED ASSESSOR'S BLOCK 138; THENCE FROM SAID **POINT OF BEGINNING** ALONG THE SAID EASTERLY LINE OF DAVIS STREET, SAID LINE BEING COMMON WITH THE WESTERLY LINE OF SAID ASSESSOR'S BLOCK 138, **NORTH 9° 06' 25" WEST, A DISTANCE OF 110.219,** TO THE SOUTHWESTERLY LINE OF ABOVEMENTIONED INNER LINE OF THE EMBARCADERO (FORMERLY EAST STREET); THENCE LEAVING SAID COMMON LINE, ALONG THE SAID SOUTHWESTERLY LINE OF SAID INNER LINE OF THE EMBARCADERO (FORMERLY EAST STREET), **NORTH 34° 50' 57" WEST, A DISTANCE OF 158.292 FEET,** TO A POINT ON THE WESTERLY LINE OF SAID DAVIS STREET, SAID LINE BEING COMMON WITH THE EASTERLY LINE OF THE ABOVEMENTIONED ASSESSOR'S BLOCK 137; THENCE ALONG LAST SAID COMMON LINE, **SOUTH 9° 06' 25" EAST, A DISTANCE OF 252.875 FEET,** TO A POINT OF INTERSECTION OF SAID WESTERLY LINE OF DAVIS STREET WITH SAID NORTHERLY LINE OF VALLEJO STREET, SAID POINT ALSO BEING THE SOUTHEASTERLY CORNER OF SAID ASSESSOR'S BLOCK 137; THENCE LEAVING LAST SAID COMMON LINE, CROSSING SAID DAVIS STREET, ALONG THE EASTERLY PROJECTION OF THE SAID NORTHERLY LINE OF VALLEJO STREET, **NORTH 80° 49' 54" EAST, A DISTANCE OF 68.75 FEET,** TO THE **POINT OF BEGINNING.**

SAID PARCEL "D"- CONTAINING 12.481 SQUARE FEET OF LAND, MORE OR LESS/ TOTAL OF FOUR SAID PARCELS- CONTAINING 59.867 SQUARE FEET OF LAND, MORE OR LESS.

SEE PLAT TO ACCOMPANY ABOVE LEGAL DESCRIPTION ENTITLED, PARCELS A, B, C, AND D, INFRASTRUCTURE FINANCING DISTRICT J, (1 SHEET), ATTACHED HERETO AND MADE A PART THEREOF.

END OF DESCRIPTION

THE DISTANCES STATED IN THIS DESCRIPTION ARE GROUND DISTANCES.

THIS LAND DESCRIPTION HAS BEEN PREPARED BY ME, OR UNDER MY DIRECTION, PURSUANT TO CHAPTER 15, ARTICLE 3, SECTION 8726(L) OF THE PROFESSIONAL LAND SURVEYORS' ACT, AND IN CONFORMANCE WITH DIVISION 2, CHAPTER 2, ARTICLE 1, SECTION 66428(A)(2) OF THE SUBDIVISION MAP ACT OF THE STATE OF CALIFORNIA AND SHALL NOT BE UTILIZED IN ANY CONVEYANCE WHICH MAY VIOLATE SAID ACT(S) OR LOCAL ORDINANCES.

PREPARED BY:

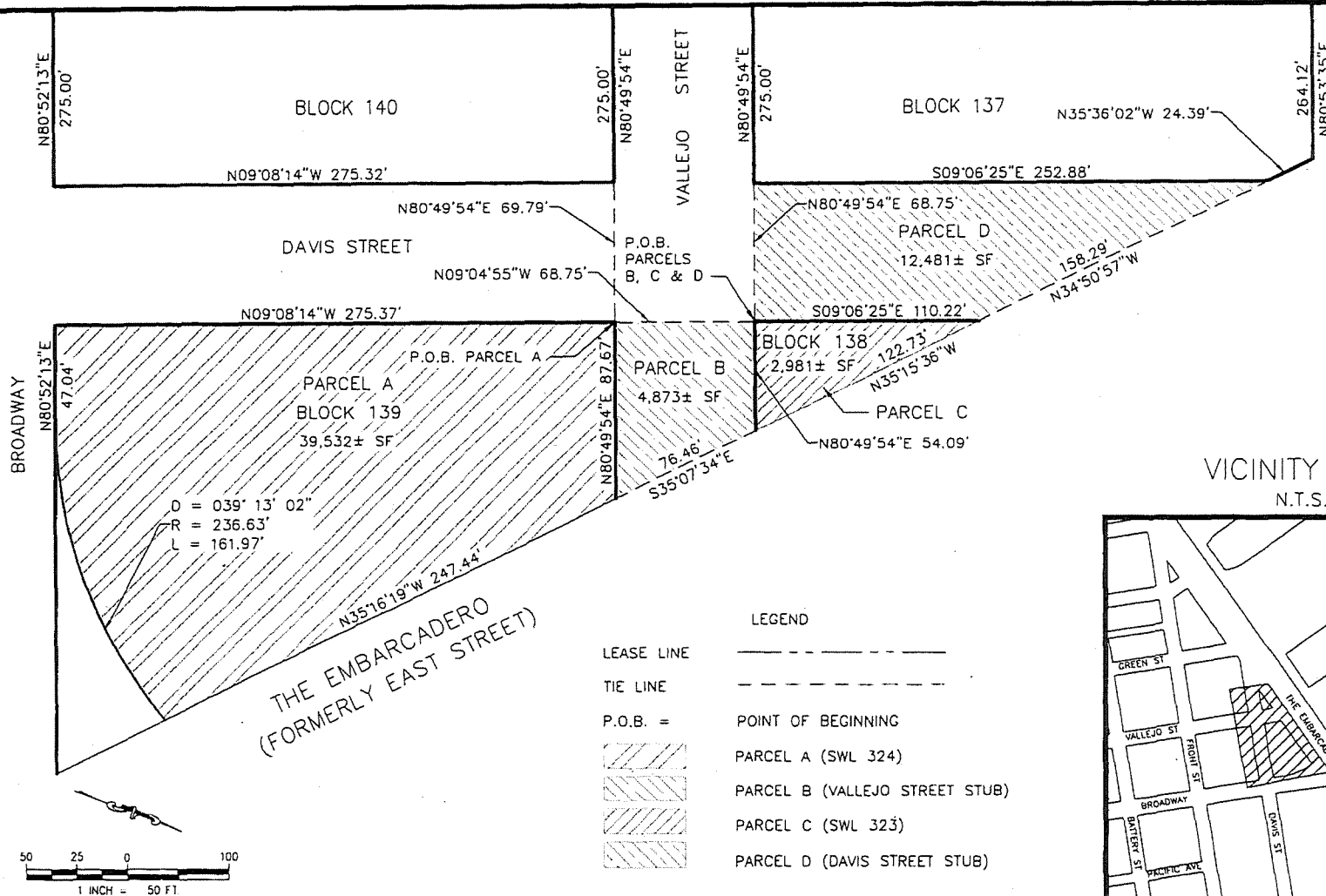
JOHN T. MAY, P.L.S.

DATE

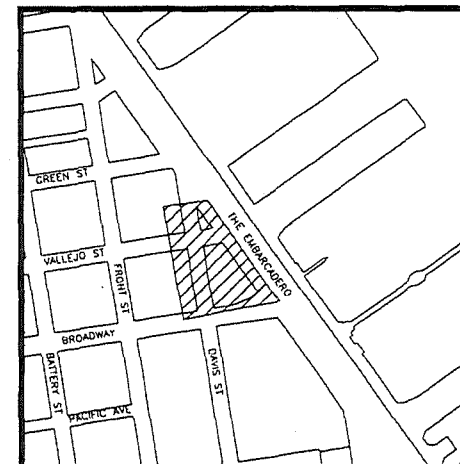
Page 4 of 4

INITIALS: PORT: _____ TENANT: _____ DATE: _____

LDDA - Exhibit A-2



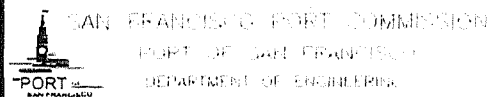
VICINITY MAP
N.T.S.



LEGEND

- LEASE LINE: - - - - -
- TIE LINE: - - - - -
- P.O.B. = POINT OF BEGINNING
- PARCEL A (SWL 324): [Hatched Pattern]
- PARCEL B (VALLEJO STREET STUB): [Hatched Pattern]
- PARCEL C (SWL 323): [Hatched Pattern]
- PARCEL D (DAVIS STREET STUB): [Hatched Pattern]

APPROVED BY: _____
SAN FRANCISCO PORT COMMISSION
DATE: _____



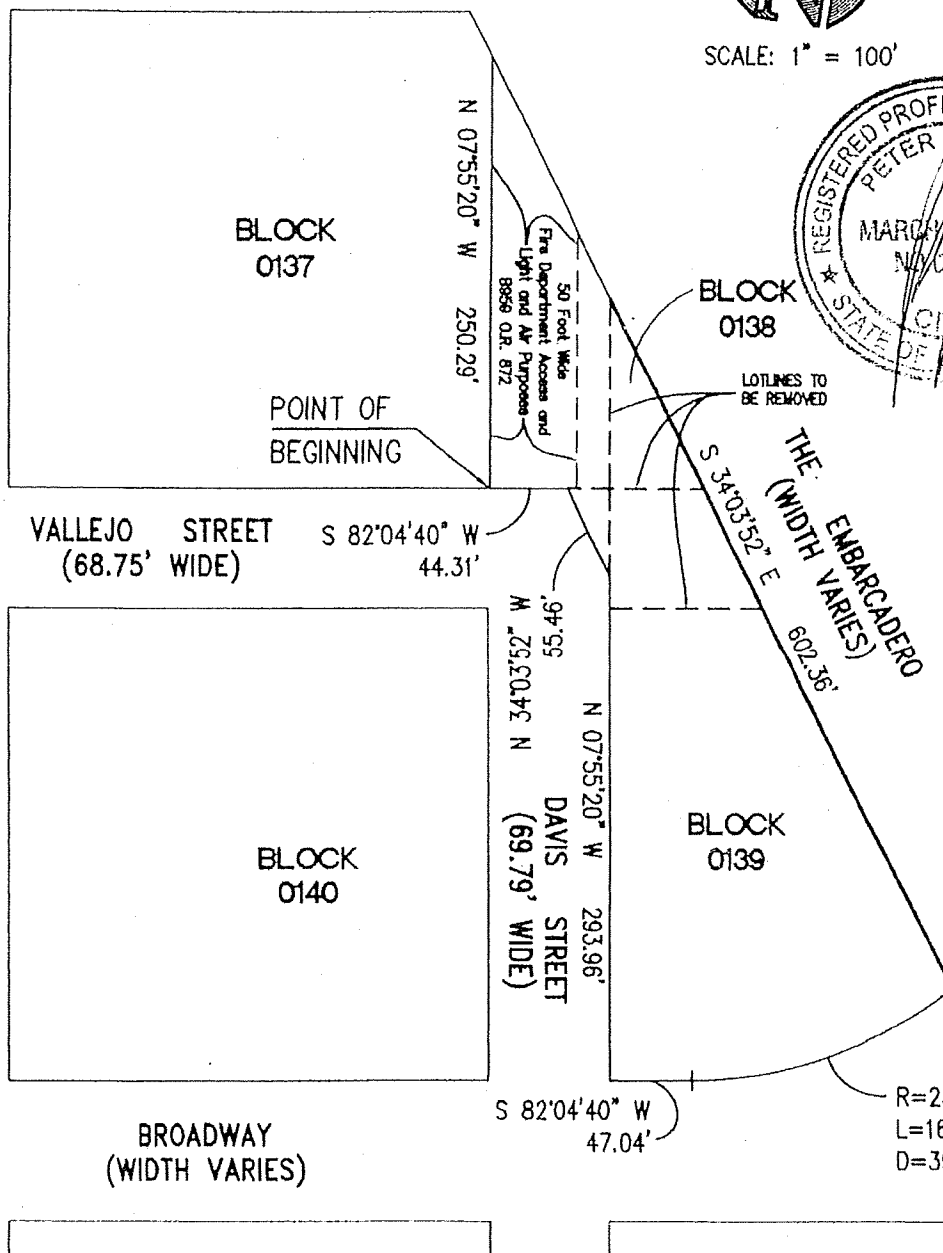
PARCELS A, B, C, AND D LDDA

PREPARED BY: JTM	CHECKED BY: J HURLEY
DRAWN BY: JGM KMK	DATE: 8/8/2019
CONTRACT NO:	SCALE: 1" = 50'
DRAWING NO:	SHEET NO. 1
	OF 1 SHEETS

GREEN STREET
(68.75' WIDE)



SCALE: 1" = 100'



KCA ENGINEERS, INC.
CONSULTING ENGINEERS • SURVEYORS • PLANNERS
318 BRANNAN ST., SAN FRANCISCO, CALIF 94107 • (415) 546-7111 • FAX: (415) 546-8472

LOT LINE ADJUSTMENT
ASSESSOR'S BLOCKS 0139 & 0138
SAN FRANCISCO CALIFORNIA

DATE:
07.19.16
1 OF 1



SAN FRANCISCO PLANNING DEPARTMENT

Historic Preservation Commission Motion No. 0370 HEARING DATE: MARCH 6, 2019

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

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Case No.: 2015-016326COA
Project Address: SEAWALL LOTS 323 & 324
Historic Landmark: Northeast Waterfront Landmark District
Zoning: C-2 (Community Business)
Waterfront Special Use District No. 3
40-X Height and Bulk District
Block/Lot: 0138/001, 0139/002 (2 lots)
Applicant: Jay Wallace
TZK Broadway, LLC
(415) 955-1100 ext. 4007
Staff Contact: Jonathan Vimr - (415) 575-9109
jonathan.vimr@sfgov.org
Reviewed By: Tim Frye - (415) 575-6822
tim.frye@sfgov.org

ADOPTING FINDINGS FOR PROPOSED WORK DETERMINED TO BE CONSISTENT WITH THE PURPOSES OF ARTICLE 10, THE STANDARDS OF ARTICLE 10 AND THE SECRETARY OF INTERIOR'S STANDARDS FOR REHABILITATION, FOR THE PROPERTY LOCATED ON LOT 001 IN ASSESSOR'S BLOCK 0138 AND LOT 002 IN ASSESSOR'S BLOCK 0139, WITHIN THE C-2 (COMMUNITY BUSINESS) ZONING DISTRICT, THE WATERFRONT SPECIAL USE DISTRICT NO. 3, AND A 40-X HEIGHT AND BULK DISTRICT.

PREAMBLE

WHEREAS, on June 1, 2016 Jay Wallace of TZK Broadway, LLC ("Project Sponsor") filed an application with the San Francisco Planning Department (hereinafter "Department") for a Certificate of Appropriateness to demolish the existing parking lot at the subject property in order to construct a new mixed-use development consisting of three components: an approximately 26,100 gross-square-foot (gsf) entertainment venue; an approximately 112,700 gsf hotel that would accommodate a maximum of 192 guest rooms, and; an approximately 14,000 gsf privately finance and maintained public park.

WHEREAS, the Department found that the project could not have a significant on the environment pursuant to a final Mitigated Negative Declaration issued on December 21, 2018. The Historic Preservation Commission ("Commission") has reviewed and concurs with said determination.

WHEREAS, on March 6, 2019, the Commission conducted a duly noticed public hearing on the current project, Case No. 2018-003593COA (Project).

WHEREAS, in reviewing the Application, the Commission has had available for its review and consideration case reports, plans, and other materials pertaining to the Project contained in the Department's case files, has reviewed and heard testimony and received materials from interested parties during the public hearing on the Project.

MOVED, that the Commission hereby finds that the proposed Project is consistent with Article 10 of the Planning Code and the Secretary of the Interior's Standards for Rehabilitation in conformance with the architectural plans labeled Exhibit A on file in the docket for Case 2015-016326COA, subject to the following conditions and findings:

CONDITIONS

1. Prior to the issuance of the Port building permit, the Project Sponsor should provide final architectural plans to Planning Department preservation staff so that they may consult with Port preservation staff regarding Planning staff's recommendations. These plans should include additional, detailed sections for all window and storefront systems, including how they meet building reveals.
2. Prior to the issuance of the Port building permit, the Project Sponsor should coordinate with Planning Department preservation staff so that they may consult with Port preservation staff on the development of a comprehensive sign program for the project.
3. The Project Sponsor should continue to work with the Planning Department and the Port preservation staff on the building design. The final design, including but not limited to the final color, finishes, textures, glazing details and window and storefront systems should be reviewed by the Planning Department and approved by the Port preservation staff prior to the issuance of the Port building permit.
4. As part of the Port building permit, the project sponsor should include notes confirming that prior to the fabrication of brick cladding, Planning Department and Port preservation staff shall review an on-site mockup of potential brick cladding systems to ensure the material is consistent with the Historic Preservation Commission's findings.
5. As part of the Port building permit, the project sponsor should include notes confirming that prior to the fabrication of the bird safe glass utilized for the theater pavilion, Planning Department and Port preservation staff shall review an on-site mockup of potential glazing systems to ensure that the material is consistent with the Historic Preservation Commission's findings. Said mockup should include a joint to ensure that the built structure is appropriately transparent and visually light.
6. Consistent with Section 260(b) of the Planning Code, the highest point of mechanical penthouses shall extend no higher than 10' above the roof of the building.
7. Consistent with Section 260(b) of the Planning Code, the highest point of elevator penthouses shall extend no higher than 16' above the roof of the building.

FINDINGS

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

1. The above recitals are accurate and also constitute findings of the Commission.
2. Findings pursuant to Article 10:

The Historic Preservation Commission has determined that the proposed work is compatible with the character of the landmark district as described in the designation report and draft designation amendment report.

- The proposed Project would demolish and replace a surface parking lot, which is not characteristic of the District; therefore no historic materials or features the contribute to District would be removed or altered.
- The new construction is consistent with the character of the District in regards to historic materials, features, size, scale and proportion, and massing.
- Although contrasting and clearly contemporary in nature, the use of non-reflective glazing for the theater pavilion reflects the fact that no such structure is otherwise found within the District, and promotes high levels of transparency.
- The proposed Project is consistent with the requirements of Article 10 of the Planning Code.
- The proposed Project is consistent with the relevant, following *Secretary of Interior's Standards for Rehabilitation*:

Standard 1.

A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.

Standard 2.

The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.

Standard 3.

Each property will be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.

Standard 4.

Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.

Standard 5.

Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be preserved.

Standard 9.

New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work will be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.

Standard 10.

New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

3. **General Plan Consistency.** The proposed Project is, on balance, consistent with the following Objectives and Policies of the General Plan:

I. URBAN DESIGN ELEMENT

THE URBAN DESIGN ELEMENT CONCERNS THE PHYSICAL CHARACTER AND ORDER OF THE CITY, AND THE RELATIONSHIP BETWEEN PEOPLE AND THEIR ENVIRONMENT.

GOALS

The Urban Design Element is concerned both with development and with preservation. It is a concerted effort to recognize the positive attributes of the city, to enhance and conserve those attributes, and to improve the living environment where it is less than satisfactory. The Plan is a definition of quality, a definition based upon human needs.

OBJECTIVE 1

EMPHASIS OF THE CHARACTERISTIC PATTERN WHICH GIVES TO THE CITY AND ITS NEIGHBORHOODS AN IMAGE, A SENSE OF PURPOSE, AND A MEANS OF ORIENTATION.

POLICY 1.3

Recognize that buildings, when seen together, produce a total effect that characterizes the city and its districts.

OBJECTIVE 2

CONSERVATION OF RESOURCES WHICH PROVIDE A SENSE OF NATURE, CONTINUITY WITH THE PAST, AND FREEDOM FROM OVERCROWDING.

POLICY 2.4

Preserve notable landmarks and areas of historic, architectural or aesthetic value, and promote the preservation of other buildings and features that provide continuity with past development.

POLICY 2.5

Use care in remodeling of older buildings, in order to enhance rather than weaken the original character of such buildings.

POLICY 2.7

Recognize and protect outstanding and unique areas that contribute in an extraordinary degree to San Francisco's visual form and character.

The proposed Project furthers these policies and objectives by maintaining and preserving the character-defining features of the contributory property and landmark district for the future enjoyment and education of San Francisco residents and visitors.

4. The proposed project is generally 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 Project would demolish a surface parking lot and replace it with a mixed-use development that would include new retail uses on the ground floor, and would improve neighborhood connectivity through the creation of a pedestrian pathway through the Project site.

- 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 Project would strengthen neighborhood character by respecting the character-defining features of the landmark district in conformance with the Secretary of the Interior's Standards. The creation of a new, compatible building would help fill out the subject landmark district and would be replacing a surface parking lot that does not contribute to the character of the district and neighborhood.

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

The proposed Project would have no effect on the affordable housing supply.

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

The proposed Project would 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 Project would not have any effect on industrial and service sector jobs. The proposed project would demolish a surface parking lot and replace it with a mixed-use development that would include new retail uses on the ground floor, and would improve neighborhood connectivity through the creation of a pedestrian pathway through the project site.

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

The work would be executed in compliance with all applicable construction and safety measures. The proposed Project would not affect the property's ability to withstand an earthquake.

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

A landmark or historic building does not occupy the project site. The proposed project, which lies within the boundaries of the Northeast Waterfront Landmark District, is in conformance with Article 10 of the Planning Code and the Secretary of the Interior's Standards.

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

The proposed Project would not affect access to sunlight or vistas for existing parks and open spaces, and would result in a new public park that would be privately financed and maintained.

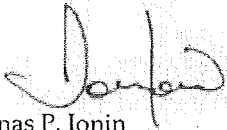
5. For these reasons, the proposal overall is consistent with the purposes of Article 10, the standards of Article 10, and the Secretary of Interior's Standards for Rehabilitation, the General Plan, and Prop M findings of the Planning Code.

DECISION

That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby finds that the project is consistent with Article 10 of the Planning Code and the Secretary of the Interior's Standards for Rehabilitation for the property located at Lot 001 in Assessor's Block 0138 and Lot 002 in Assessor's Block 0139 for proposed work in conformance with the renderings and architectural sketches labeled Exhibit A on file in the docket for Case No. 2015-016326COA.

THIS IS NOT A PERMIT TO COMMENCE ANY WORK OR CHANGE OF OCCUPANCY UNLESS NO BUILDING PERMIT IS REQUIRED. APPROPRIATE PERMITS MUST BE SECURED BEFORE WORK IS STARTED OR OCCUPANCY IS CHANGED.

I hereby certify that the Historical Preservation Commission ADOPTED the foregoing Motion on March 6, 2019.



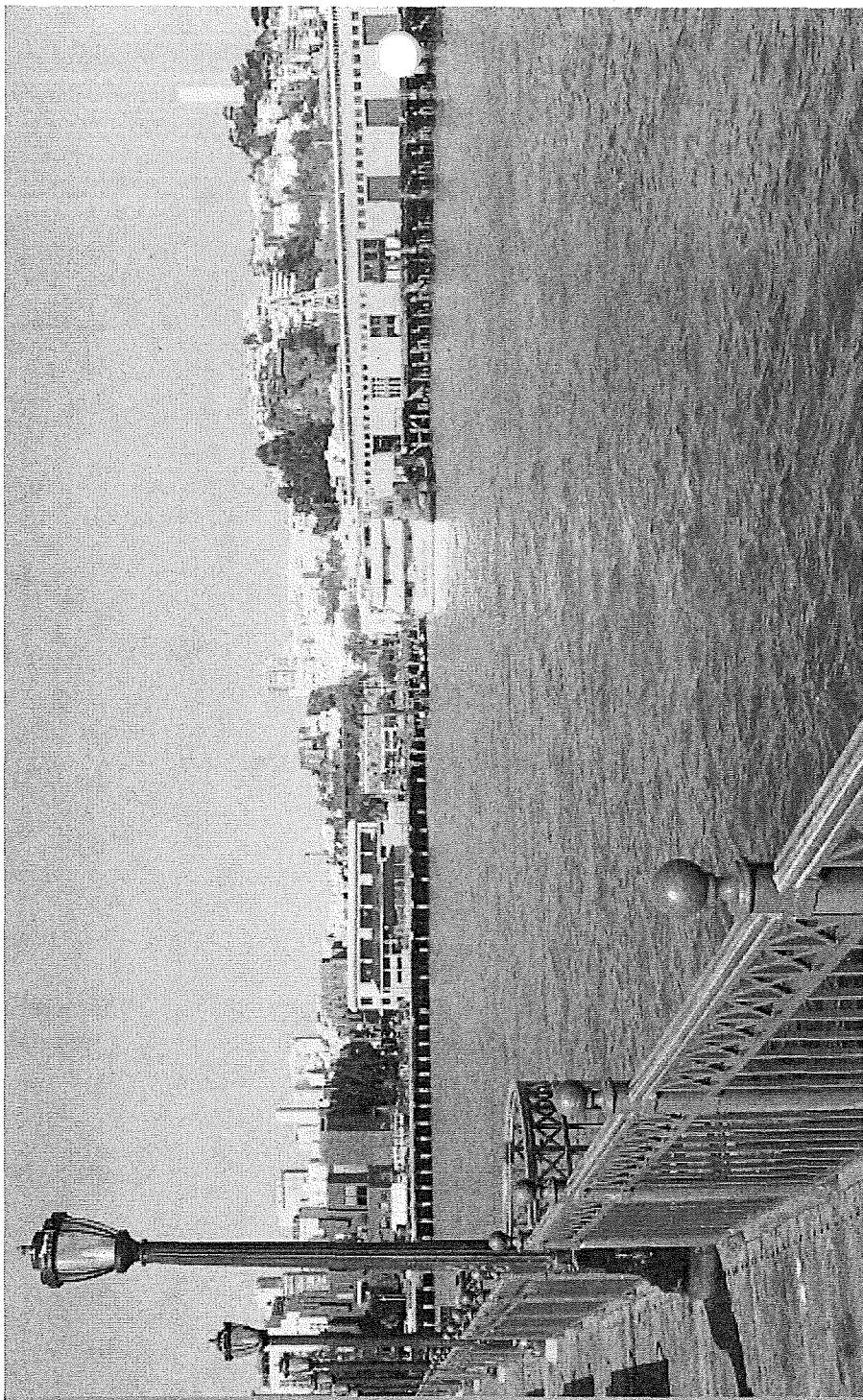
Jonas P. Ionin
Commission Secretary

AYES: Hyland, Matsuda, Black, Johns, Pearlman, Wolfram

NAYS: None

ABSENT: Johnck

ADOPTED: March 6, 2019



ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California
A Teaming ZinZanni & Kenwood Investments Project

Teaming ZinZanni

presidio companies

KENWOOD INVESTMENTS

TZK Broadway, LLC

December 21, 2018 Design Package



Prepared for:
Teaming ZinZanni, Presidio Companies
and Kenwood Investments
by:
Hornberger + Worstell

Site Context

ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

A Theater ZinZanni & Kenwood Investments Project





Project Site

December 21, 2018 | 3

Hornberger

Hornberger + Worstell Architects

ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

A Theater ZinZanni & Kenwood Investments Project

Worstell

presidio

companies

KENWOOD INVESTMENTS



Existing Site
Embarcadero Looking South



Existing Site
Davis Looking North



Existing Site
Broadway/Embarcadero Corner Looking North



Existing Site
Broadway/Davis Corner Looking East

Existing Site Images

TESTINO ZINZANNI

presidio companies

ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California
A Testino ZinZanni & Kenwood Investments Project

KENWOOD INVESTMENTS

Hornberger & Woistell Architects

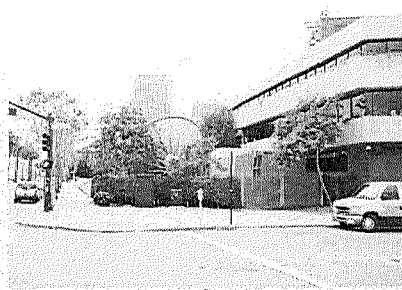
Hornberger

Woistell

December 21, 2018 | 4



KGO - from Davis & Vallejo



KGO - from Green St.



900 Front St. KGO - from Front & Vallejo



KGO - from The Embarcadero across project park site



Golden Gateway Commons - Broadway



Golden Gateway Commons - Broadway



Golden Gateway Commons - from The Embarcadero



Golden Gateway Commons - from The Embarcadero



The Waterfront Restaurant & Cafe - Pier 7 & The Embarcadero



Pier 9 & The Embarcadero



60 Broadway - from Davis St.



753 Davis - from across project site

Existing Context Images / Nearby Buildings

TEARING ZINZANNI

presidiocompanies

ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

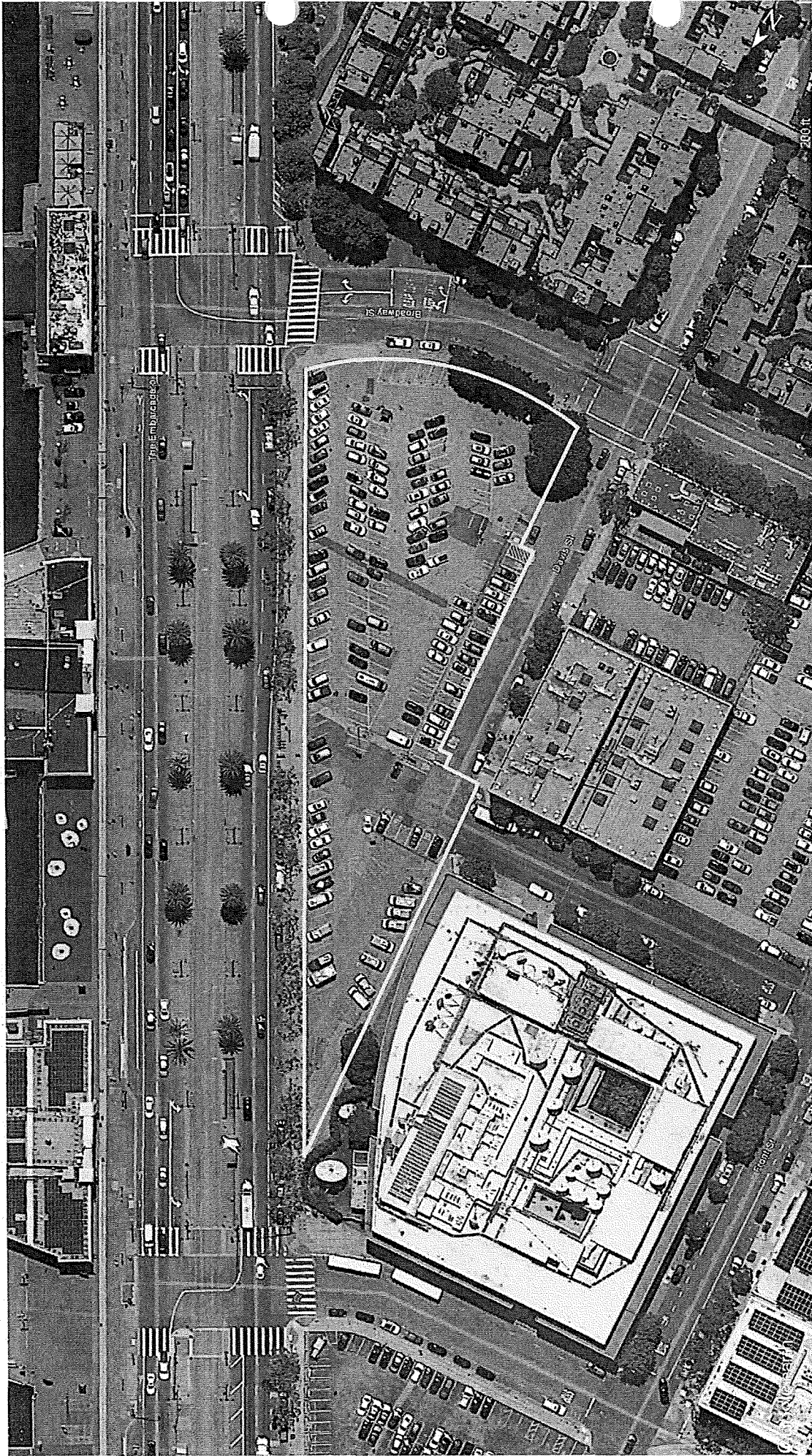
A TEARING ZINZANNI & KENWOOD INVESTMENTS PROJECT

Hornberger + Wurstell Architects

Hornberger

Wurstell

December 31, 2018 | 5



Project Site

December 21, 2018 | 8

Hornberger

Hornberger + Marschall Architects

ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

A Teatro ZinZanni & Kenwood Investments Project

Worstell

presidio companies

Teatro ZinZanni

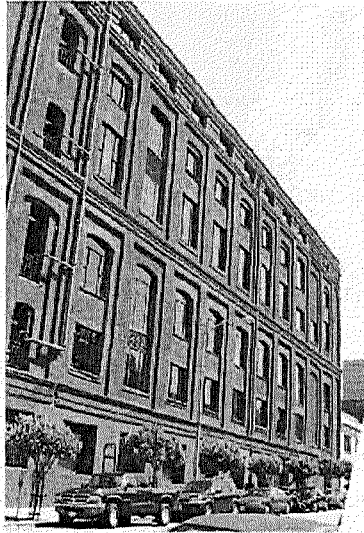
KENWOOD INVESTMENTS

Historic District Images

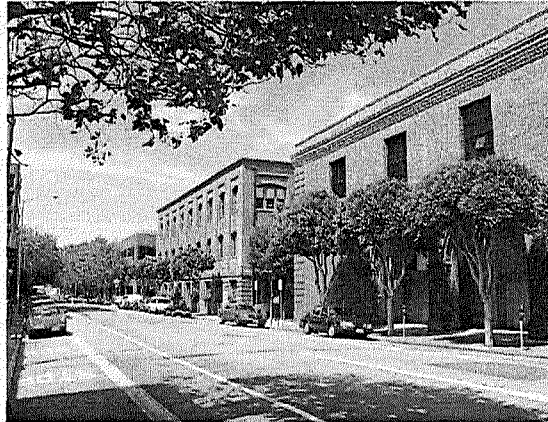
ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

A Theater ZinZanni & Kenwood Investments Project





151 Union



1050 Battery

1010 Battery

Section 6. FEATURES

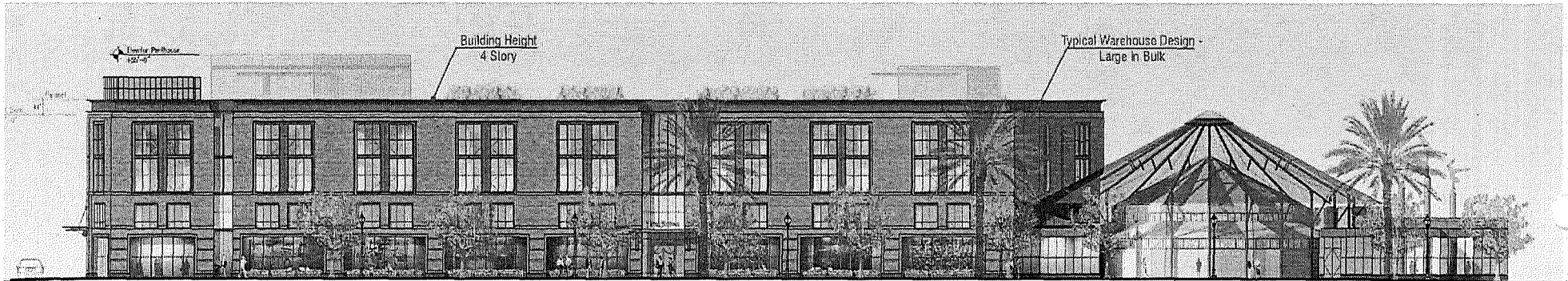
(a) Overall Form and Continuity.

- Building height is generally within a six-story range, with the higher structures closer to the base of Telegraph Hill and lower buildings near the water. Many of the oldest structures are one or two stories in height.

Northeast Waterfront Historic District

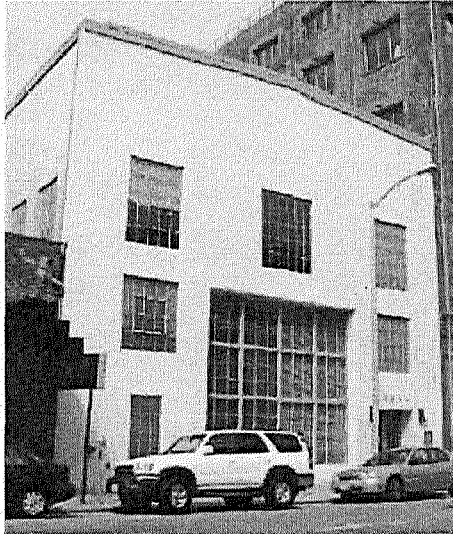
Appendix D, Article 10 San Francisco Planning Code

All quotes from Article 10: Preservation of Historical Architectural and Aesthetic Landmarks, Appendix D: Northeast Waterfront Historic District - San Francisco Planning Code

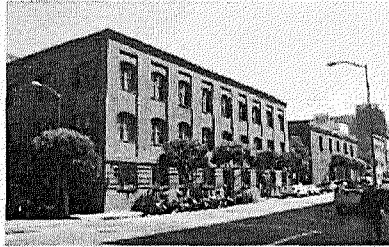


Embarcadero Elevation - Proposed Scheme

Historic District Images



1035 Battery



1050 Battery



1050 Battery

1010 Battery

Section 6. FEATURES

(b) Scale & Proportion:

- The buildings are of typical warehouse design, large in bulk, often with large arches and openings originally designed for easy vehicular access. The earlier brick structures blend easily with the scaled-down Beaux Arts forms of the turn of the century and the plain reinforced-concrete structures characteristic of twentieth century industrial architecture.

Northeast Waterfront Historic District

Appendix D, Article 10 San Francisco Planning Code

All quotes from Article 10: Preservation of Historical Architectural and Aesthetic Landmarks, Appendix D: Northeast Waterfront Historic District - San Francisco Planning Code



Embarcadero Elevation - Proposed Scheme

Historic District Images

TESTA ZINZANNI

presidio companies

ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

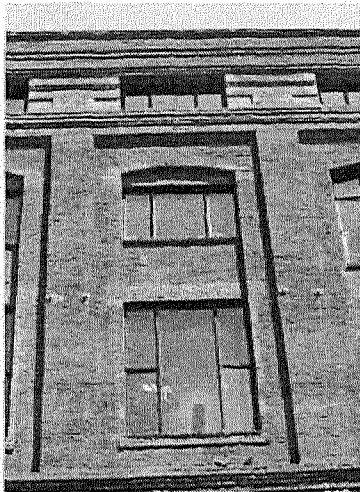
A Testa ZinZanni & Kenwood Investments Project

Hornberger + Worstell Architects

Hornberger

Worstell

December 21, 2012 | 3



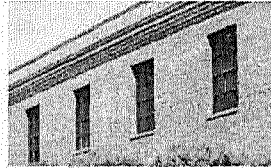
151 Union Street



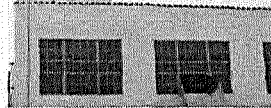
1088 Sansome Street



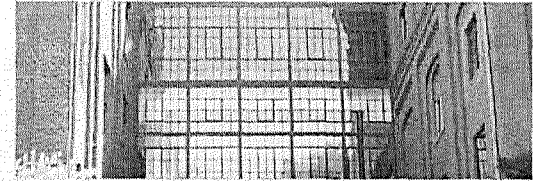
150 Green Street



1010 Battery



847 Front Street



Icehouse Alley: glass bridge approved by HRC 1992

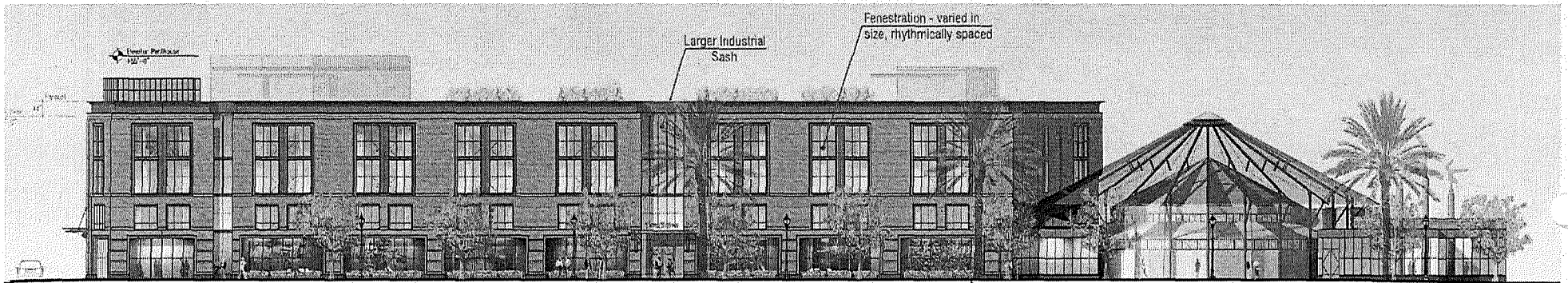
(c) Fenestration.

- Minimal glazing is deeply recessed, producing a strong shadow line. The earliest structures have a few windows expressing their warehouse function. They are varied in size, rhythmically spaced and relate in shape and proportion to those in nearby buildings. Larger industrial sash window began to be incorporated in structures built from the 1920's and onward. Door openings are often massive to facilitate easy access of bulk materials.

Northeast Waterfront Historic District

Appendix D, Article 10 San Francisco Planning Code

All quotes from Article 10: Preservation of Historical Architectural and Aesthetic Landmarks, Appendix D: Northeast Waterfront Historic District - San Francisco Planning Code



Embarcadero Elevation - Proposed Scheme

Strong Shadow Lines

Historic District Images

Teatro ZinZanni

presidio companies

ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

A Teatro ZinZanni & Kenwood Investments Project

Hornberger + Worstell Architects

Hornberger

Worstell



Embarcadero | Teatro ZinZanni Entrance

Section 6. FEATURES

(c) Fenestration

- They are varied in size, rhythmically spaced and relate in shape and proportion to those in nearby buildings. Larger industrial sash window began to be incorporated in structures built from the 1920's and onward. Door openings are often massive to facilitate easy access of bulk materials.

(d) Materials:

- Standard brick masonry is predominant for the oldest buildings in the District, with reinforced concrete introduced after the 1906 fire. Some of the brick facades have been stuccoed over. One of the structures still has its metal shutters, which were once typical of the area.

(e) Color

- Red brick is typical, with some yellow and painted brick. Muted earth tones predominate in shades of red, brown, green, gray and blue.

(f) Texture

- Typical facing materials give a rough-textured appearance. The overall texture of the facades is rough-grained.

Northeast Waterfront Historic District

Appendix D, Article 10 San Francisco Planning Code

All quotes from Article 10: Preservation of Historical Architectural and Aesthetic Landmarks, Appendix D: Northeast Waterfront Historic District - San Francisco Planning Code

Teatro ZinZanni

presidio companies

ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

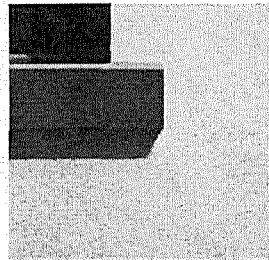
A Teatro ZinZanni & Kenwood Investments Project

KENWOOD INVESTMENTS

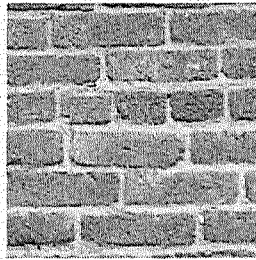
Hornberger + Worstell Architects

Hornberger

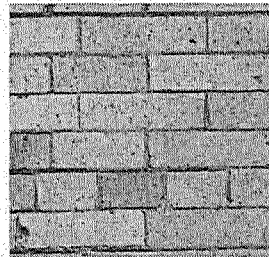
Worstell



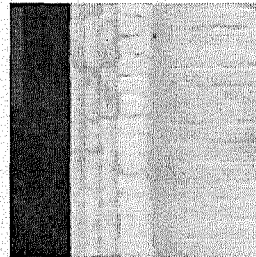
150 Green St.



825 Battery



55 Union



100 Green St.

Section 6. FEATURES

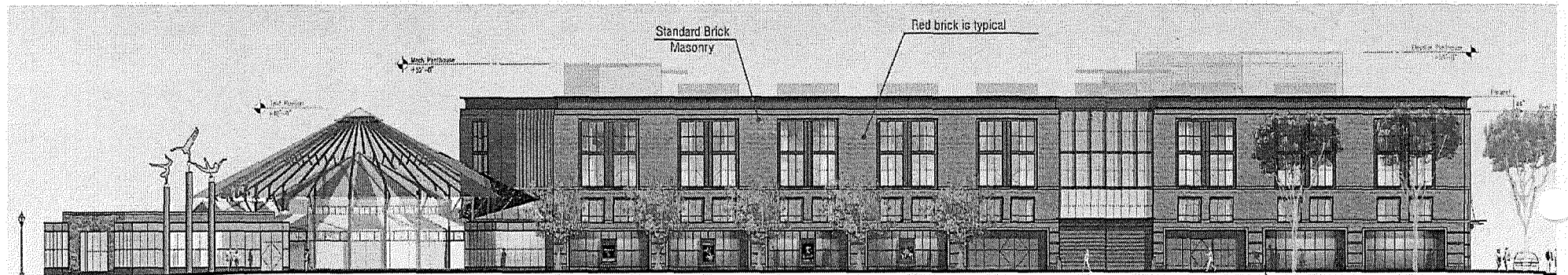
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Northeast Waterfront Historic District

Appendix D, Article 10 San Francisco Planning Code

All quotes from Article 10: Preservation of Historical Architectural and Aesthetic Landmarks, Appendix D: Northeast Waterfront Historic District - San Francisco Planning Code



Davis Elevation - Proposed Scheme

Rough-textured
Rough-grained
Brick

Historic District Images

TEARING ZINZANNI

presidio companies

ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

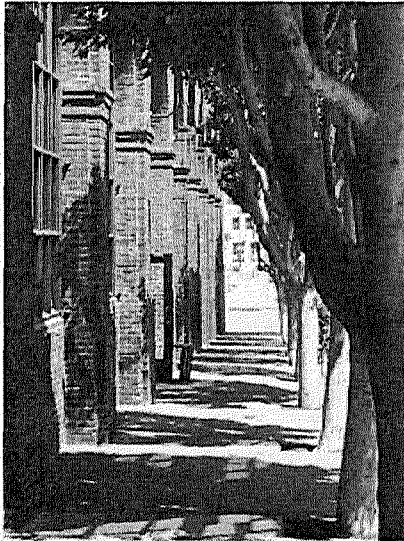
A TEARING ZINZANNI & KENWOOD INVESTMENTS PROJECT

Hornberger + Worstall Architects

Hornberger

Worstall

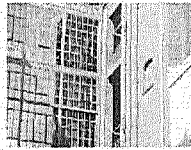
December 21, 2018 / 13



1010 Battery



1088 Sansome



Icehouse Alley: glass
bridge approved by
HRC 1992



1025 Battery

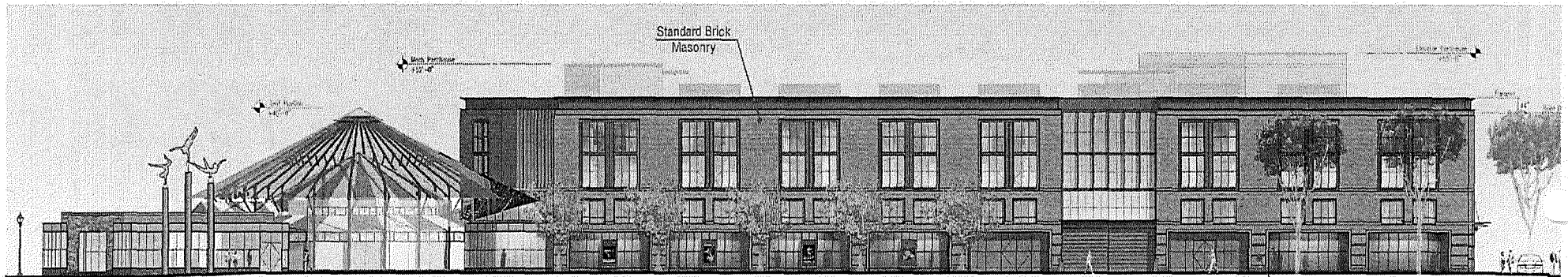
Section 6. FEATURES

(f) Texture.

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Northeast Waterfront Historic District Appendix D, Article 10 San Francisco Planning Code

All quotes from Article 10: Preservation of Historical Architectural and Aesthetic Landmarks, Appendix D: Northeast Waterfront Historic District - San Francisco Planning Code



Davis Elevation - Proposed Scheme

Rough-textured
Rough-grained
Brick

Historic District Images

THEATRE ZINZANNI

presidio companies

ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

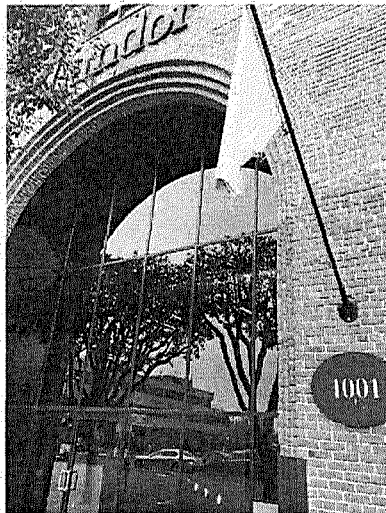
A Theatre ZinZanni & Kenwood Investments Project

Hornberger + Worstell Architects

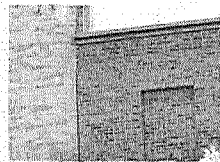
Hornberger

Worstell

December 21, 2018 | 14



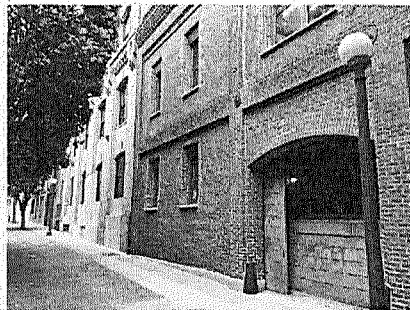
1001 Front St.



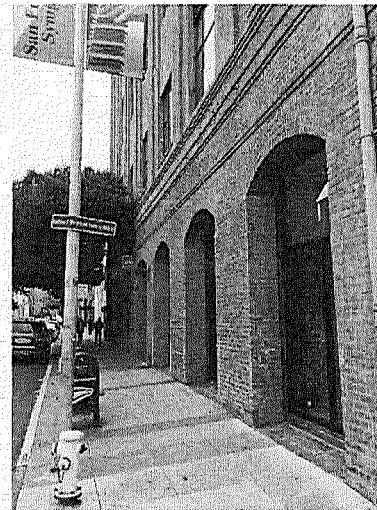
55 Union & 1050 Battery



1105 Battery



John Maher St.



101 Green St.

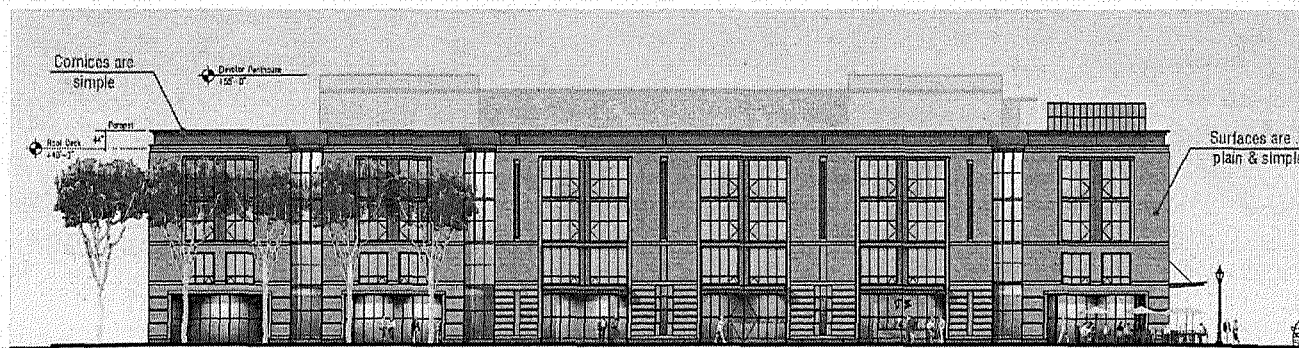
Section 6. FEATURES

(g) Detail.

- Arches are common on the ground floor, and are frequently repeated on upper floors. Flattened arches for window treatment are typical. Cornices are simple and generally tend to be abstract versions of the more elaborate cornices found on the downtown commercial structures from the nineteenth century. Most of the surfaces of the later buildings are plain and simple, reflecting their function, some of the earlier brickwork contains suggestions of pilasters, again highly abstracted. Where detail occurs, it is often found surrounding entryways.

Northeast Waterfront Historic District Appendix D, Article 10 San Francisco Planning Code

All quotes from Article 10: Preservation of Historical Architectural and Aesthetic Landmarks, Appendix D: Northeast Waterfront Historic District - San Francisco Planning Code



Broadway Elevation - Proposed Scheme

Historic District Images

Teatro ZinZanni

presidio companies

ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

A Teatro ZinZanni & Kenwood Investments Project

Hornberger + Worstell Architects

Hornberger

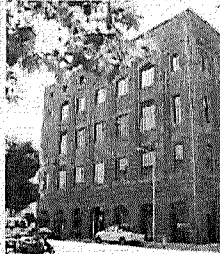
Worstell

December 21, 2013 | 15

1088 Sansome



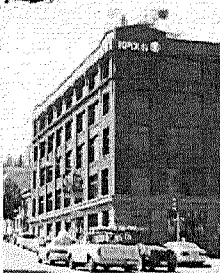
151 Union St.



55 Union St.



1105 Battery



855 Battery



151 Union St.

Sec. 7. ADDITIONAL PROVISIONS FOR CERTIFICATES OF APPROPRIATENESS

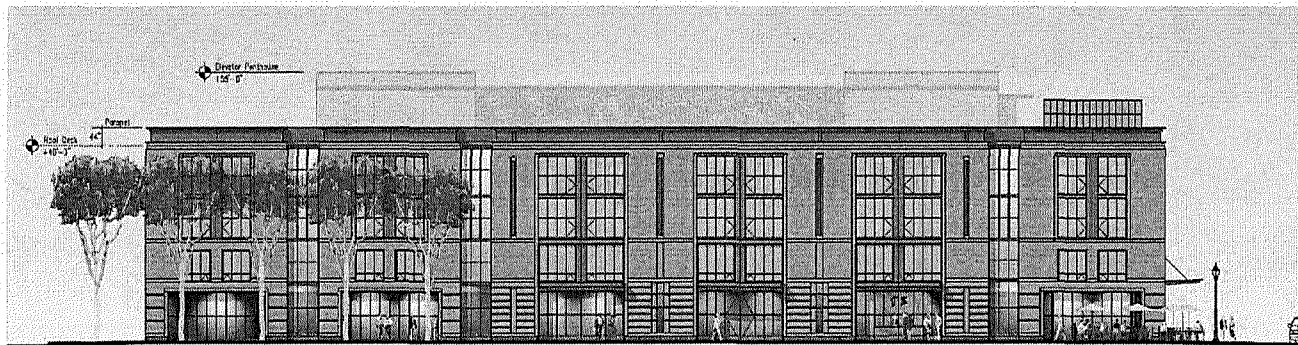
(b) Additional Standards for Certain Features.

(1) Facade Line Continuity.

- Facade line continuity is historically appropriate. Therefore, setbacks and arcades, not generally being features of the Northeast Waterfront Historic District, are not acceptable.

Northeast Waterfront Historic District
Appendix D, Article 10 San Francisco Planning Code

All quotes from Article 10: Preservation of Historical Architectural and Aesthetic Landmarks, Appendix D: Northeast Waterfront Historic District - San Francisco Planning Code



Broadway Elevation - Proposed Scheme

Historic District Images

Teatro ZinZanni

presidio companies

ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

A Teatro ZinZanni & Kenwood Investments Project

Hornberger + Worstell Architects

Hornberger

Worstell

December 21, 2019 | 18



Existing Rooftop View



Proposed Rooftop View

Sec. 7. ADDITIONAL PROVISIONS FOR CERTIFICATES OF APPROPRIATENESS

(3) Roof Treatment

- Historically the view from Telegraph Hill over the Northeast Waterfront District has been one of roofs characterized by numerous regularly spaced industrial skylights. In renovation or new construction, these particular design features should be retained or incorporated.



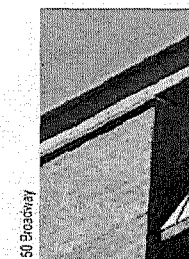
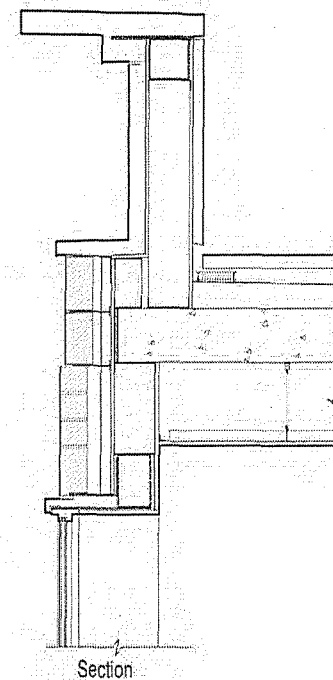
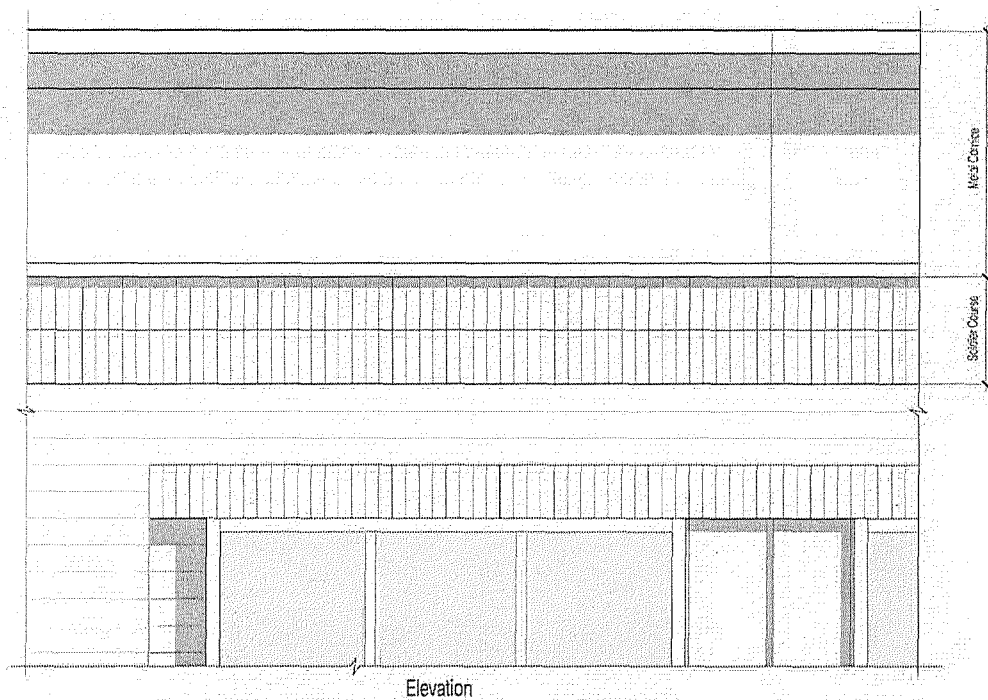
Davis Elevation - Proposed Scheme

All quotes from Article 10: Preservation of Historical Architectural and Aesthetic Landmarks, Appendix D: Northeast Waterfront Historic District - San Francisco Planning Code

Northeast Waterfront Historic District
Appendix D, Article 10 San Francisco Planning Code

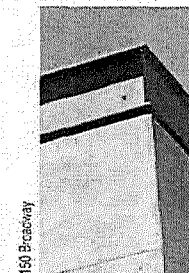
Historic District Images

December 21, 2018 | 17



150 Broadway

HPC Approved 2003



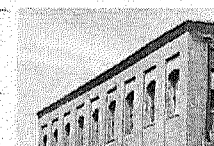
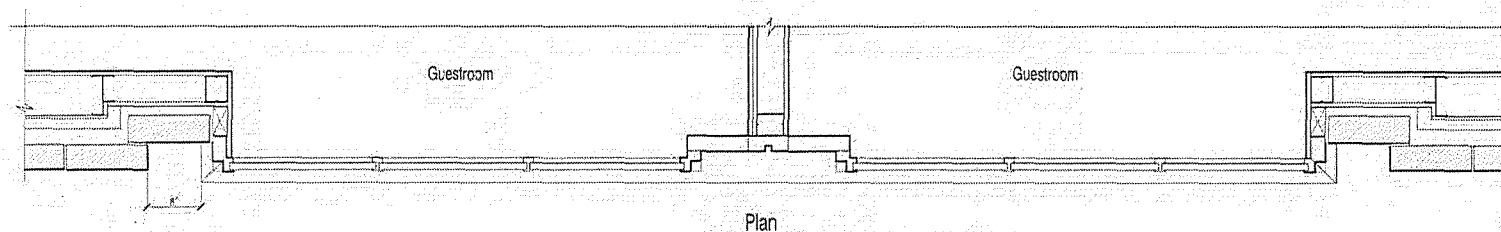
150 Broadway

District Images

Sec. 6. FEATURES.

(g) Detail.

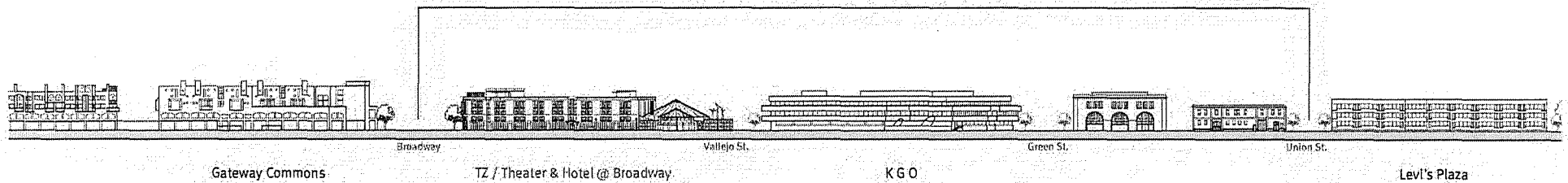
Cornices are simple and generally tend to be abstract versions of more elaborate cornices found on downtown commercial structures from the nineteenth century.



1050 Battery

Metal Cornice @ Flush Bay

Northeast Waterfront Historic District



All quotes from Article 10: Preservation of Historical Architectural and Aesthetic Landmarks, Appendix D: Northeast Waterfront Historic District - San Francisco Planning Code

Northeast Waterfront Historic District
Appendix D, Article 10: San Francisco Planning Code

Northeast Waterfront Historic District
Appendix D, Article 10: San Francisco Planning Code

Section 6. FEATURES

(b) Scale & Proportion:

- The buildings are of typical warehouse design, large in bulk, often with large arches and openings originally designed for easy vehicular access. The earlier brick structures blend easily with the scaled-down Beaux Arts forms of the turn of the century and the plain reinforced-concrete structures characteristic of twentieth century industrial architecture.

Embarcadero Elevation & Building Height Comparison

December 21, 2018 | 19

Teating ZinZanni

presidio companies

ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

A Teating ZinZanni & Kenwood Investments Project

Hornberger + Warstell Architects

Hornberger

Warstell Architects

Warstell

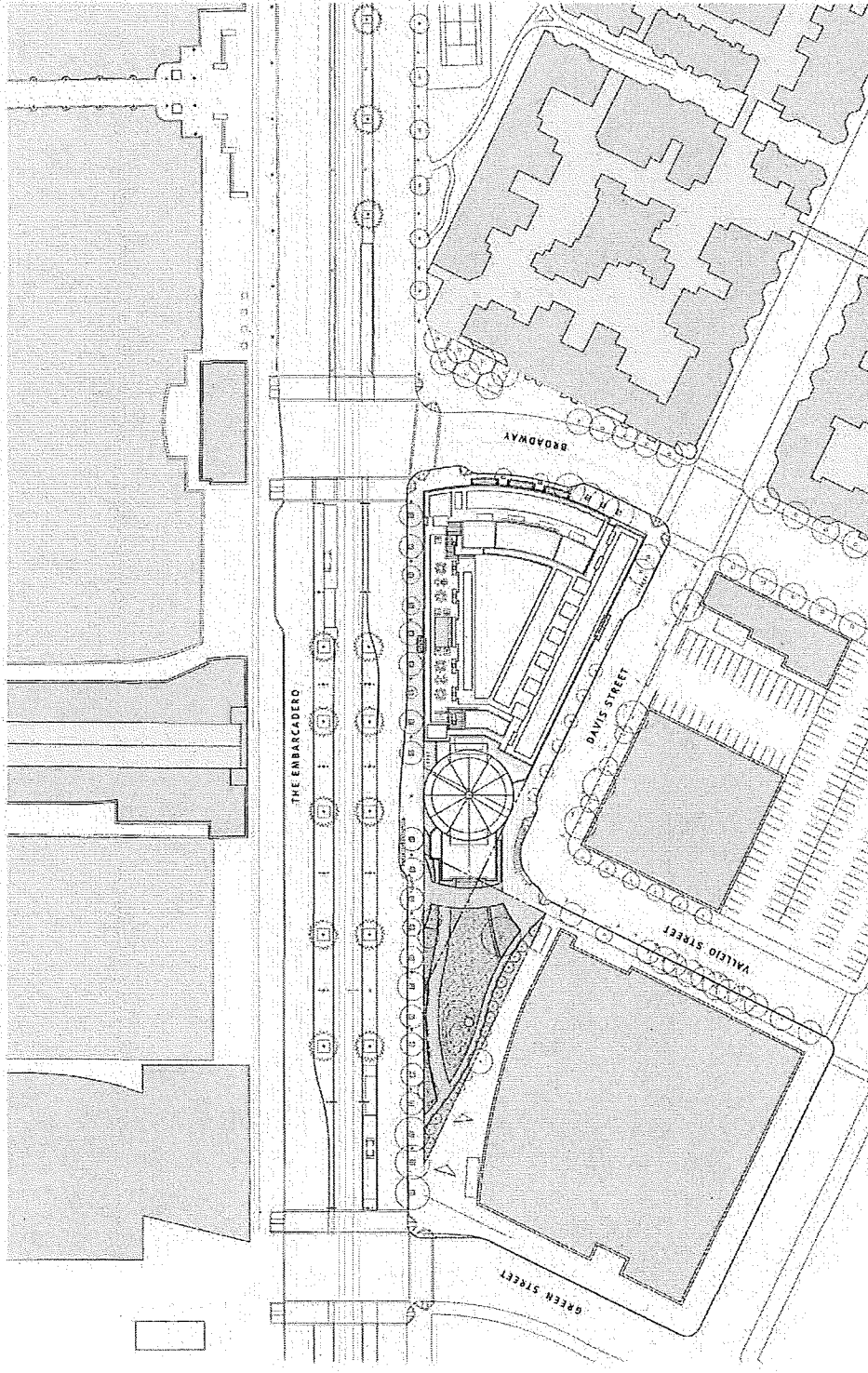
KENWOOD INVESTMENTS

Proposed Project

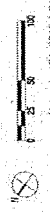
ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

A ZinZanni / Kenwood Development Project





Project Area Plan



ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California
 A Theater & Hotel, a Kenwood Investments Project

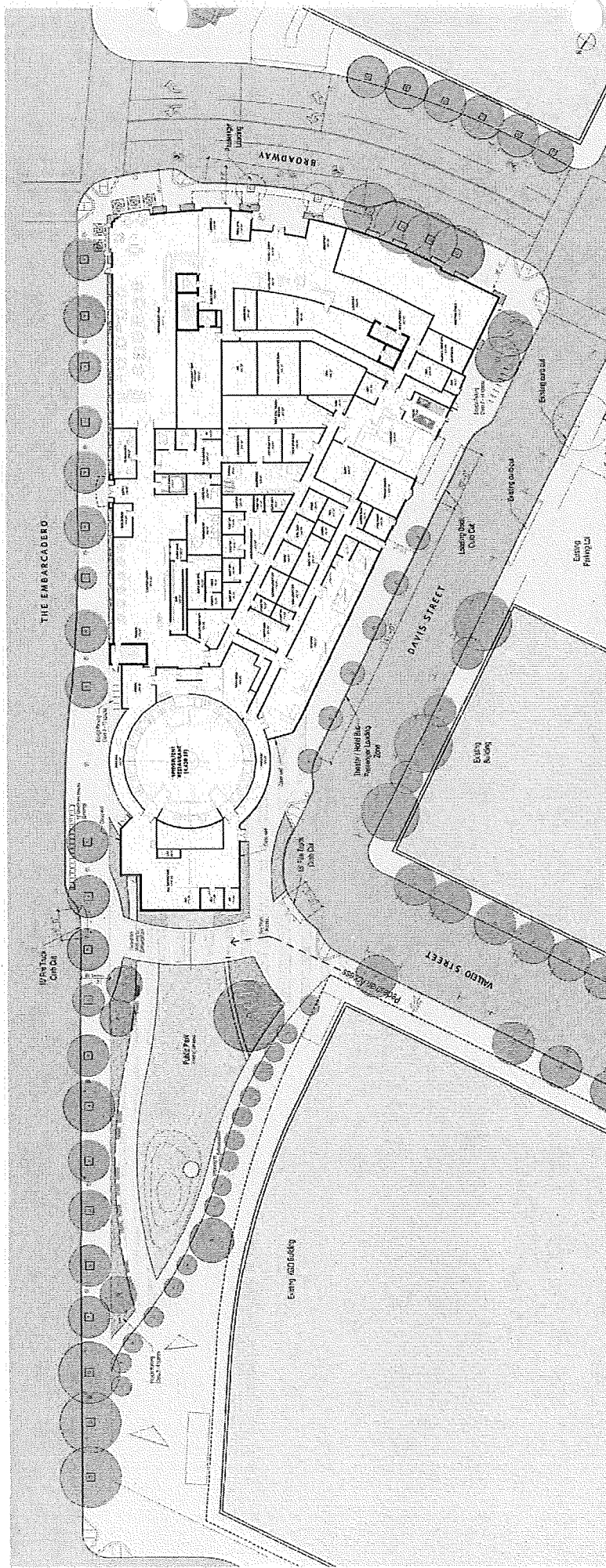
presidio companies

Tea & ZinZanni

KENWOOD INVESTMENTS

Hornberger

Worstell



Site Plan

December 21, 2015 | 22

ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

A Teatro ZinZanni & Kenwood Investments Project

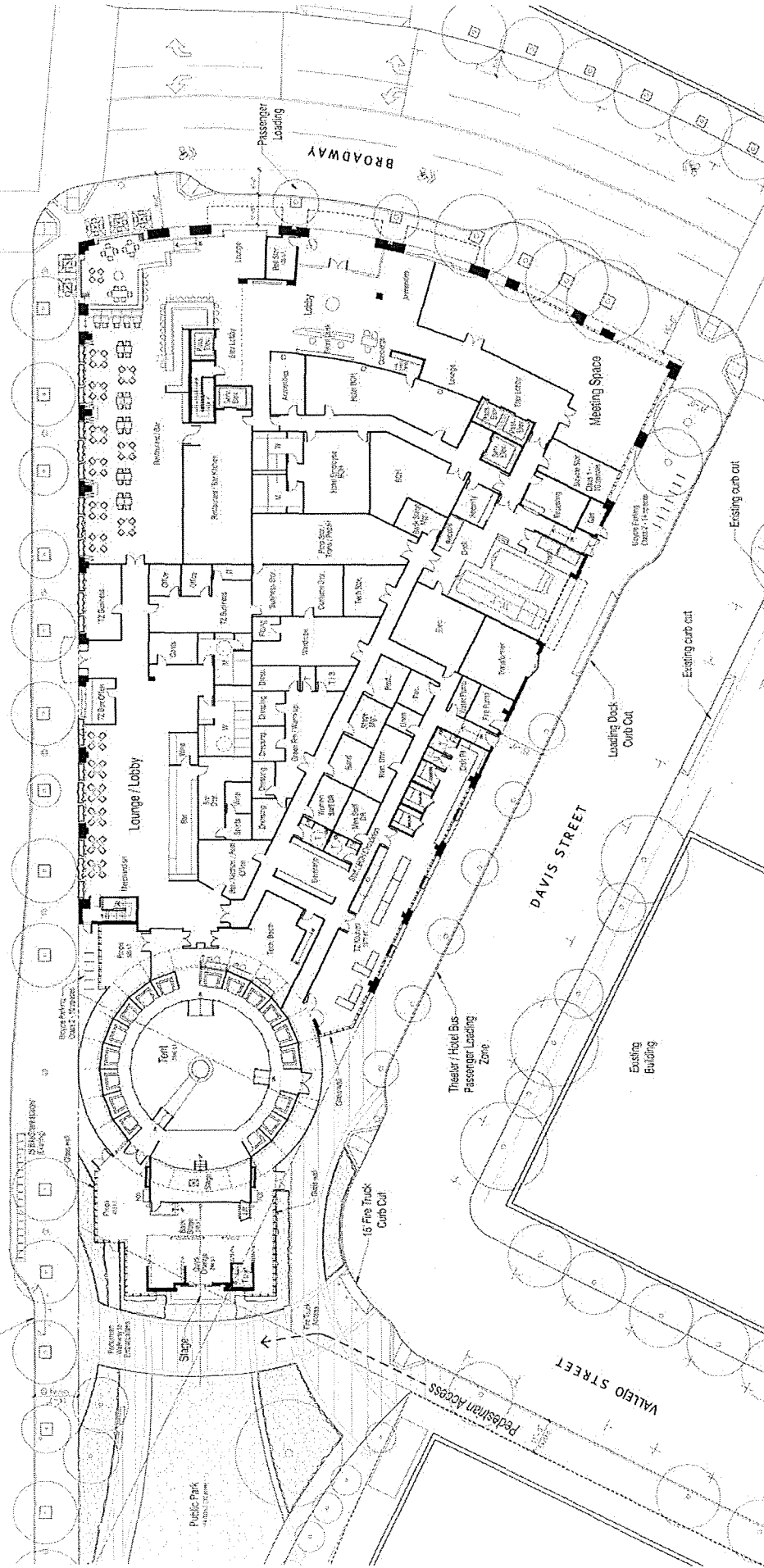
presidio companies

Teatro ZinZanni

KENWOOD INVESTMENTS

HRGA

THE EMBARCADERO.

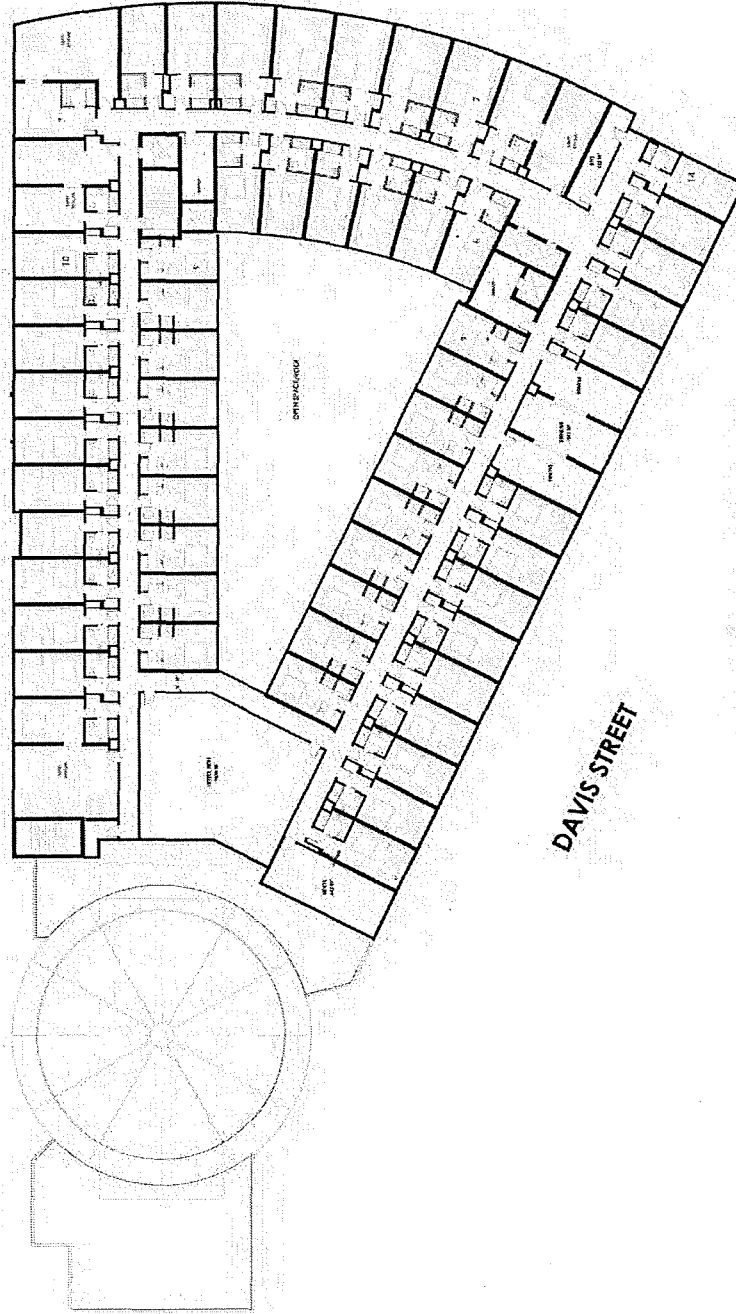


Ground Floor



February 2, 2016 | 23

THE EMBARCADERO



GUEST ROOM -2ND FLOOR

LEVEL 2



December 21, 2016 / 24

presidio companies

Theater ZinZanni

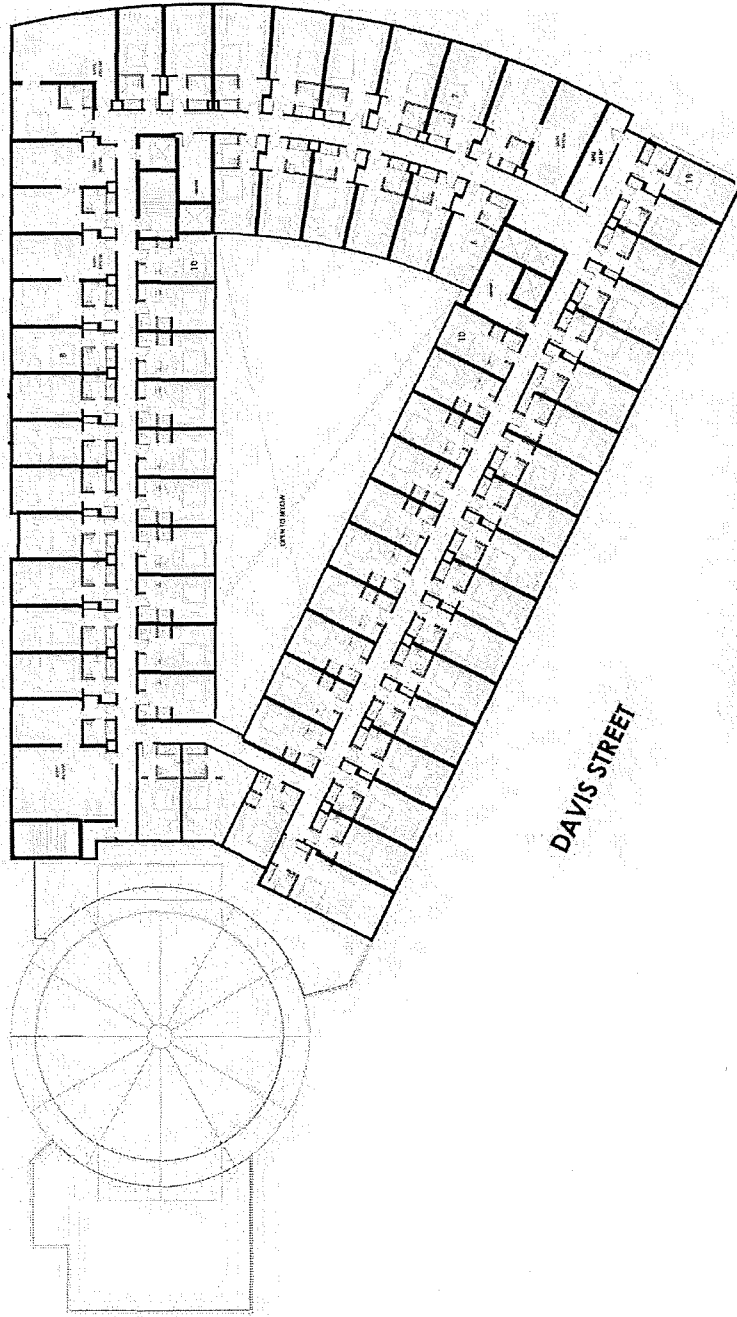
KENWOOD INVESTMENTS

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A THEATRO ZINZANNI KENWOOD INVESTMENTS PROJECT

HRGA

THE EMBARCADERO



GUEST ROOM - 3RD FLOOR

Level 3 1



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presidio

companies

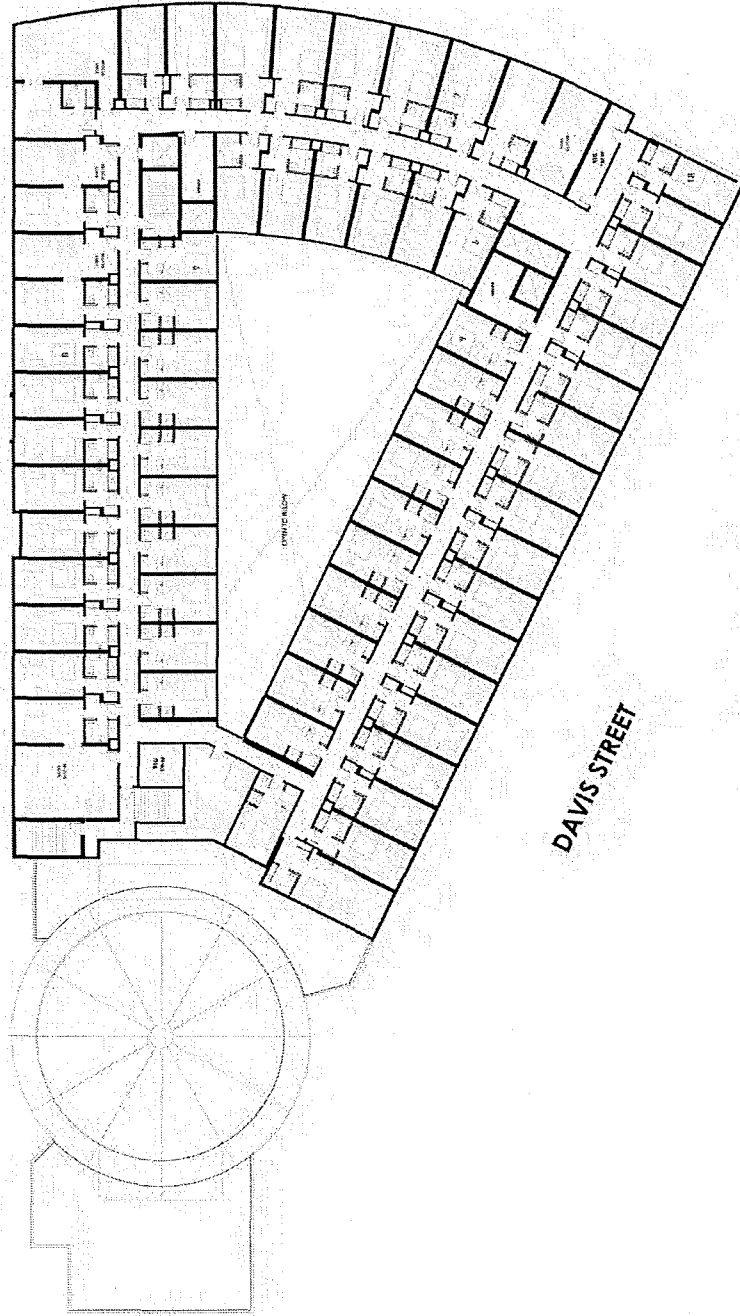
ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

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KENWOOD INVESTMENTS

HRGA

THE EMBARCADERO



GUEST ROOM - 4TH FLOOR

Level 4



Scale: 1/8" = 1'-0"

THE ZINZANNI GROUP

presidio companies

ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

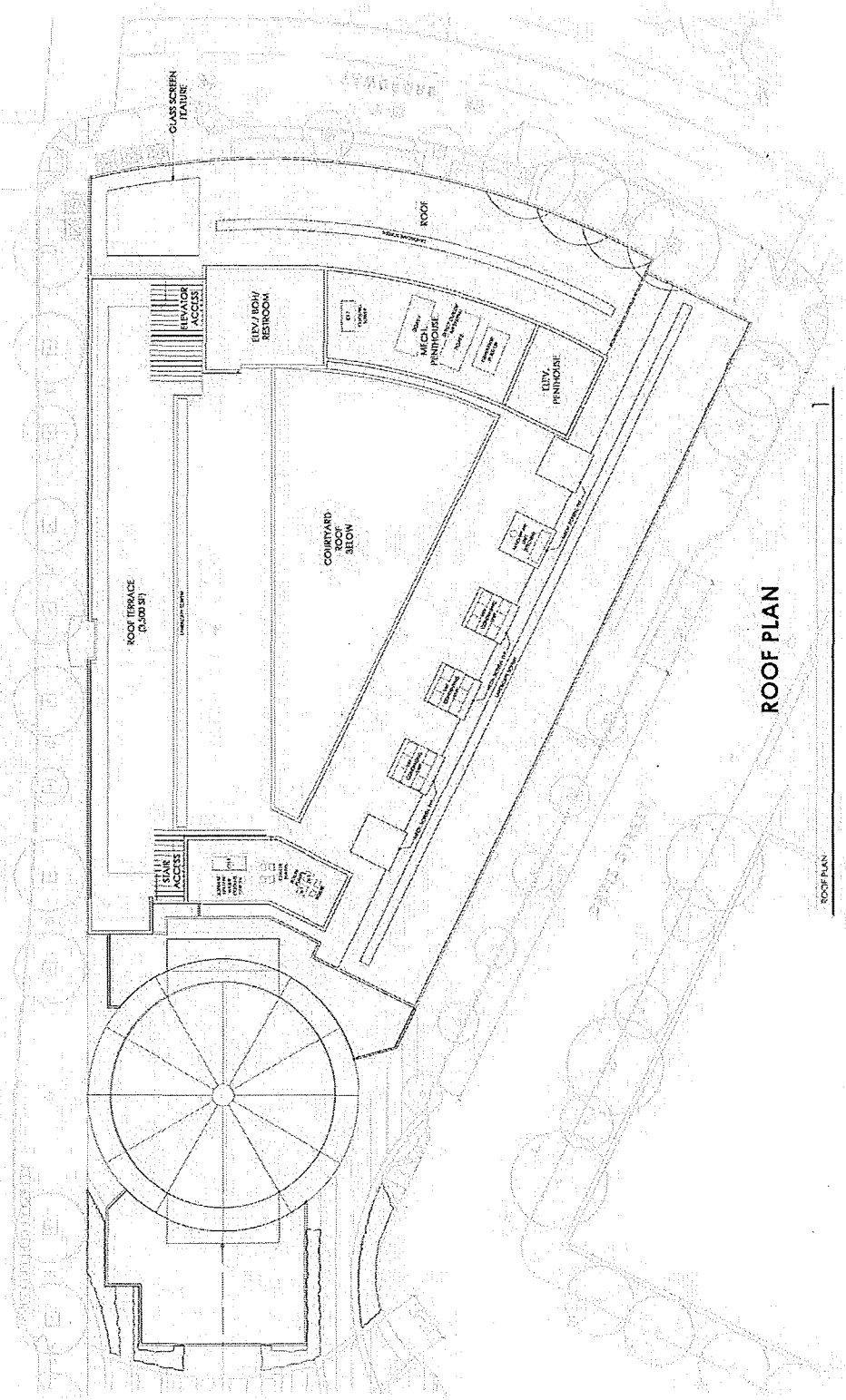
A Theater & Hotel & Kenwood Investments Project

KENWOOD INVESTMENTS

HPGA

Document 21, 2018 | 20

THE EMBARCADERO



ROOF PLAN

ROOF PLAN



Drawings 21, 2018 | 27

presidio companies

Teal & Zinanni

KENWOOD INVESTMENTS

ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

A Teal & Zinanni / Kenwood Investments Project

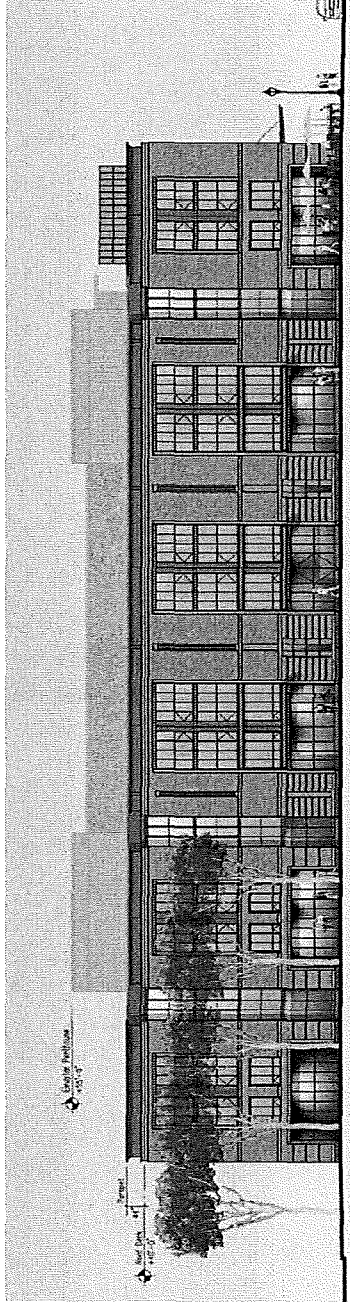
HRGA

Architectural Drawings

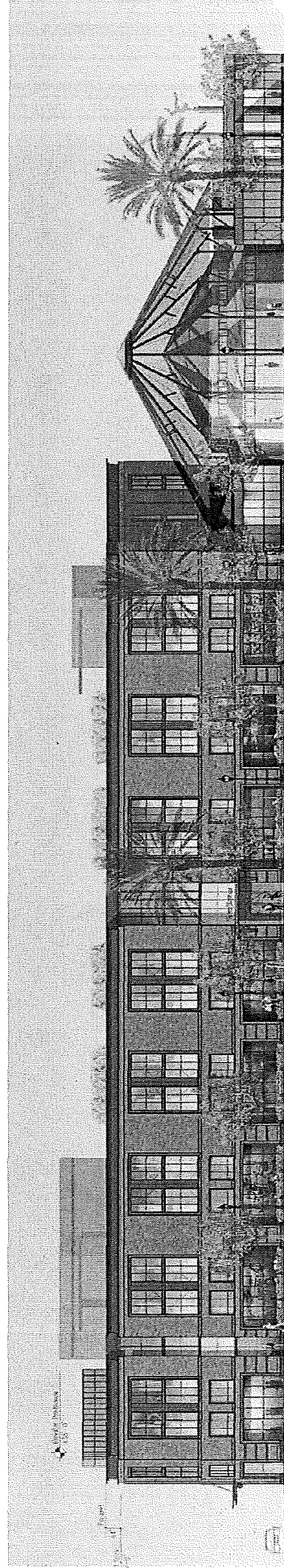
ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

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Broadway



The Embarcadero

Building Elevations

presidio companies

THEATERS ZINZANNI
KENWOOD INVESTMENTS

ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

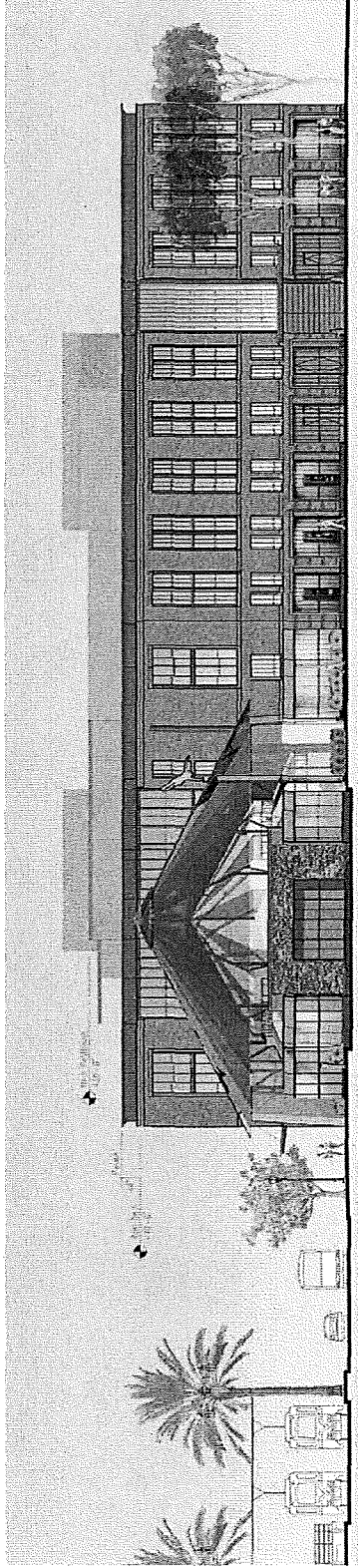
A Theater ZinZanni & Kenwood Investments Project

Hornberger + Worstell Architects

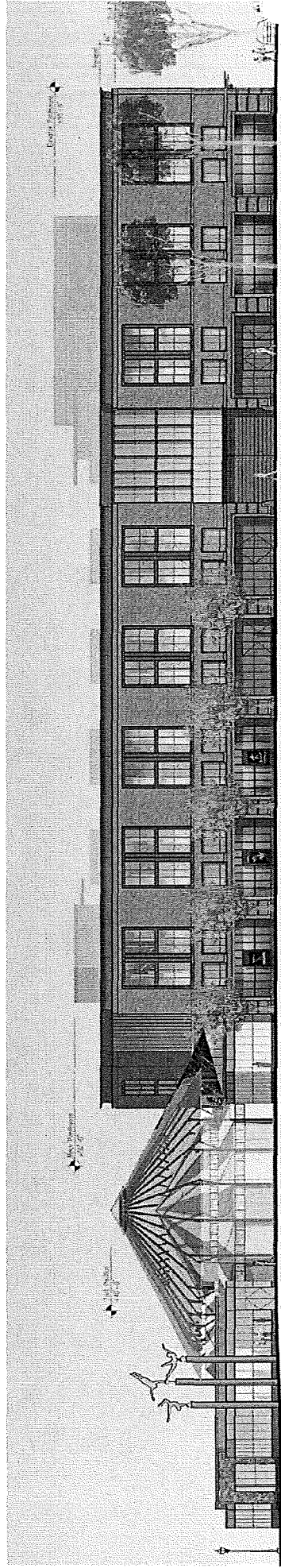
February 2, 2016 | 29

Hornberger

Worstell



Park



Davis Street

Building Elevations

Tempos Zinzanni

presidio companies

KENWOOD INVESTMENTS

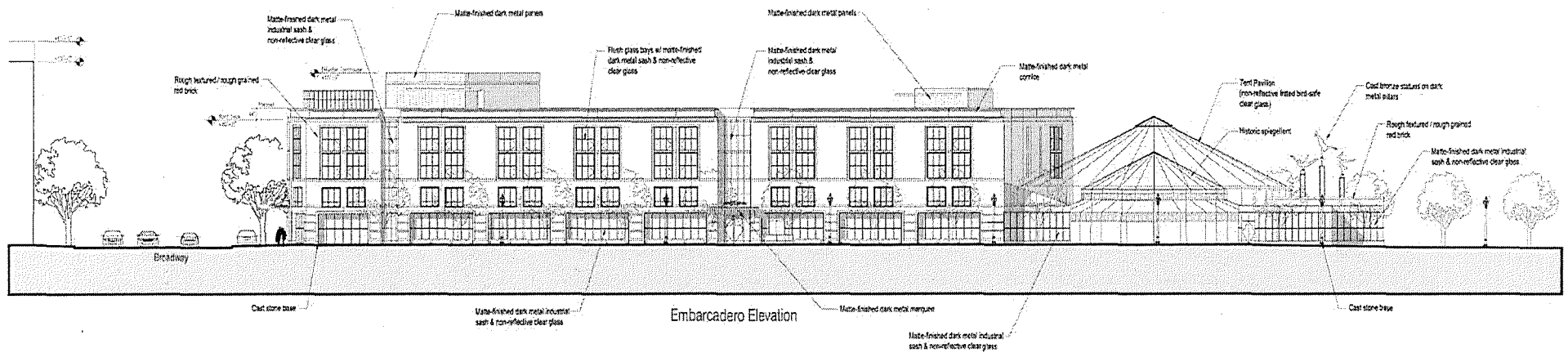
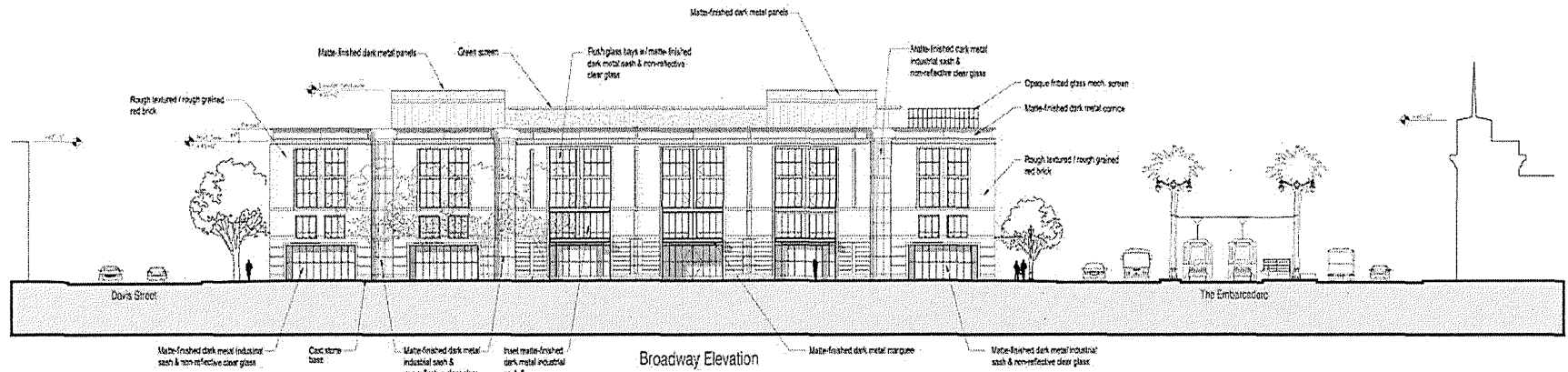
ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

A Theater ZinZanni & Kenwood Investment Project

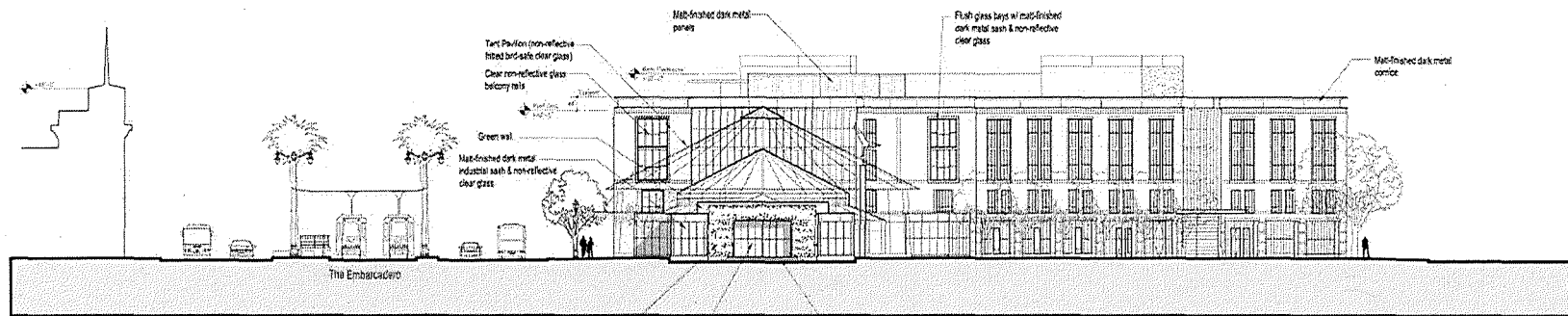
Hornberger + Worstell Architects

Hornberger

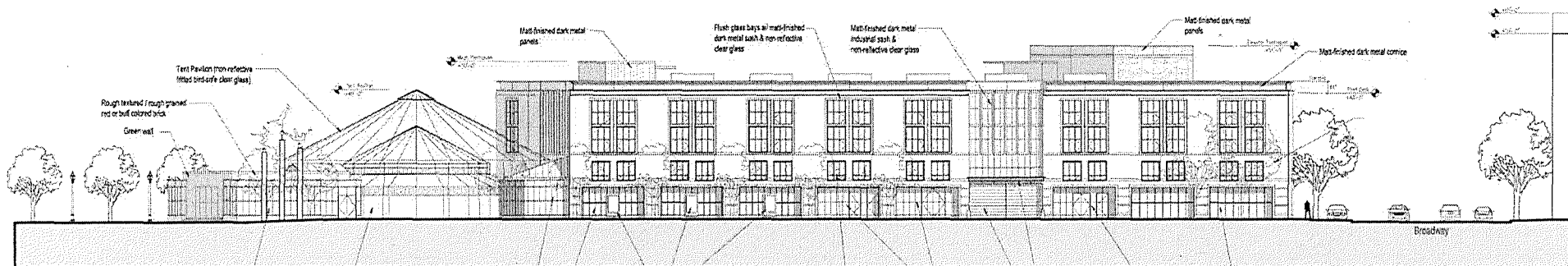
Worstell



Building Elevations | Preferred Proposal Reviewed by Planning Staff & ARC



Park Elevation



Davis Street Elevation

Building Elevations | Preferred Proposal Reviewed by Planning Staff & ARC

Teatro ZinZanni

presidio companies

ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

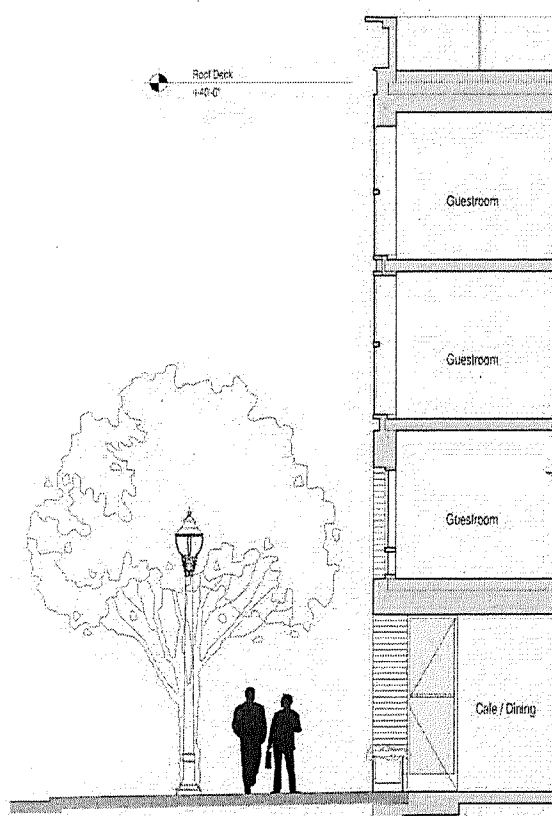
A Teatro ZinZanni & Kenwood Investments Project

Hornberger + Worsell Architects

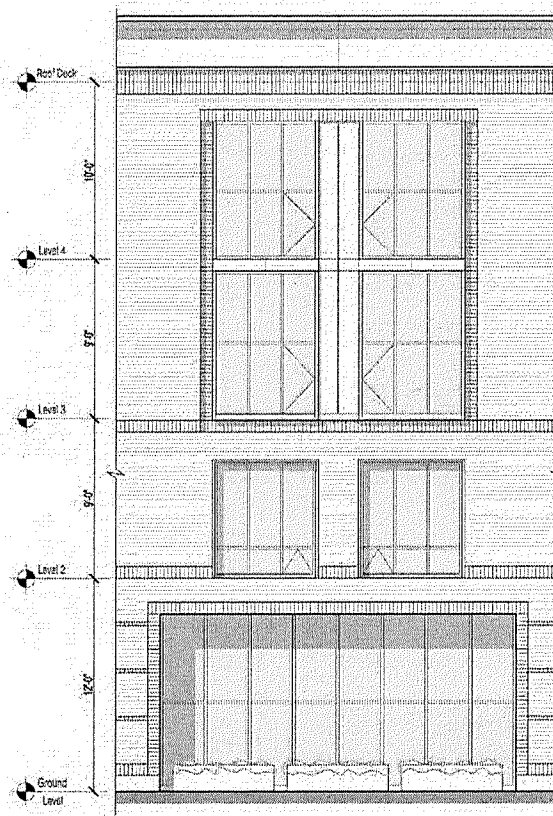
Hornberger

Worsell

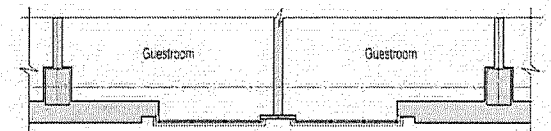
February 8, 2016 | 32



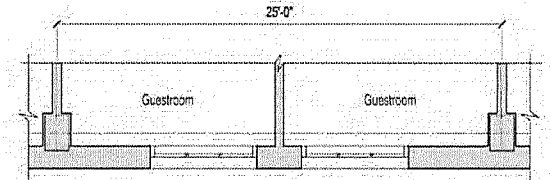
Wall Section



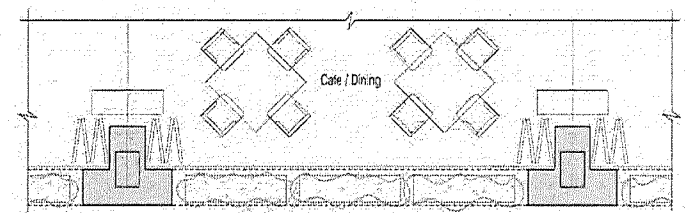
Elevation



Levels 3 & 4



Level 2



Ground Floor

Plan Sections

Embarcadero | Rectangular Shoulder & Flush Bay

December 21, 2018 | 33

Teatro ZinZanni

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ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

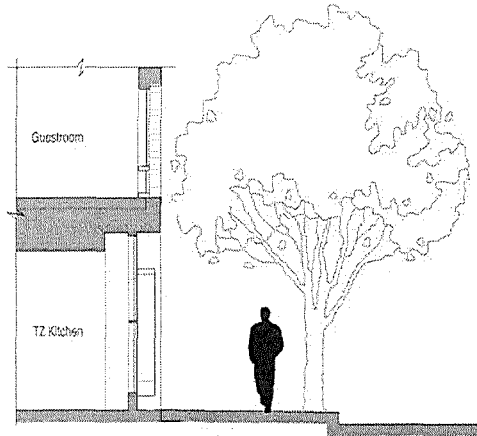
A Teatro ZinZanni & Kenwood Investments Project

Hornberger + Worstell Architects

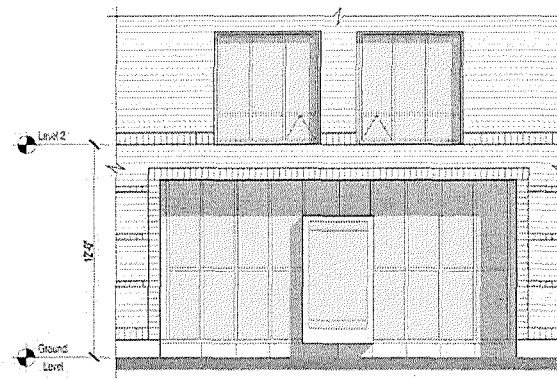
Hornberger

Worstell

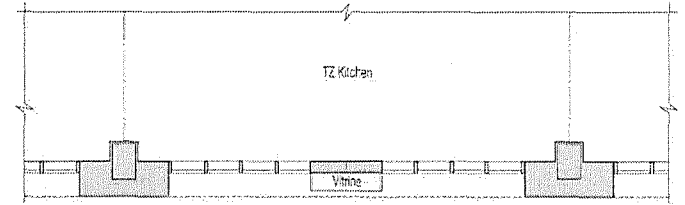
KENWOOD INVESTMENTS



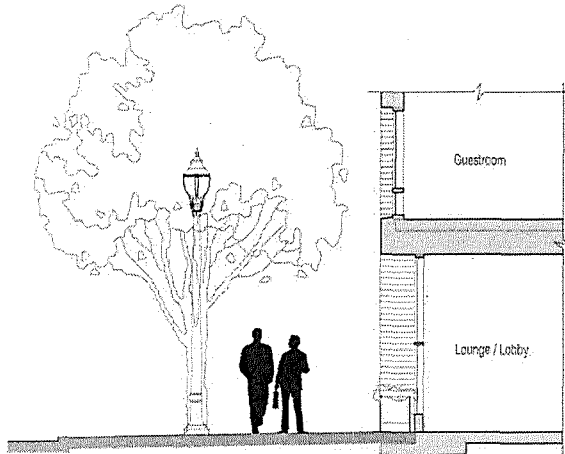
Partial Wall Section @ Davis



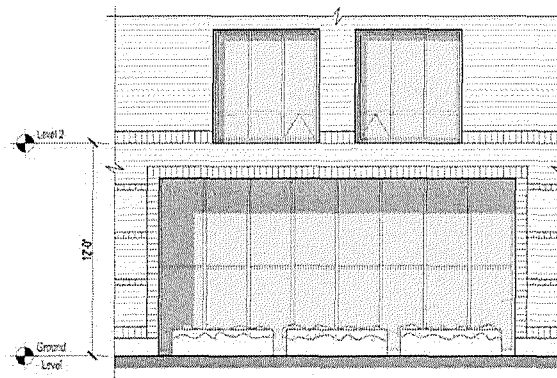
Davis St. Bay- Fixed Storefront & Vitrine



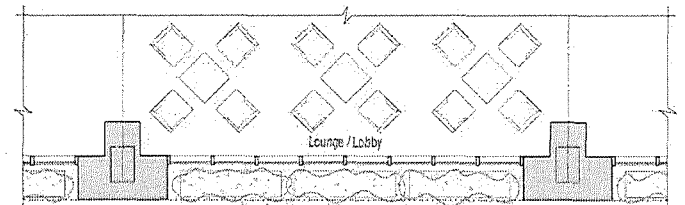
Partial Plan - Ground Floor



Partial Wall Section @ Embarcadero

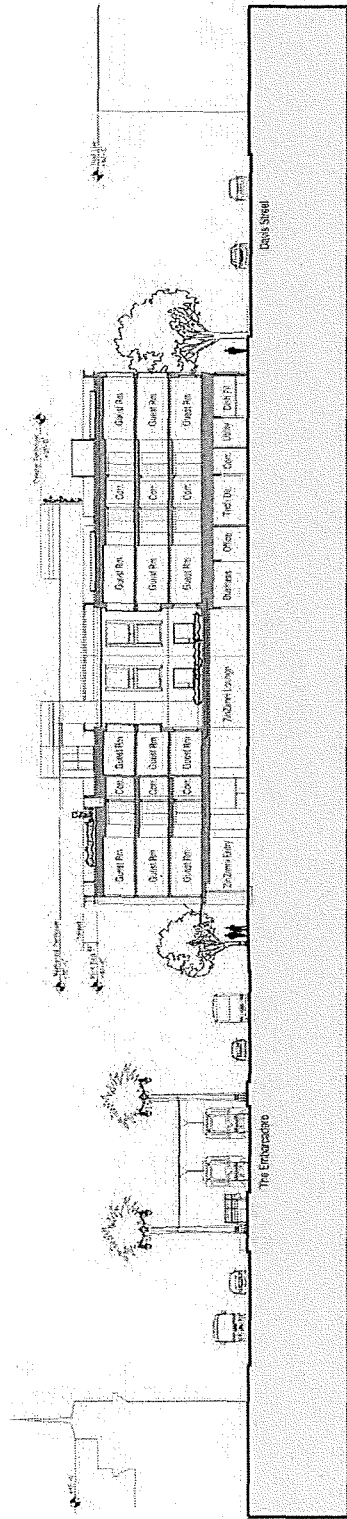


Embarcadero Bay - Fixed Storefront

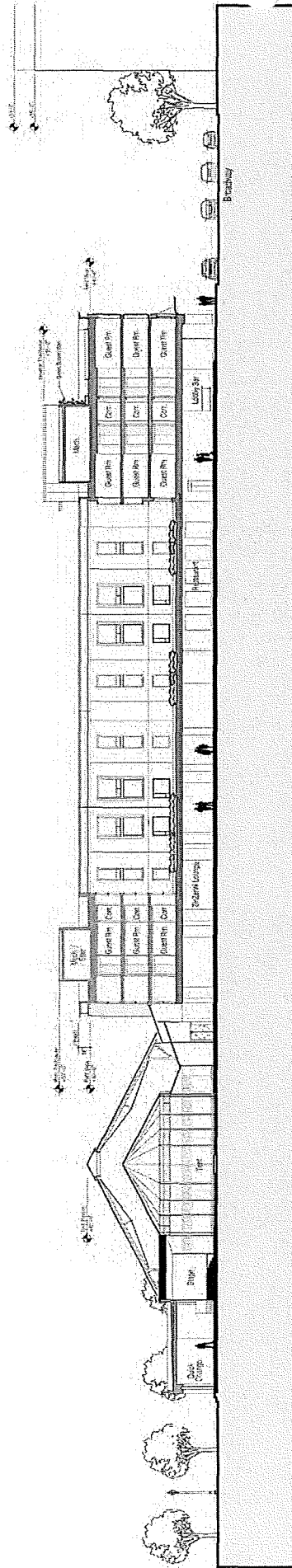


Partial Plan - Ground Floor

Enlarged Bay - Fixed Storefront



Cross Section looking South



Longitudinal Section looking East

Building Sections

November 21, 2012 | 34

Hornberger

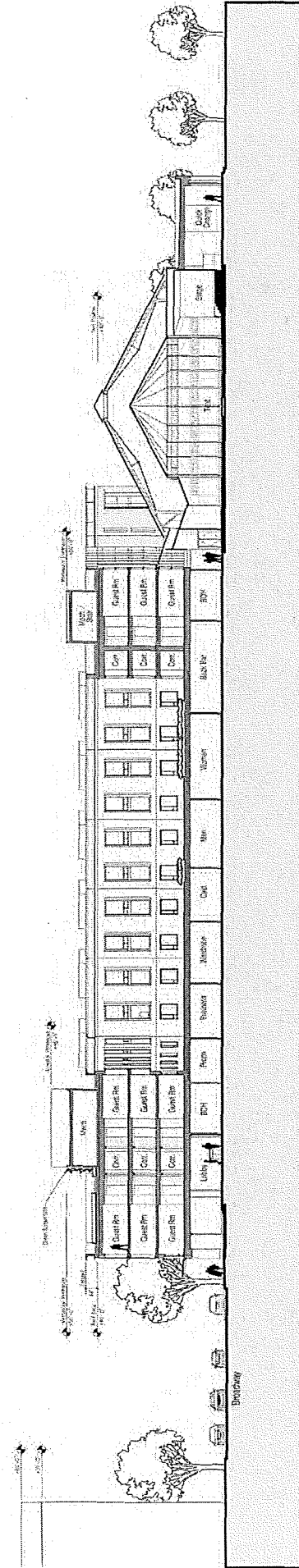
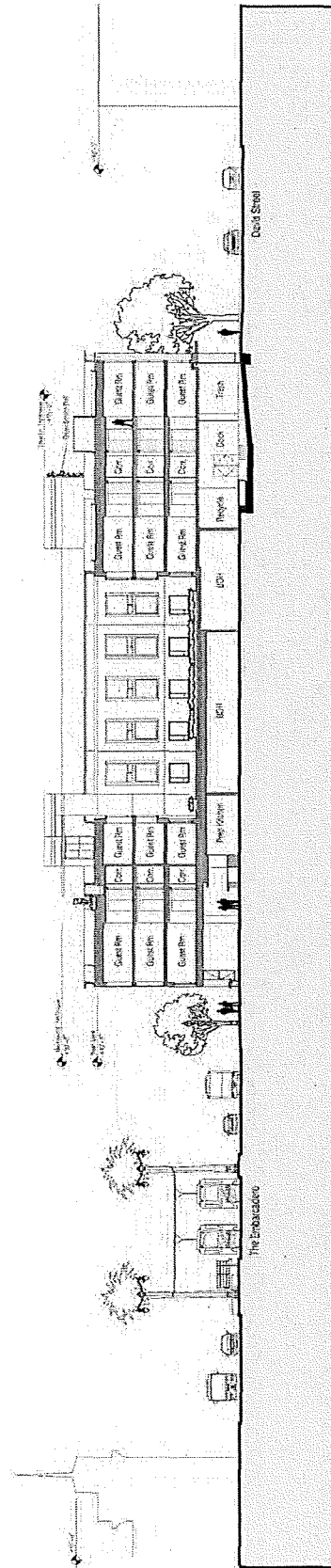
Hornberger + Wurster Architects

Zinzani / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

presidio companies

Kenwood Investments

Worstell



Longitudinal Section looking West

Project Characteristics & Dimensions

ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

A ZinZanni / Kenwood Development Project



TABLE 1 PROJECT CHARACTERISTICS

Lot		Dimensions
Size		59,750 square feet (HRGA cannot confirm. No data)
Length		600 feet (Embarcadero) 210 feet (Broadway) 290 feet (Davis Street)
Proposed Building		Area (gsf)
Height		40 feet (4 stories) (55 feet with elevator penthouse)
Ground Floor (Hotel and Theater)	Lobby (Hotel Lobby + Elev Lobby + Elev Lobby)	1,460
	Pre-function (TZ Lounge + TZ Lobby)	3,010
	Food & Beverage (Restaurant/bar)	4,420
	Retail (TZ Merchant STG + Merch Sale)	1,900
	Tent	4,630
	Meeting (net) (Hotel)	2,360
	Mechanical/Circulation/Back of House	26,920
	Total	43,700
	Level 2 ¹	30,600
	Level 3 ¹	30,500
	Level 4 ¹	30,500
Roof	Open Roof Terrace	3,500
	Elevator/Mechanical Penthouse	4,220
	Total	143,020
Uses		Area (gsf)
Entertainment Venue		26,100 (includes all ground-floor uses, circulation, and back-of-house uses)
Hotel		112,700
Open Space	Publicly Accessible ²	14,000
	Common ³	3,500
	Private ⁴	0
Vehicle Parking Spaces		Number 0
Bicycle Parking Spaces	Class I	20 (on ground floor)
	Class II	24 (in current site plan) (in two locations along project frontage); 15 existing (along The Embarcadero)
Loading Spaces		2

Notes:

¹ Proposed room numbers: Level 2, 59 rooms; level 3, 67 rooms; and level 4, 66 rooms.² Publicly accessible open space provided as a park in the northern corner of the site.³ Common open space provided as an open roof terrace that would be accessible to hotel guests only.⁴ No private open space (including patios/decks off of hotel rooms) would be provided.

Source: Homberger + Worstell Architects and HRGA Architects, 2018.

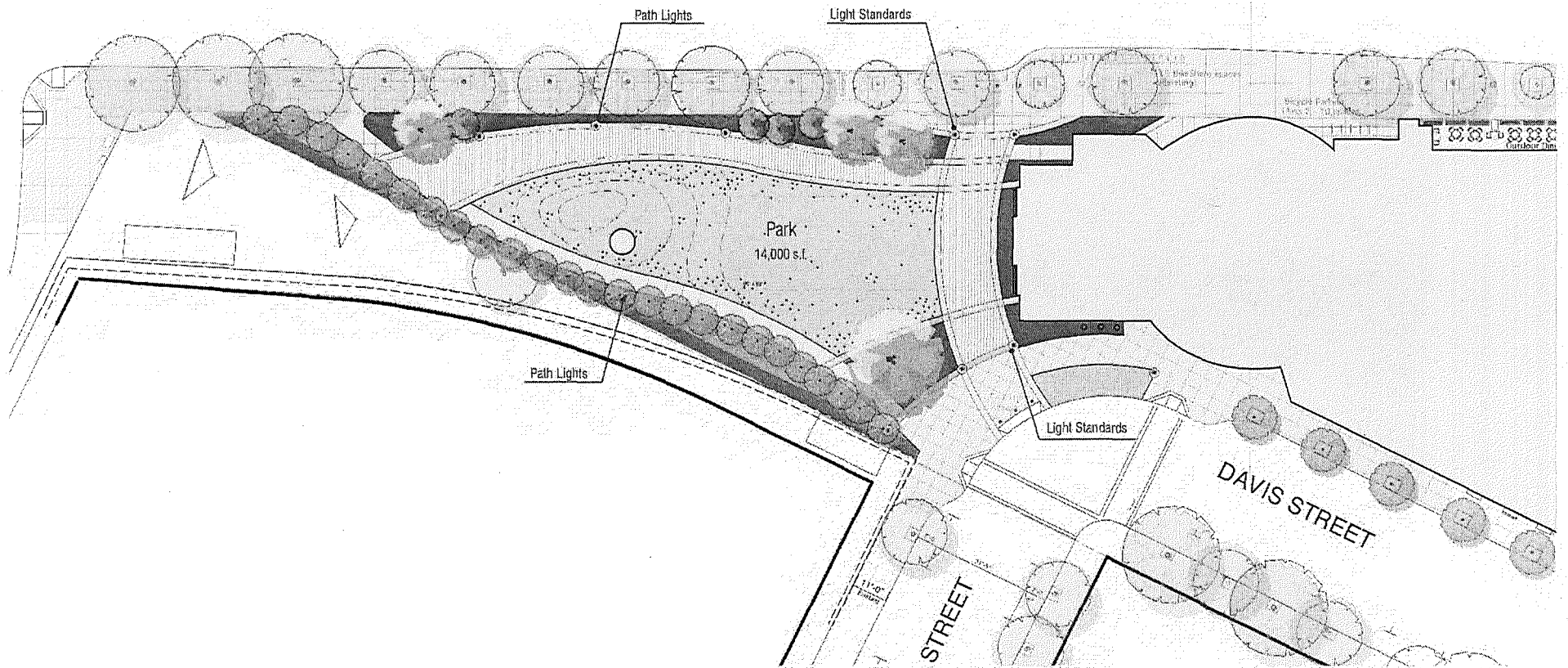
Landscape Plan

ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

A ZinZanni / Kenwood Development Project



THE EMBARCADERO



Site Plan | New Theater and Hotel Park

Teatro ZinZanni

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ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

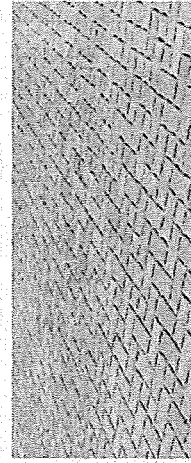
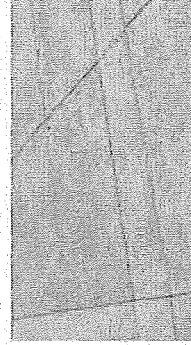
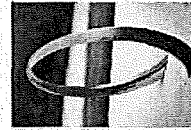
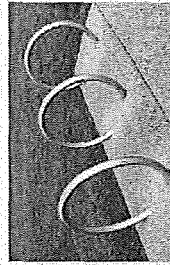
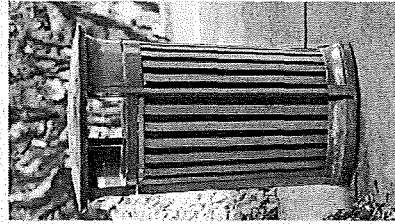
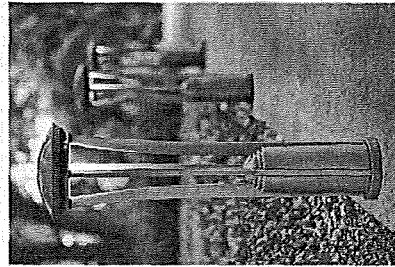
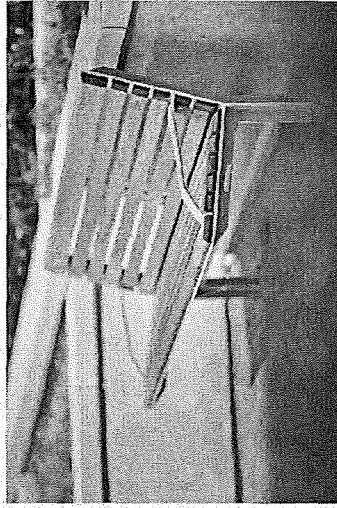
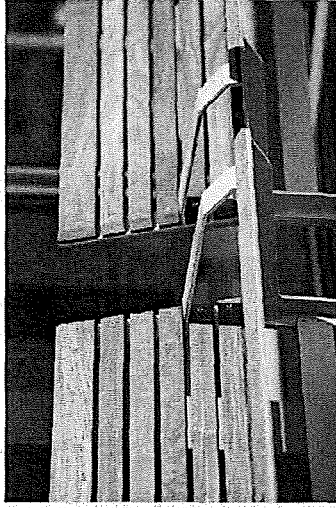
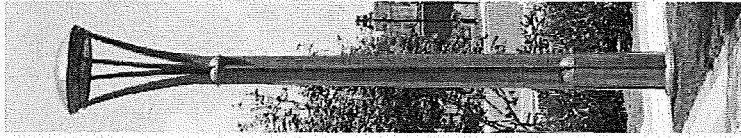
A Teatro ZinZanni & Kenwood Investments Project

Hornberger + Worstell Architects

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December 21, 2013 | 39



Landscape Images

December 21, 2018 | 40

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Hornberger & Worstell Architects
1000 California Street, Suite 1000
San Francisco, CA 94109
Tel: 415.774.1000
Fax: 415.774.1001
www.hornberger.com

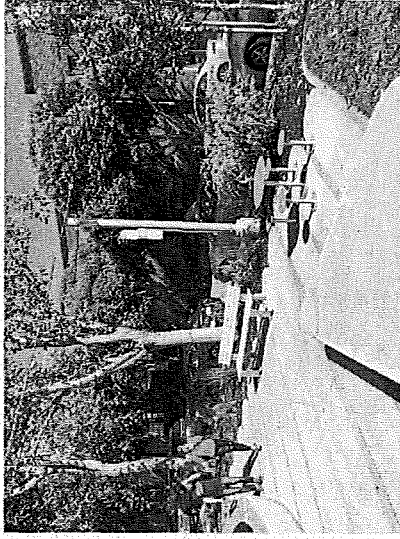
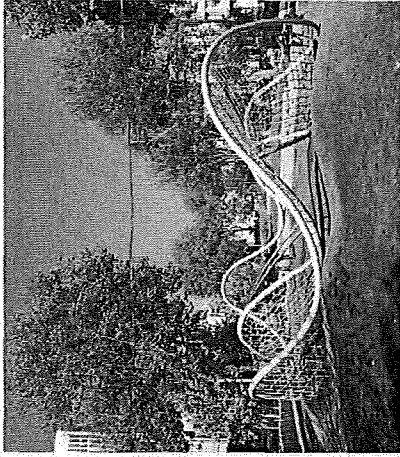
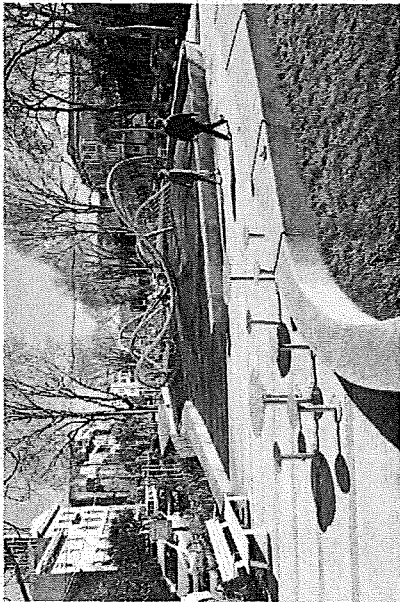
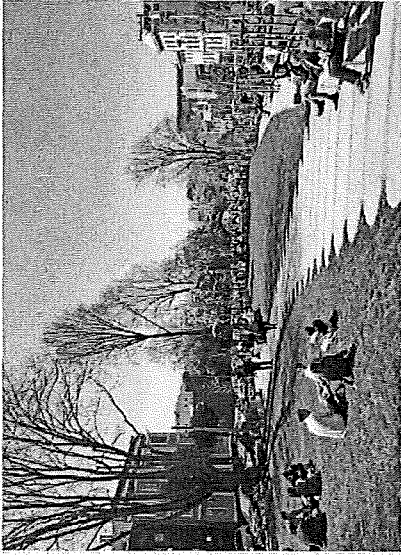
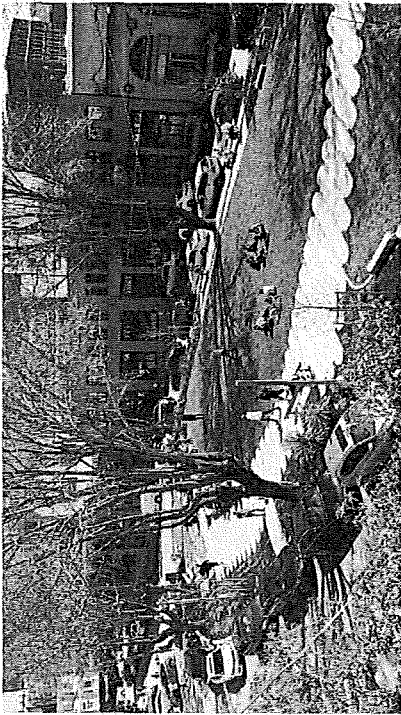
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A Teatro Zinzanni & Kenwood Investments Project

presidio

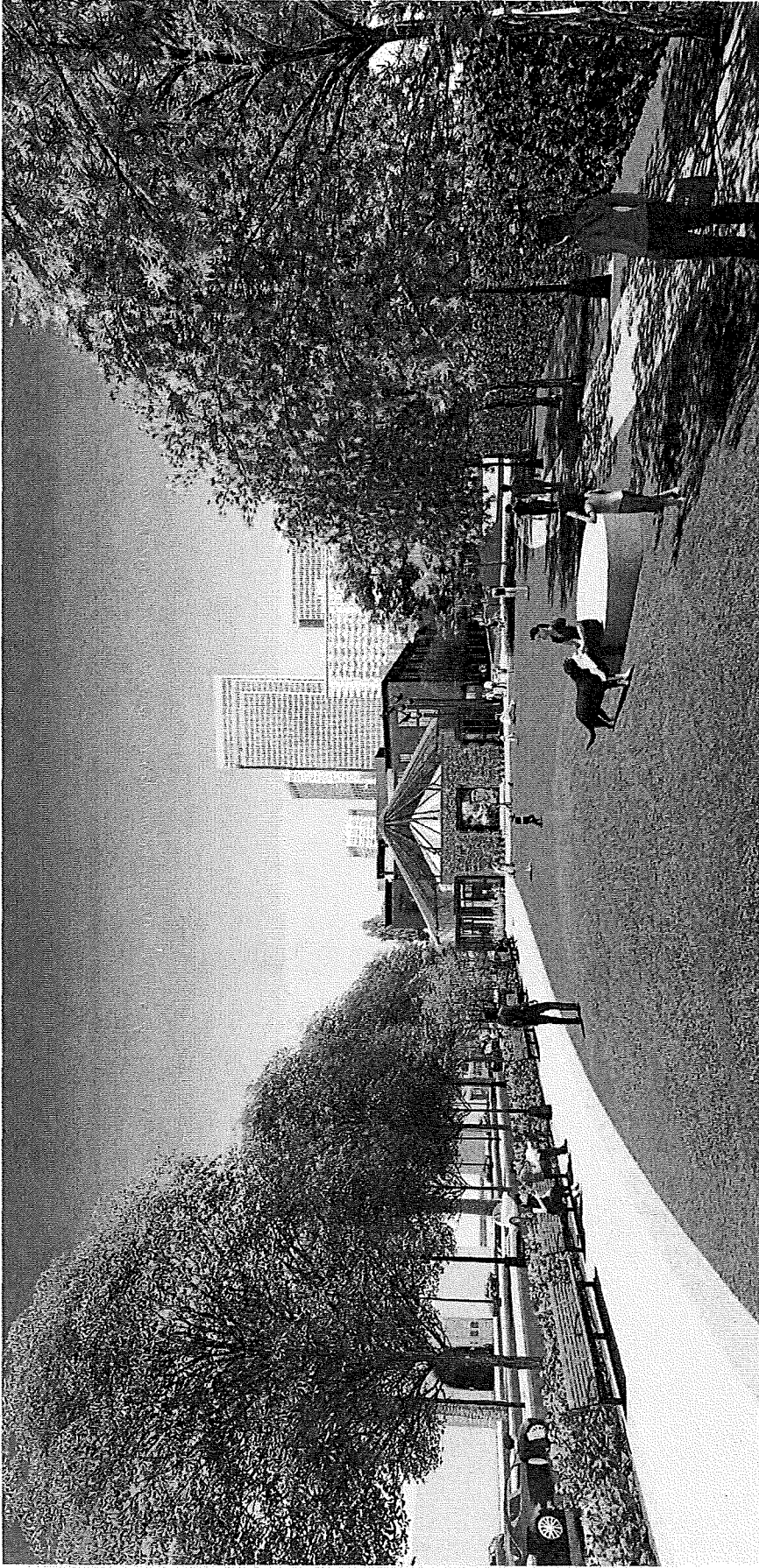
Teatro Zinzanni

KENWOOD INVESTMENTS

Worstell



Park Images - South Park, San Francisco



Visual Analysis | Park View looking South

December 21, 2018 | 42

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Hornberger + Wolsfeld Architects
1000 California Street, Suite 1000
San Francisco, CA 94109
Tel: 415.774.4400
www.hornberger-wolsfeld.com

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A Theater & Hotel in a Kenwood Investment Project

Wolsfeld

presidio companies

Theater ZinZanni

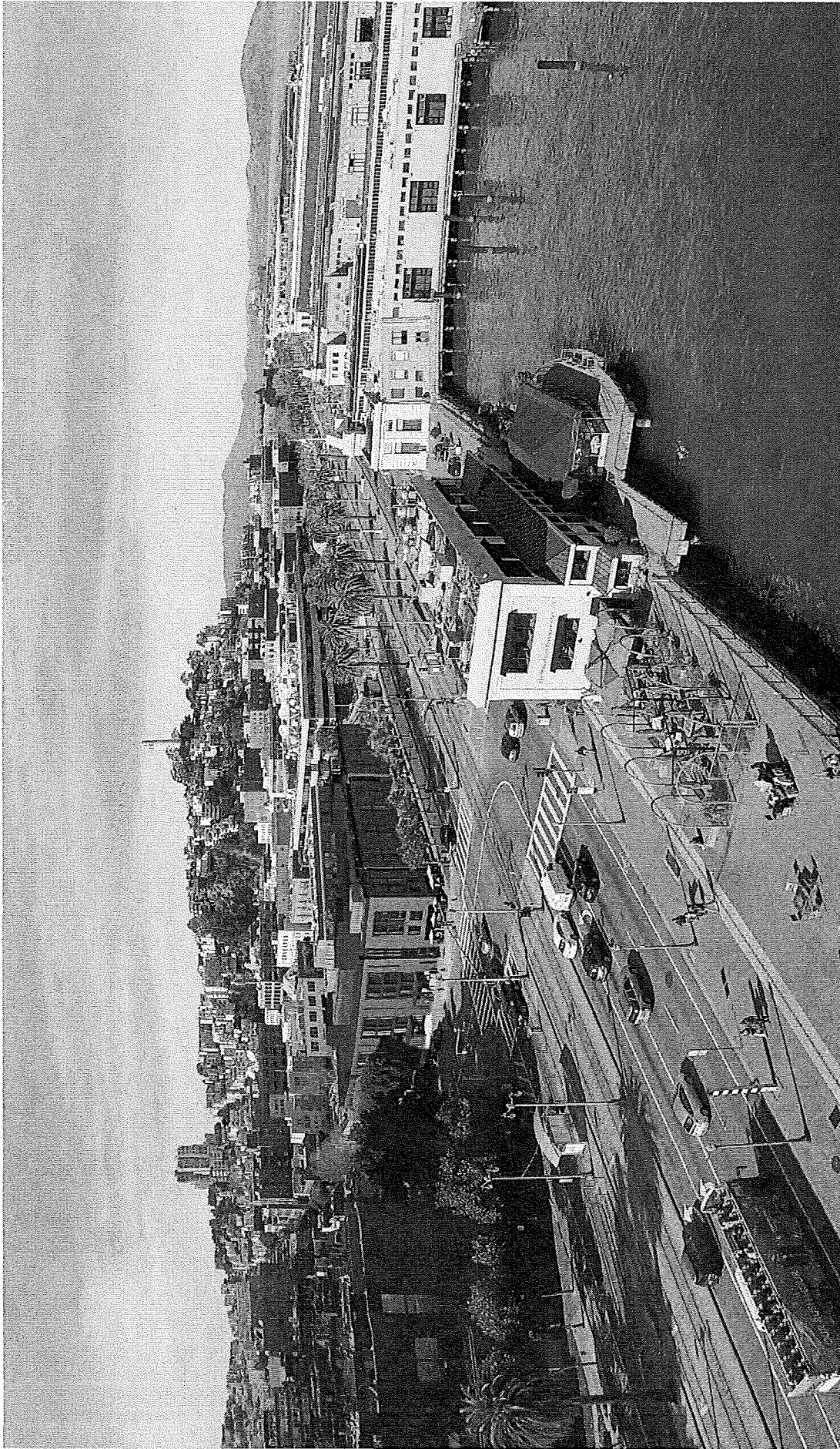
KENWOOD INVESTMENTS

Project Renderings

ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

A Teatro ZinZanni & Kenwood Investments Project





Aerial View

December 21, 2015 | 14

Zinzanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

A Theater Zinzanni & Kenwood Investments Project

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Theater Zinzanni

KENWOOD INVESTMENTS



Visual Analysis | Park View from Davis Street

December 21, 2018 | 45

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Teatro ZinZanni

KENWOOD INVESTMENTS



View: Broadway and The Embarcadero

December 21, 2016 | 48

Hornberger

Hornberger + Worstell Architects

Zinzanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

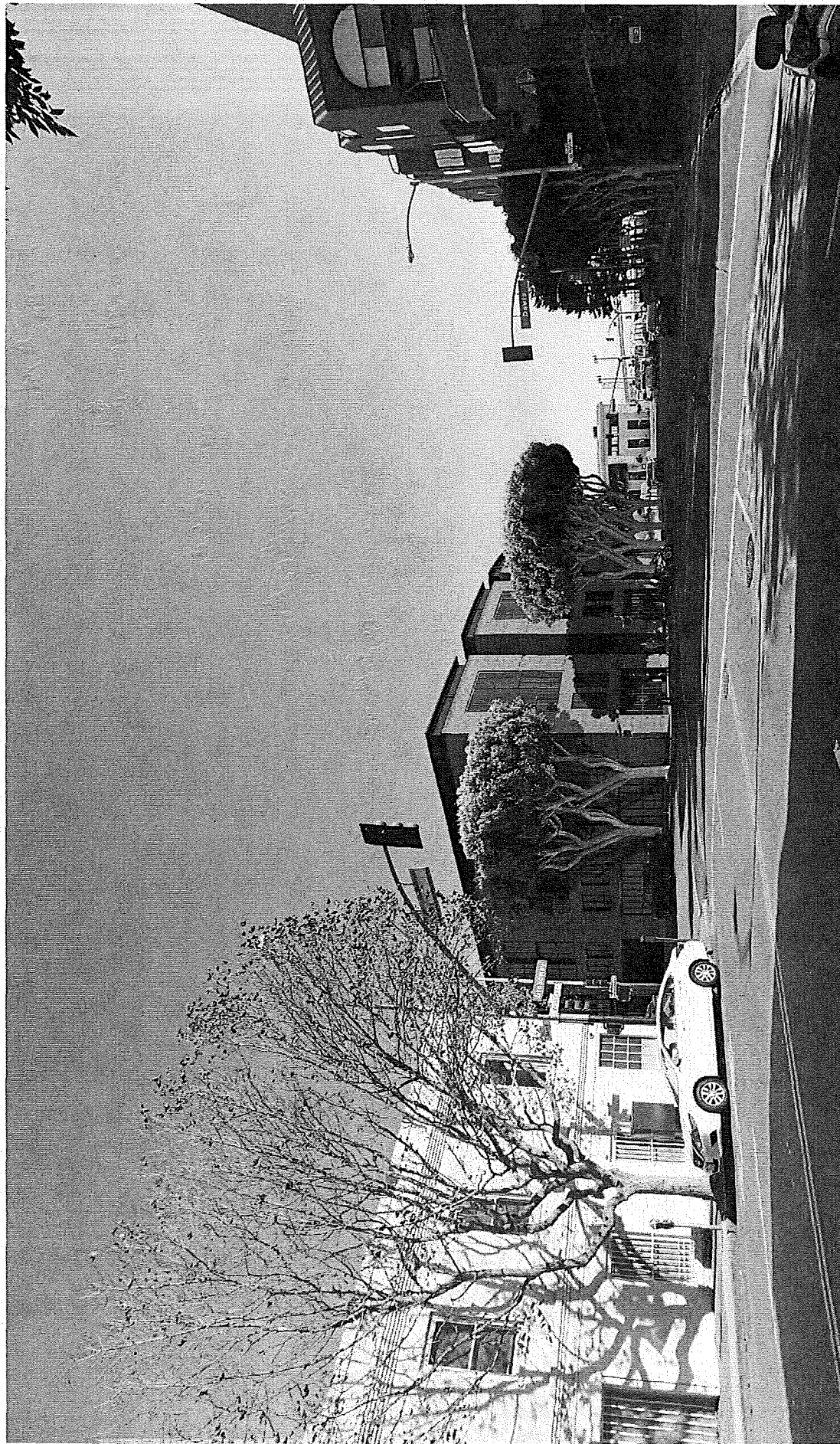
A Theater Zinzanni & Kenwood Investments Project

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THEATER ZINZANNI

KENWOOD INVESTMENTS

Worstell



View: Broadway and Davis

Telling Zinzani

presidio companies

KENWOOD INVESTMENTS

ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

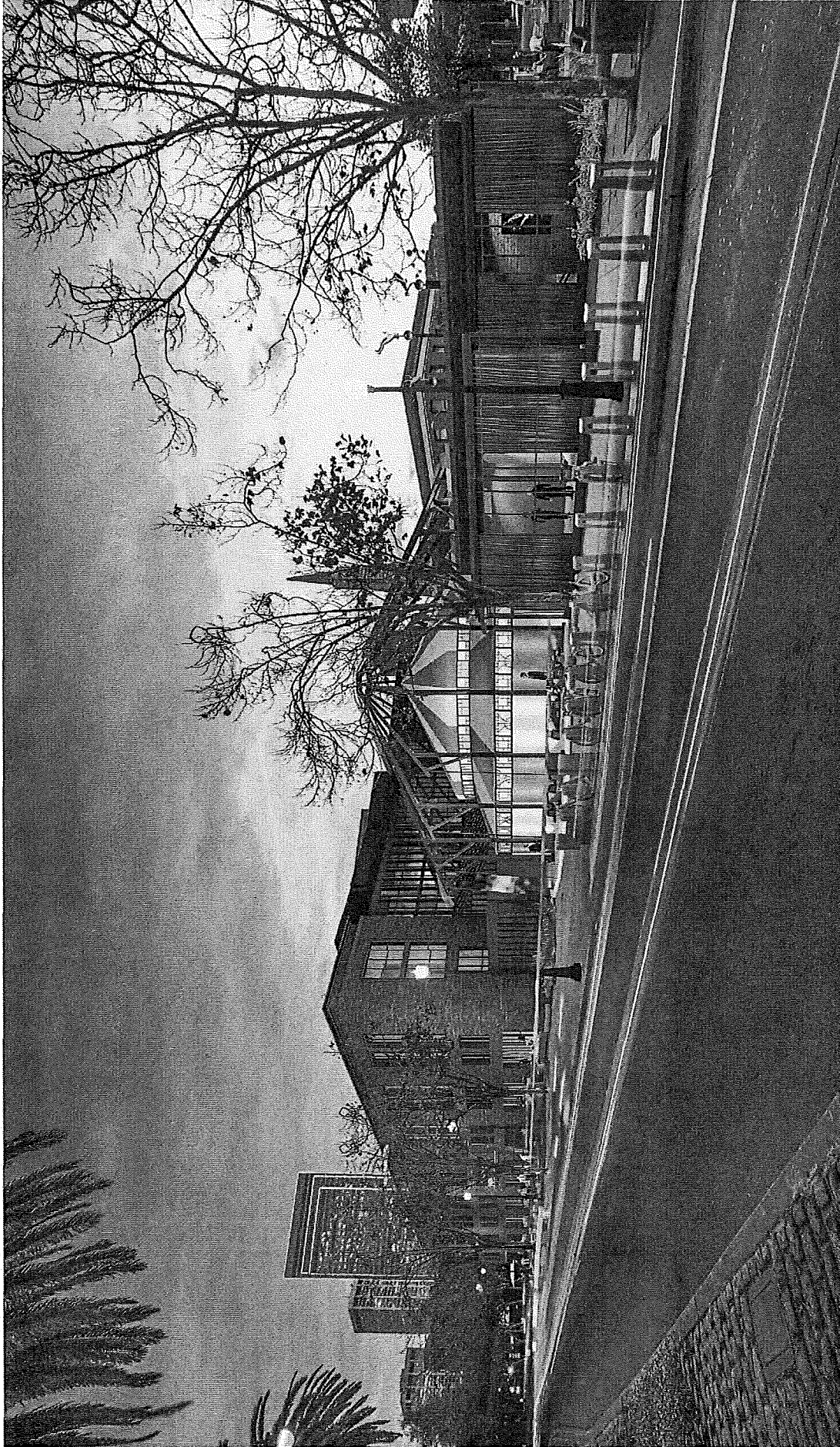
A ZinZanni, ZinZanni & Kenwood Investments Project

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December 21, 2018 | 47

Hornberger

Worselt



View: South Along The Embarcadero

December 21, 2013 | 48

Hornberger

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 1000 California Street, Suite 1000
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 Tel: 415.774.1100
 Fax: 415.774.1101
 www.hornbergerworstell.com

ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

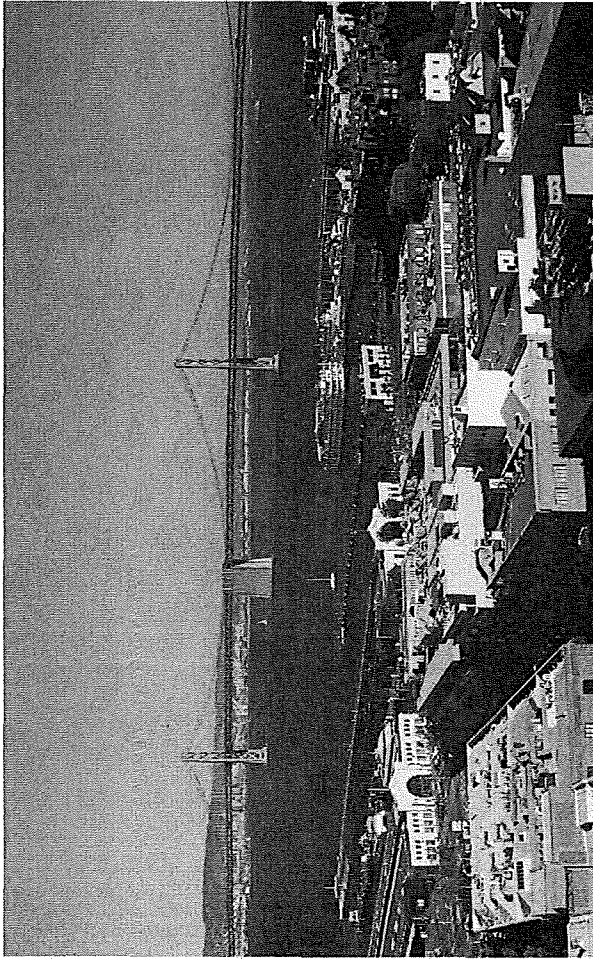
A Theater ZinZanni & Kenwood Investments Project

presidio companies

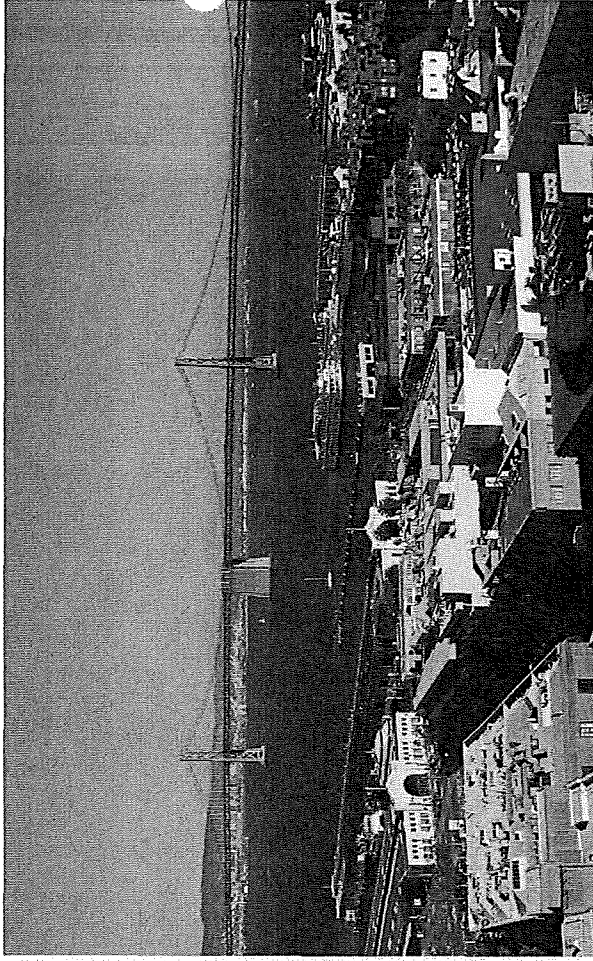
Theater ZinZanni

KENWOOD INVESTMENTS

Worstell



Existing



Proposed

Visual Analysis | View From Telegraph Hill

THEATRE ZINZANNI

presidio companies

KENWOOD INVESTMENTS

Zinzanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

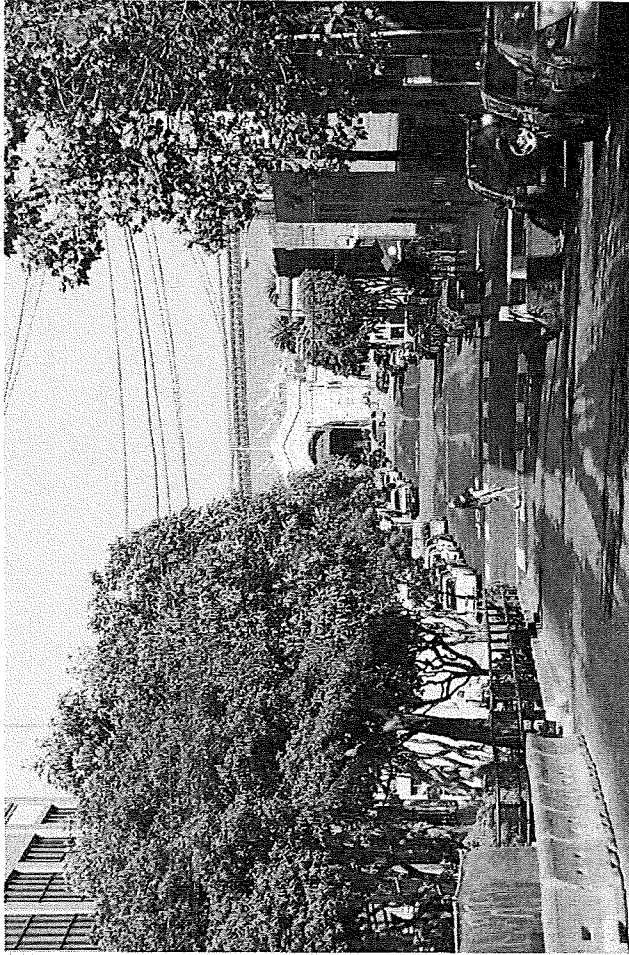
A Theatre Zinzanni & Kenwood Investments Project

Hornberger + Worstell Architects

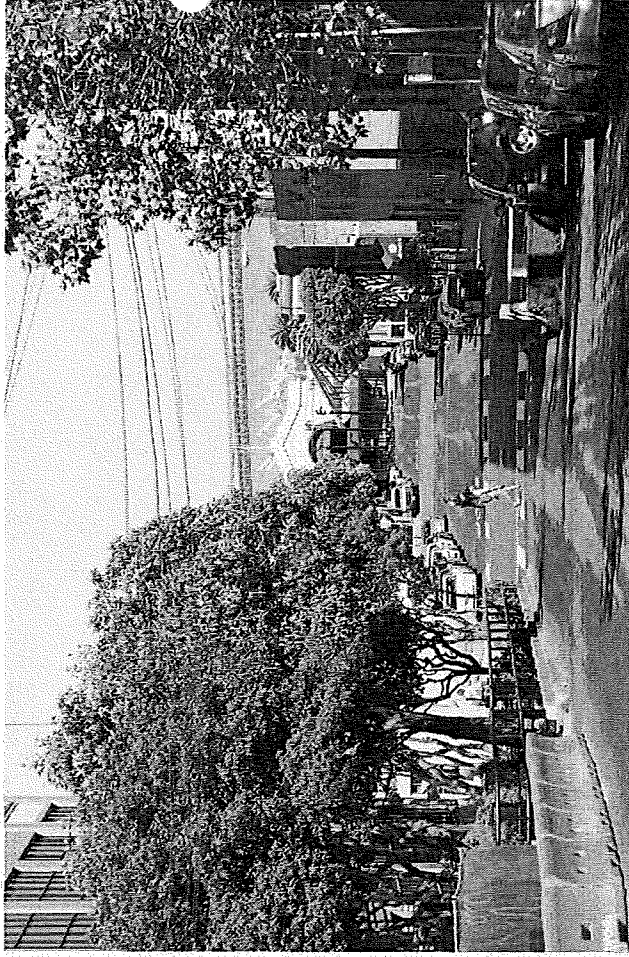
December 21, 2018 | 48

Hornberger

Worstell



Existing



Proposed

Visual Analysis | View from Sansome & Vallejo

presidio companies

Teatro ZinZanni

KENWOOD INVESTMENTS

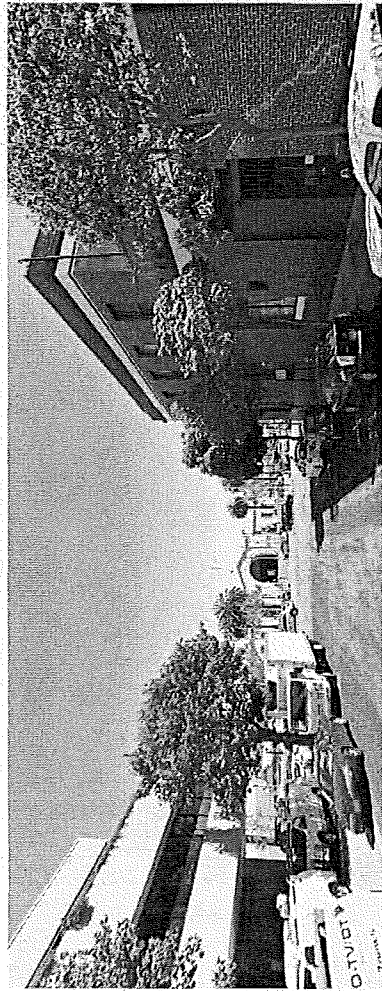
ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

A Teatro ZinZanni & Kenwood Investments Project

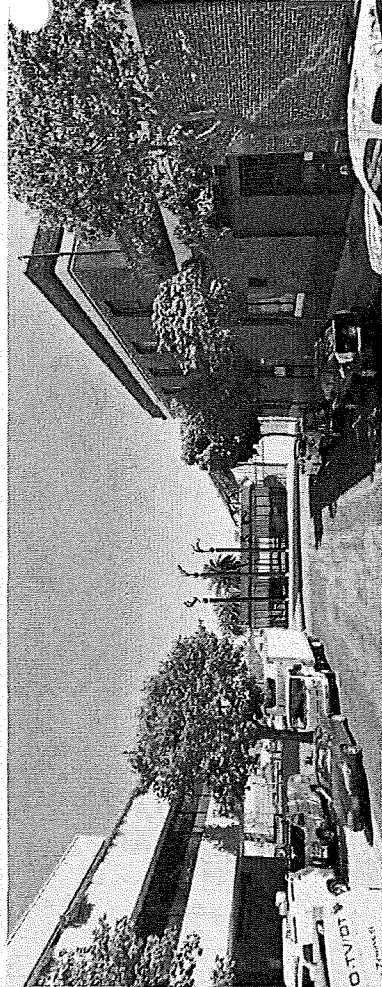
Hornberger + Hornberger Architects

Hornberger

Worstell

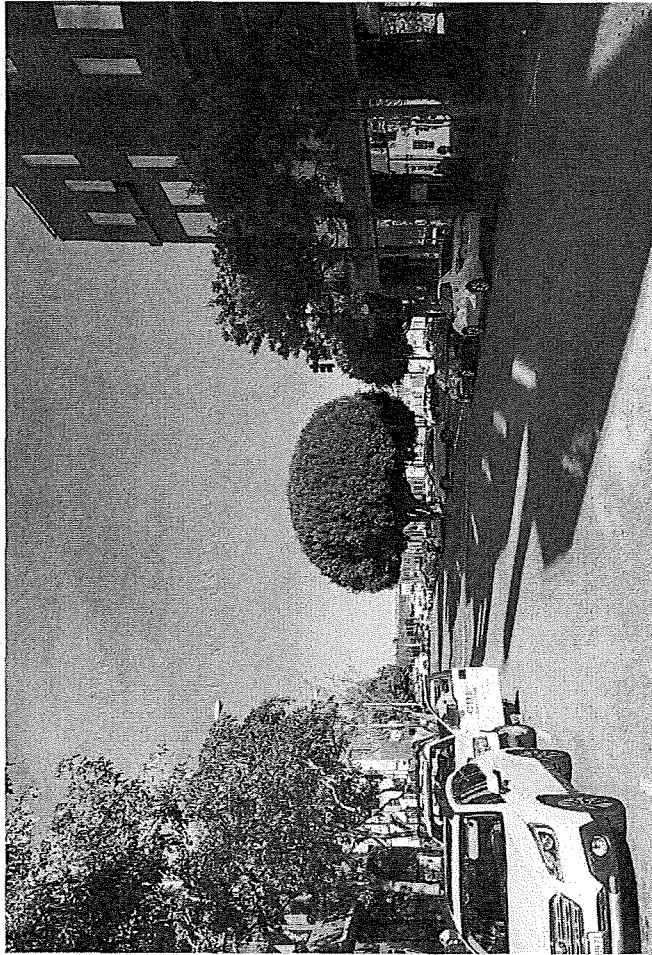


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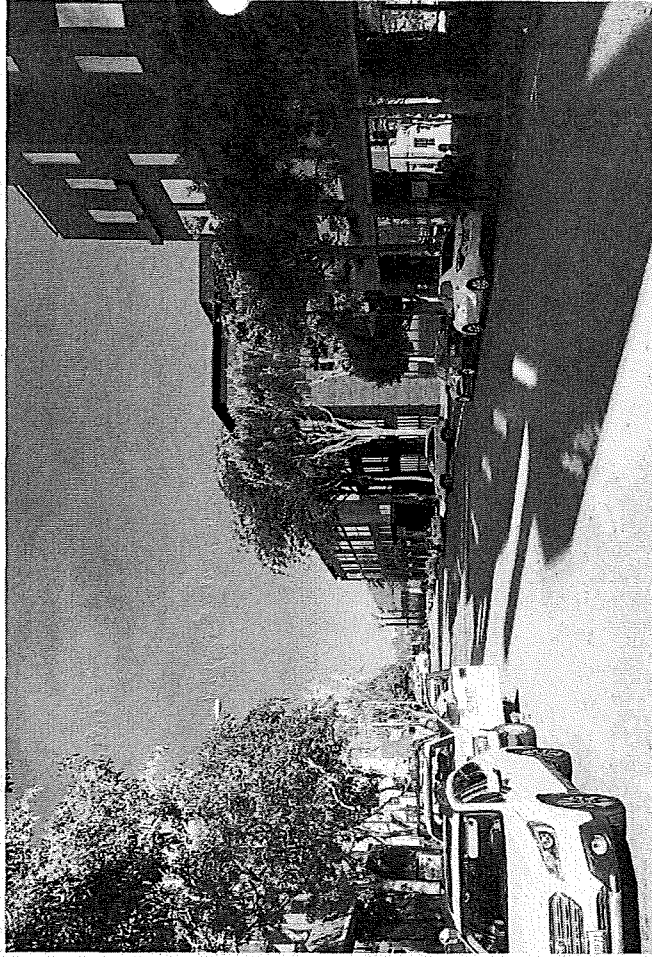


Proposed

Visual Analysis | View from Vallejo

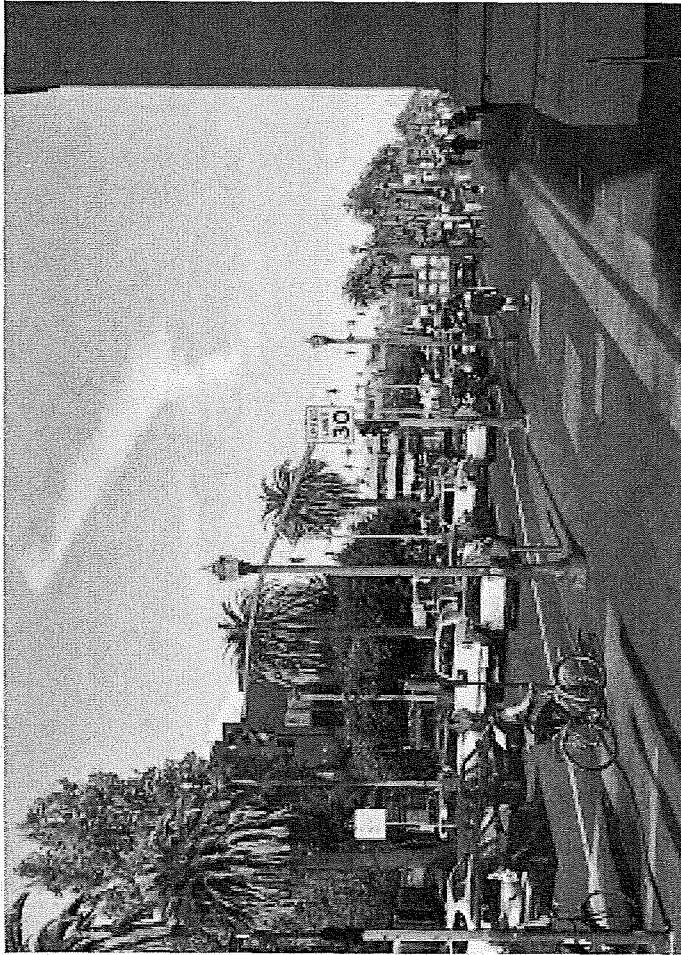


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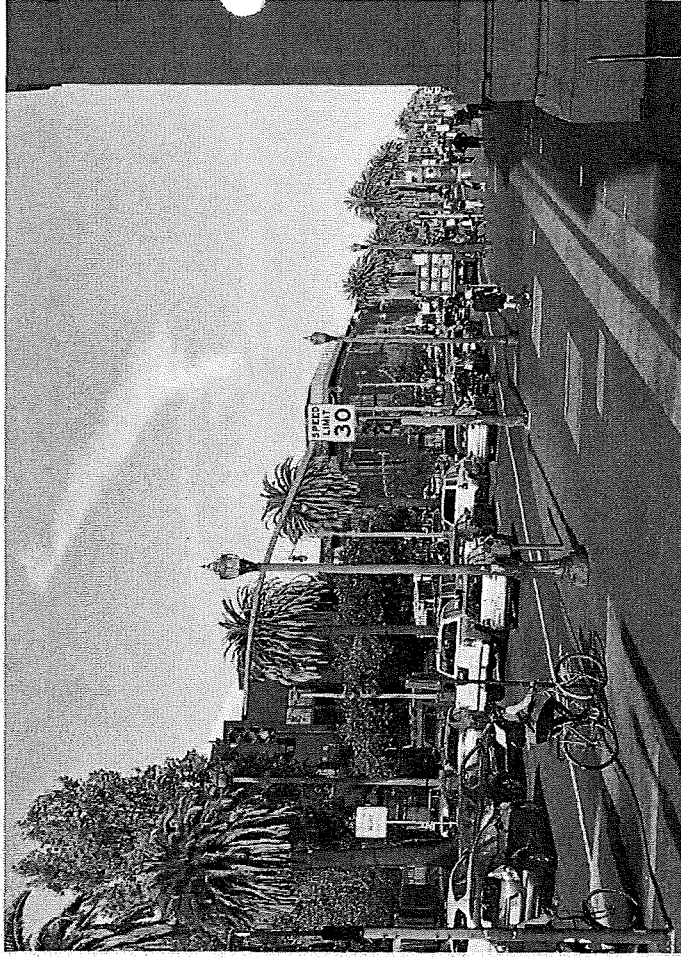


Proposed

Visual Analysis | View 3 - Looking North Along Davis Street



Existing



Proposed

Visual Analysis | View Looking North Along The Embarcadero

Testine ZinZanni

presidio companies

KENWOOD INVESTMENTS

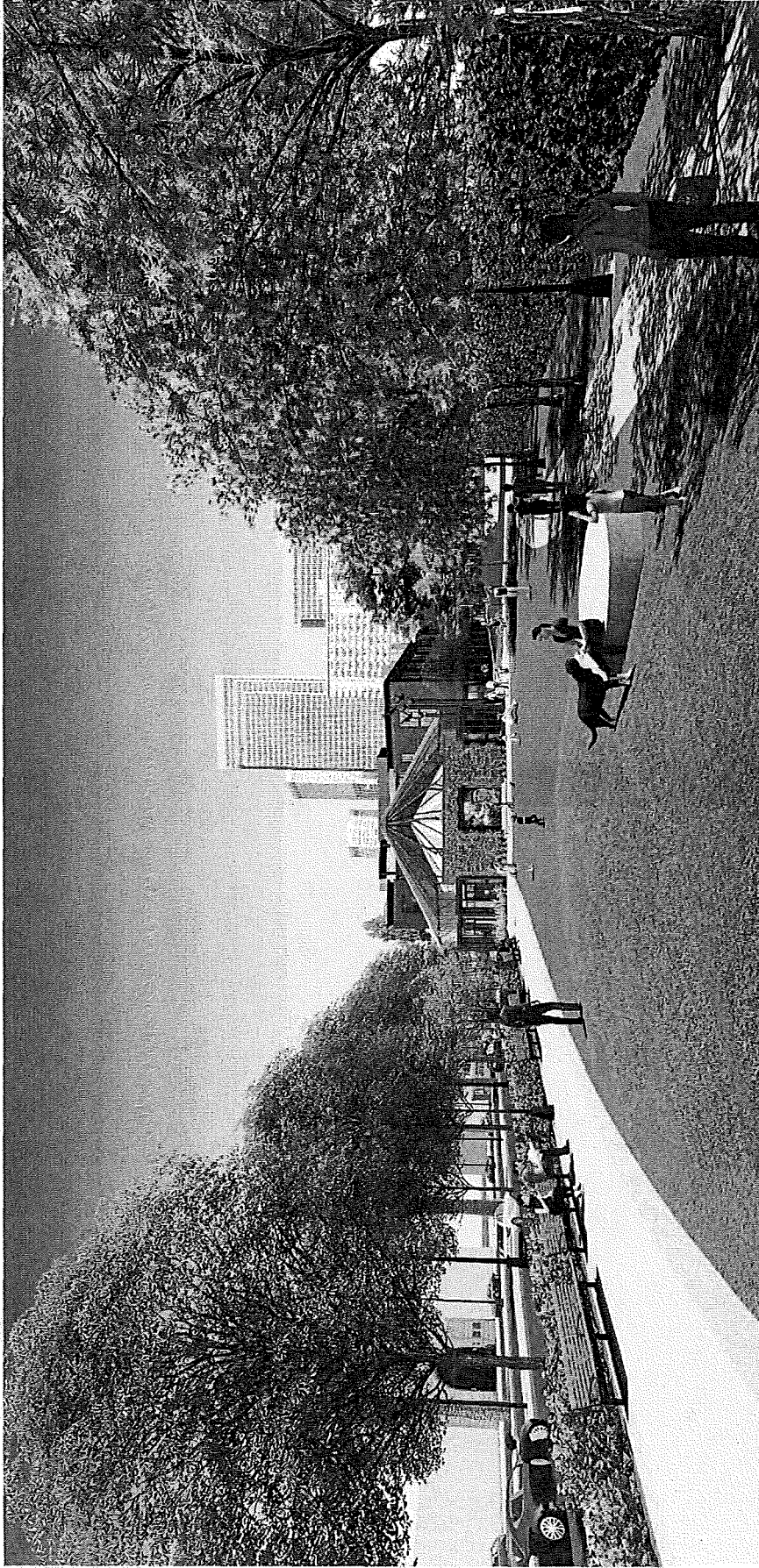
ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

A Teatro ZinZanni & Kenwood Investments Project

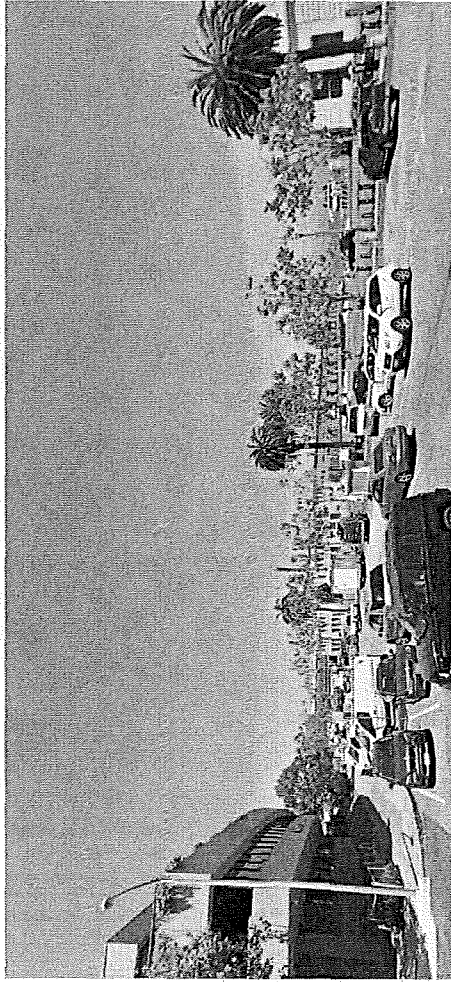
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November 21, 2018 | 53

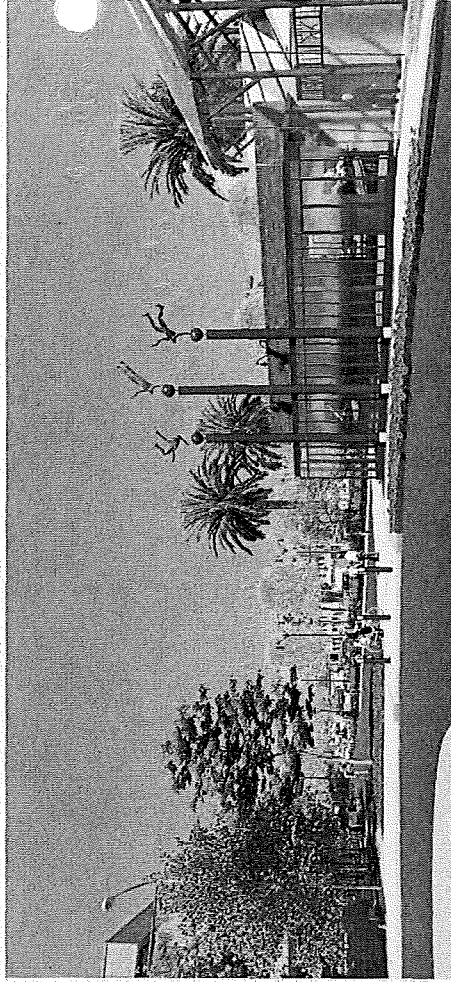
Worstell



Visual Analysis | Park View looking South



Existing



Proposed

Visual Analysis | Park View from Davis Street

Materials

ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

A ZinZanni / Kenwood Investments Project



Dark anthracite
color matte-finish
metal cornice &
marquis

Red brick
3-color blend



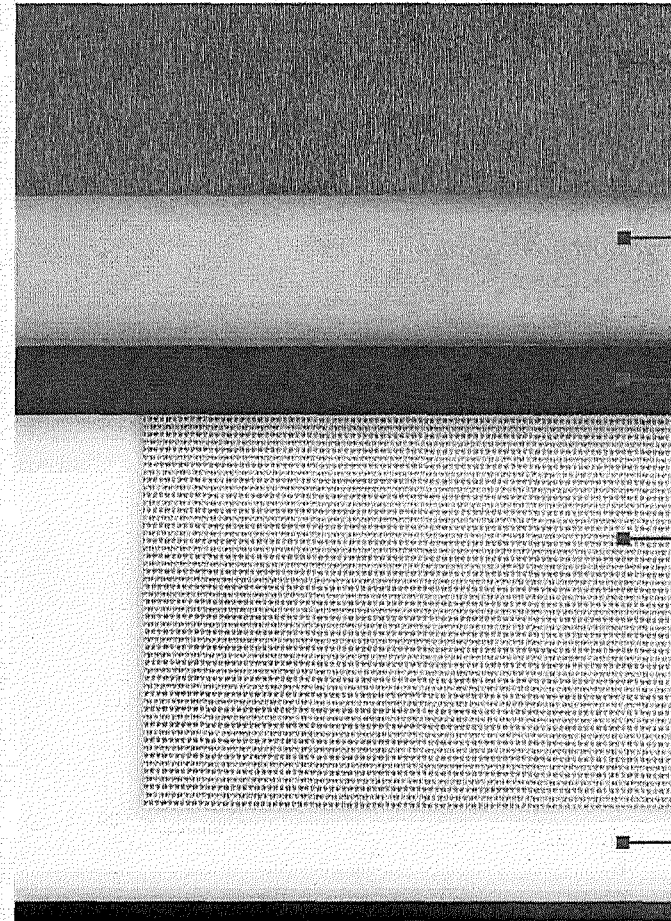
Matte-finish metal
panels at mechanical
enclosures

Back painted/fritted
spandrel glass panel at
mechanical screen and
selected storefront locations

Dark anthracite color
metal mullion sash

Privacy shade

Non-reflective
clear glass



Exterior Materials

THEATRE ZINZANNI

presidio companies

ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

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Hornberger

KENWOOD INVESTMENTS

Worstell



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution No. 20443

HEARING DATE: MAY 2, 2019

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

Reception:
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415.558.6409

Planning
Information:
415.558.6377

Record No.: 2016-011011GPR
Project: STREET VACATION ON DAVIS AND VALLEJO STREETS
FOR THE TEATRO ZINZANNI DEVELOPMENT PROJECT
Project Address: SEAWALL LOTS 323 AND 324 (DBA TEATRO ZINZANNI)
Zoning: C-2 (Community Business) Zoning District
40-X Height and Bulk District
Waterfront Special Use District No. 3
Article 10 Northeast Waterfront Landmark District
Project Sponsor: Jay Wallace
TKZ Broadway, LLC
170 Columbus Avenue, #240
San Francisco, CA 94133
(415) 955-100 ext. 4007
Staff Contact: Christy Alexander – (415) 575-8724
christy.alexander@sfgov.org

ADOPTING FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND WITH THE PRIORITY POLICIES OF PLANNING CODE SECTION 101.1 FOR THE PROPOSED STREET VACATIONS OF PORTIONS OF VALLEJO STREET AND DAVIS STREET FOR THE TEATRO ZINZANNI DEVELOPMENT PROJECT, WITH CONDITIONS.

PREAMBLE

WHEREAS, Section 4.105 of the City Charter and Section 2A.53 of Administrative Code require General Plan referrals to the Planning Commission (hereinafter "Commission") for certain matters, including determination as to whether the lease or sale of public property, the vacation, sale or change in the use of any public way, transportation route, ground, open space, building, or structure owned by the City and County, would be in conformity with the General Plan prior to consideration by the Board of Supervisors.

WHEREAS, On August 25, 2016, the Planning Department received a General Plan Referral Application submitted by Jay Wallace, the Agent for TZK Broadway, LLC, developer of project at Seawall Lots 323 and 324 (the "Project"), for various street vacations necessary for the construction of a new mixed-use development at this site.

WHEREAS, the Project Site consists of two lots located at or near the northwest corner of the Embarcadero and Broadway in San Francisco, along with portions of Vallejo Street and Davis Street, within the C-2 – Community Business Zoning District and a 40-X Height and Bulk District. In total, the site is approximately 42,719 square feet in size (excluding the portions of Vallejo Street and Davis Street). The Project proposes demolition of a surface parking lot on Seawall Lots 323 and 324 to construct a new mixed-use development consisting of three components: an approximately 26,100 gross-square-foot (gsf) entertainment venue; an

approximately 112,700 gsf hotel that would accommodate 192 guest rooms, and; an approximately 14,000 gsf privately financed and maintained public park.

WHEREAS, the proposed street vacation on portions of Vallejo Street and Davis Street would facilitate the Teatro ZinZanni Development Project at the scale of development contemplated in the Waterfront Land Use Plan (WLUP) while providing much needed open space areas within the Northeastern Waterfront Area Plan and extend the existing connections between the Northeastern Waterfront and the Golden Gate National Recreation Area along the Embarcadero. Currently, Vallejo Street does not exist as an actual road and the easement bisects the Project Site at the location contemplated for the proposed privately-owned publicly-accessible park, and the continued existence of a functional public street would make this park space infeasible. The proposed street vacation area would be incorporated into the proposed park. Currently, Davis Street does not exist as an actual road and the easement is included in the existing surface parking lot which bisects the Project Site and the television station to the west. The proposed park is an approximately 13,000 square foot open area with walkways at ground elevation. The proposed vacations on Vallejo Street and Davis Street would expand the public's use of the proposed privately-owned publicly-accessible park and maintain interconnectivity with subsequent permanent declaration of public access covenants and restrictions for pedestrian access and an emergency vehicle and large trucks access easement (See Exhibit B in Case No. 2015-016326CUA).

WHEREAS, the proposed street vacation of portions of Vallejo Street and Davis Street would incorporate these portions of the streets into the proposed privately-owned publicly-accessible park. The proposed vacations on Vallejo Street and Davis Street would expand the public's access to the Embarcadero with subsequent permanent declaration of public access covenants and restrictions for pedestrian access (See Exhibit B in Case No. 2015-016326CUA).

WHEREAS, In lieu of the current easement of Vallejo Street from Davis Street to the Embarcadero, Vallejo Street would continue to be routed as it exists at a 90-degree angle to the south to Davis Street.

WHEREAS, In lieu of the current easement of Davis Street from Vallejo Street to the Embarcadero, Davis Street would continue to be routed as it exists at a 90-degree angle to the west to Vallejo Street.

WHEREAS, the Project proposes to vacate approximately 14,461 square feet of street including approximately 4,842 square feet of Vallejo Street and approximately 9,619 square feet of Davis Street under the specific configurations as described below (See "EXHIBIT B" in Case No. 2015-016326CUA):

Vallejo Street Vacation – Vallejo Street is currently a 68.75' wide street running west of Davis Street to the Embarcadero. The Project proposes to vacate Vallejo Street west of Davis Street for a length of 87.84' on its southerly side and a width of 68.75' (for the total area of approximately 4,842 square feet).

The area proposed for the Vallejo Street vacation is generally bounded by Assessor's Block No. 0139, Lot No. 002 to the south and Assessor's Block No. 0138, Lot No. 001 to the north. The area proposed for the Davis Street vacation is generally bounded by Assessor's Block No. 0138, Lot No. 001 to the east and Assessor's Block No. 0137, Lot No. 001 to the west.

Davis Street Vacation – Davis Street is currently a 69.79' wide street running north of Vallejo Street to the Embarcadero. The Project proposes to vacate Davis Street north of Vallejo Street for a length of 250.29' on its westerly side and a width of 69.79' (for the total area of approximately 9,619 square feet).

The full length of vacated area on Vallejo Street and Davis Street would be subject to a non-exclusive public easement for pedestrian access and will be open 24 hours per day and seven days a week and will be fully open and feature no gates or other physical restrictions to pedestrian access. The Vallejo Street vacation area (not occupied by the entertainment venue) will be accessible by pedestrians between Davis Street and the Embarcadero and the Davis Street vacation area will be accessible by pedestrians between Vallejo Street and the Embarcadero via the proposed privately-owned publicly-accessible park.

The vacation area would become part of the privately-owned publicly accessible park. This area would be accessible by pedestrians primarily from the Embarcadero and from Davis Street. The vacated portion of Vallejo Street and Davis Street is proposed by the Project Sponsor to be accessible to the public 24 hours per day, 7 days a week through a permanent declaration of public access covenants and restrictions.

WHEREAS, to provide consistency with General Plan policies pertaining to the vacation of City streets and to minimize the effects of the proposed street vacation per the Urban Design Element (Policy 2.9) the certain conditions are required to be met regarding hours of public access as well as design treatments on the vacated streets, publicly accessible private open spaces, or the continued alignment of Vallejo Street and Davis Street as described below:

WHEREAS, the Urban Design Element allows permitting street vacations so long as the greater public benefit of the vacation outweigh the loss of public ownership of the streets. To ensure that standard is met, the design and access of the proposed privately-owned publicly-accessible park provided at the street level must be seamlessly coordinated with the vacated areas to provide the highest quality open space that is publicly accessible at all times. To this end, the proposed park shall remain 24 hours of public access, seven days a week (See Exhibit B in Case No. 2015-016326CUA). This would enhance the pedestrian and public space along the Embarcadero and Davis Street with widened areas as public space. These enlarged public spaces are open to sky and accessible at all times. Consequently, this design would help advance the greater public benefit offered by this Project in exchange for the vacation of public rights-of-ways.

ENVIRONMENTAL REVIEW

The Department found that the Project could not have a significant impact on the environment pursuant to a final Mitigated Negative Declaration issued on December 21, 2018. The Planning Commission (hereinafter "Commission") has reviewed and concurs with said determination.

The proposal addresses the following relevant objectives and policies of the General Plan:

GENERAL PLAN COMPLIANCE AND BASIS FOR RECOMMENDATION

The Project is consistent with the General Plan and Eight Priority Policies of Planning Code Section 101.1 as described below in the body of this letter. The Project as modified by the conditions described above, is on balance, in conformity with the following Objectives and Policies of the General Plan:

NORTHEASTERN WATERFRONT AREA PLAN ELEMENT

Objectives and Policies

OBJECTIVE 1:

TO DEVELOP AND MAINTAIN ACTIVITIES THAT WILL CONTRIBUTE SIGNIFICANTLY TO THE CITY'S ECONOMIC VITALITY AND PROVIDE ADDITIONAL ACTIVITIES WHICH STRENGTHEN THE PREDOMINANT USES IN EACH SUBAREA OF THE NORTHEASTERN WATERFRONT, WHILE LIMITING THEIR CONCENTRATION TO PRESERVE THE ENVIRONMENTAL QUALITY OF THE AREA.

Policy 1.1

Accommodate where appropriate, additional activities which will strengthen the predominant economic functions of each subarea of the Northeastern Waterfront.

Policy 1.2

Consistent with other policies of this Plan, encourage uses on Port property which return revenue to the Port to support and improve its facilities.

The Project is consistent with the other policies of the City's General Plan and encourages uses that return revenue to the Port through a long-term ground lease payment, hotel transient occupancy tax revenue, possessory interest tax payments and other fees and taxes associated with the Project. The Project will replace an underutilized surface parking lot with three new public-serving uses that will strengthen the predominant economic functions of the gateway to North Beach and Chinatown, serve as an important feature of The Embarcadero and provide new public uses and economic functions that are consistent with many of the Policies, Objectives and plans set forth in the City's General Plan and its Northeastern Waterfront Area Plan, the Port of San Francisco's Waterfront Land Use Plan and Waterfront Design and Access Plan.

OBJECTIVE 2:

TO DIVERSIFY USES IN THE NORTHEASTERN WATERFRONT, TO EXPAND THE PERIOD OF USE OF EACH SUBAREA AND TO PROMOTE MAXIMUM PUBLIC USE OF THE WATERFRONT WHILE ENHANCING ITS ENVIRONMENTAL QUALITY.

Policy 2.1

Develop uses which generate activity during a variety of time periods rather than concentrating activity during the same peak periods.

Policy 2.2

Diversify activities to encourage the use of the Northeastern Waterfront by a broad spectrum of the population.

Policy 2.3

Encourage land uses having different peak periods of activity within each subarea of the Northeastern Waterfront to contribute to the area's diversity, to expand the period of use, to decrease peak period traffic congestion, to facilitate efficient use of the transit system and to preserve and enhance the environmental quality of the waterfront.

Policy 2.4

Promote the development of new maritime activities, public open space and public access improvements as part of major new development on piers.

The Project will include public open space and public access improvements in, around and adjacent to the Project Site and as an integral part of the Project. The Project involves uses that generate activity during a variety of time periods (i.e. guests arriving and departing from the Hotel at various hours, pedestrians strolling along The Embarcadero during mid-day and afternoon excursions, visiting the public park and patrons to the entertainment venue), rather than concentrating activity only during the AM or PM peak periods. The creation of the entertainment venue will contribute to the area's diversity and create new jobs in the area in the arts, culture, and hospitality industries consistent with this General Plan policy and Administrative Code 90A.2. The Project's use of off-site parking enhances numerous City policies and its adoption of convenient mass transit at the Project Site's front door will facilitate efficient use of the City's transit system. The Project will be designed with attention to details, streetscapes and landscape features and will be constructed consistent with the Secretary of the Interior's standards and Article 10 to ensure respect for the historic district and the waterfront.

OBJECTIVE 7:

TO STRENGTHEN AND EXPAND THE RECREATION CHARACTER OF THE NORTHEASTERN WATERFRONT AND TO DEVELOP A SYSTEM OF PUBLIC OPEN SPACES AND RECREATION FACILITIES THAT RECOGNIZES ITS RECREATIONAL POTENTIAL, PROVIDES UNITY AND IDENTITY TO THE URBAN AREA, AND ESTABLISHES AN OVERALL WATERFRONT CHARACTER OF OPENNESS OF VIEWS, WATER AND SKY AND PUBLIC ACCESSIBILITY TO THE WATER'S EDGE.

Policy 7.1

Develop recreation facilities attractive to residents and visitors of all ages and income groups.

Policy 7.2

Provide a continuous system of parks, urban plazas, water-related public recreation, shoreline pedestrian promenades, pedestrian walkways and street greenways throughout the entire Northeastern Waterfront.

Policy 7.3

Connect the recreation and open space facilities of the Northeastern Waterfront with those of the Golden Gate National Recreation Area.

Policy 7.4

Encourage and provide open space and public recreation facilities as part of any development, to provide facilities for people residing and working in the Northeastern Waterfront and in adjoining neighborhoods.

Policy 7.7

Where desirable and feasible, provide amenities which enhance public enjoyment of open spaces and public access areas by providing public restrooms, drinking fountains, information kiosks, sales of refreshments from push carts and other services.

Policy 7.11

Develop a continuous bicycle path along the Northeastern Waterfront that is linked with the city-wide bicycle route system.

The Project develops the new POPOS, a new publicly accessible open space that will be designed and constructed to be attractive to residents and visitors and will provide amenities to enhance public enjoyment of the new POPOS such as information kiosks, push carts and other services. The Project will add to the continuous system of parks, urban plazas, water-related public recreation, pedestrian promenades and walkways that already exist in the Northeastern Waterfront and will extend the existing connections between the Northeastern Waterfront and the Golden Gate National Recreation Area along The Embarcadero. The Project will be linked to the city-side bicycle route system and public bicycles and Class 1 and Class 2 bicycle parking in full compliance with City Codes will be a part of the Project.

OBJECTIVE 8:

TO FACILITATE THE MOVEMENT OF PEOPLE AND GOODS WITHIN THE NORTHEASTERN WATERFRONT IN SUCH A WAY AS TO MINIMIZE THE ADVERSE IMPACT OF THIS MOVEMENT.

Policy 8.1

Intercept and divert as much automobile traffic as feasible away from the water's edge and areas of intense pedestrian activity in order to make conditions more pleasurable, safe, and interesting for the pedestrian, and in order to facilitate the commercial and recreational development of the area.

Policy 8.2

Limit additional parking facilities in the Northeastern Waterfront and minimize the impact of this parking. Discourage long-term parking for work trips which could be accommodated by transit. Restrict additional parking to: (a) Short-term (less than four hour) parking facilities to meet needs of additional business, retail, restaurant, marina, and entertainment activities; (b) Long-term parking facilities for maritime activities, hotel and residential uses. To the extent possible, locate parking away from areas of intense pedestrian activity. Encourage shared parking at adjacent or nearby facilities.

Policy 8.6

Remove or relocate inland those existing parking facilities on or near the water's edge or within areas of intense pedestrian activity.

Policy 8.7

Facilitate pedestrian access to the shoreline, including access for the handicapped, through the provision of convenient, safe pedestrian crossings along The Embarcadero. Provide promenades and walkways of sufficient width to accommodate comfortably and safely the movement of pedestrians throughout the Northeastern Waterfront.

The Project removes an existing parking facility near the water's edge and has been designed to locate parking away from the site by using shared parking at nearby facilities and to minimize the impact of parking by encouraging the use of transit and alternative forms of transportation, such as bicycles, walking and shared ride vehicles. The Project will facilitate pedestrian access to the inland side of the waterfront by providing a series of attractive amenities along The Embarcadero and will provide walkways of sufficient width as determined by relevant City agencies to accommodate all persons comfortably and safely.

OBJECTIVE 10:

TO DEVELOP THE FULL POTENTIAL OF THE NORTHEASTERN WATERFRONT IN ACCORD WITH THE UNUSUAL OPPORTUNITIES PRESENTED BY ITS RELATION TO THE BAY, TO THE OPERATING PORT, FISHING INDUSTRY, AND DOWNTOWN; AND TO ENHANCE ITS UNIQUE AESTHETIC QUALITIES OFFERED BY WATER, TOPOGRAPHY, VIEWS OF THE CITY AND BAY, AND ITS HISTORIC MARITIME CHARACTER.

Policy 10.1

Preserve the physical form of the waterfront and reinforce San Francisco's distinctive hill form by maintaining low structures near the water, with an increase in vertical development near hills or the downtown core area. Larger buildings and structures with civic importance may be appropriate at important locations.

Policy 10.2

Preserve and create view corridors which can link the City and the Bay.

Policy 10.3

Use continuous planting and other ground surface treatment to physically and visually link the waterfront with adjacent inland areas.

Policy 10.9

Encourage the provision of street furniture which is of appropriate design to the historic maritime character of the Northeastern Waterfront.

Policy 10.13

Remove exposed surface parking from over water, and along the Embarcadero roadway to improve shoreline appearance and access to the Bay.

Policy 10.27

Locate buildings to minimize shadows and wind on public open spaces.

Waterfront views from Vallejo Street will not be substantially impacted due to the rising topography of Vallejo Street, the low height of the Project (40 feet) and the translucent (and bird-safe) design for the entertainment venue's glass pavilion. The Project will use planting and other ground surface treatment to physically and visually link the waterfront with adjacent land uses.

The Project is being built within the 40-X height and bulk district for the site thereby preserving the physical form of the waterfront and reinforcing San Francisco's hill form westerly from the Bay toward Telegraph Hill. Consistent with the Waterfront Land Use Plan, and other City policies. The Project will construct the new POPOS with public walkways and public open space around and through the Project Site which will provide new view corridors to the Bay and will provide new amenities in the neighborhood that will make for an inviting experience, in the place of a surface parking lot.

The entertainment venue and the hotel will attract many more members of the public to the waterfront, allowing a greater number of people to experience the historic district, other Port properties, and the Bay, and the POPOS will be a new public amenity for the neighborhood and the City.

OBJECTIVE 18:

TO DEVELOP A DIVERSITY OF ADDITIONAL ACTIVITIES WHICH WOULD STRENGTHEN THE EXISTING PREDOMINANT USES IN THE BASE OF TELEGRAPH HILL SUBAREA AND ACTIVITIES WHICH WOULD EXPAND THE PERIOD OF USE, BUT OF AN INTENSITY WHICH WOULD PROVIDE A RELIEF FROM THE ADJACENT DOWNTOWN AND FISHERMAN'S WHARF AREAS.

Policy 18.3

Encourage moderate development of uses such as shops, restaurants, entertainment and hotels which activate the waterfront during evenings and weekends, but to a lesser overall intensity and concentration than present in the adjacent downtown and Fisherman's Wharf areas.

Policy 18.4

Design new development on Seawall Lots 323 and 324 as an orientation point for the waterfront which also highlights the intersection of Broadway and The Embarcadero.

Policy 18.5

Plan and design new developments on inland sites and adjacent piers in a manner which complements and enhances the surrounding area, and which unites the waterfront with the rest of the City.

The Project involves a new development designed to conform to the site's height and bulk district (40X) involving restaurants, entertainment and a hotel that will activate the waterfront during evenings and weekends, as well as the new POPOS. It is designed to be an orientation point for the waterfront and its highlights the intersection of Broadway and The Embarcadero through the hotel's main entry point and enhancements to The Embarcadero and Broadway streetscapes and the unique entertainment venue and glass pavilion hosting Teatro Zinzanni and the historic entertainment tent.

RECREATION AND OPEN SPACE ELEMENT

Objectives and Policies

OBJECTIVE 2:

INCREASE RECREATION AND OPEN SPACE TO MEET THE LONG-TERM NEEDS OF THE CITY AND THE BAY REGION.

Policy 2.4

Support the development of signature public open space along the shoreline.

Policy 2.8

Consider repurposing underutilized City-owned properties as open space and recreational facilities.

Policy 2.12

Expand the Privately-owned Public Open Spaces (POPOS) requirement to new mixed-use development areas and ensure that spaces are truly accessible, functional and activated.

The Project repurposes part of the City-owned property for open space and creates a new park along the waterfront.

OBJECTIVE 3:

IMPROVE ACCESS AND CONNECTIVITY TO OPEN SPACE

Policy 3.1

Creatively develop existing publicly-owned rights-of-way and streets into open space.

The Project takes a portion of the publicly-owned right-of-way and turns it into an open space.

URBAN DESIGN ELEMENT

Objectives and Policies

OBJECTIVE 1:

EMPHASIS OF THE CHARACTERISTIC PATTERN WHICH GIVES TO THE CITY AND ITS NEIGHBORHOODS AN IMAGE, A SENSE OF PURPOSE, AND A MEANS OF ORIENTATION.

Policy 1.1

Recognize and protect major views in the city, with particular attention to those of open space and water.

Policy 1.2

Recognize, protect and reinforce the existing street pattern, especially as it is related to topography.

Policy 1.5

Emphasize the special nature of each district through distinctive landscaping and other features.

Policy 1.6

Make centers of activity more prominent through design of street features and by other means.

Policy 1.8

Increase the visibility of major destination areas and other points for orientation.

The Project is designed to emphasize and be consistent with the Northeastern Waterfront Historic District and includes the distinctive glass pavilion for the entertainment venue and will become an orientation point as a gateway to North Beach and Chinatown. The Project does not impact any major views in the City because Vallejo Street is not designated as a street with a major view, as more particularly described below in response to Policy 10.2, nor does it alter the existing street pattern.

OBJECTIVE 2:

CONSERVATION OF RESOURCES WHICH PROVIDE A SENSE OF NATURE, CONTINUITY WITH THE PAST, AND FREEDOM FROM OVERCROWDING.

Policy 2.8

Maintain a strong presumption against the giving up of street areas for private ownership or use, or for construction of public buildings.

No active, or planned-for active, "street areas" are being given up for private ownership or use, or for the construction of public buildings. Rather, the ROW Parcel is not currently used as street areas or for street purposes (instead it is a surface parking lot), and there is no plan to use the ROW Parcel for a street. Moreover, the Port is not "giving up" street areas for private ownership as the Port will remain the fee owner of the ROW Parcel. Additionally, POLICY 2.8 creates a rebuttable presumption that allows for the giving up of street areas in certain circumstances as set forth in Policy 2.9. The ROW Parcel vacation would be offset by the new POPOS which will provide the public with new park areas, passive recreational areas, walkways and pathways and enhance pedestrian walkways and sidewalks in and around the Project, as well as a new easement for an emergency vehicle truck access easement through the ROW Parcel for the benefit of the San Francisco Fire Department.

Policy 2.9

Review proposals for the giving up of street areas in terms of all the public values that streets afford.

The Project creates a new hotel, entertainment venue and POPOS on the ROW Parcel. There is no plan to use the ROW Parcel for street purposes. The Project also meets POLICY 2.9 because the publicly accessible uses proposed at the Project are consistent with the General Plan, Planning Code, Port Policies and State Lands requirements and the Project when judged against the criteria of POLICY 2.9 tips heavily in support of the Project.

Any impacts from the ROW Parcel vacation will be offset by the building of the new POPOS which will afford the public with new park areas, passive recreational areas, walkways and pathways and enhanced pedestrian walkways and sidewalks in and around the Project. The Project also includes a new easement for emergency vehicle truck access through the ROW Parcel that was designed for the benefit of the San Francisco Fire Department and has been endorsed by the Fire Department during the design process.

The POLICY 2.9 characteristics that support the Project's proposal for the giving up of street areas are as follows:

- a. No release of a street area shall be recommended which would result in:

1. Detriment to vehicular or pedestrian circulation.

The Project will not cause any detriment to vehicular or pedestrian circulation insofar as the Project Site is not currently used for vehicular or pedestrian circulation but instead is used as a surface parking lot for short-term storage of private automobiles. There are no existing or future plans to use the ROW Parcel as a street and doing so would be contrary to City policy to reduce vehicular traffic on The Embarcadero.

2. Interference with the rights of access to any private property.

The Project will not interfere with the right of access to any private property.

3. Inhibiting of access for fire protection or any other emergency purpose, or interference with utility lines or service without adequate reimbursement.

The Project will not inhibit access of fire protection but instead has been designed with the direct input of, and approval from, the San Francisco Fire Department and the Port's Fire Marshal to ensure that the San Francisco Fire Department has adequate and safe passage through and around the Project Site for any emergency purposes. Moreover, the Project will not interfere with utility lines or services as all Project approvals and permits will require coordination and compliance with utility providers requirements.

4. Obstruction or diminishing of a significant view, or elimination of a viewpoint; industrial operations.

The Project does not obstruct, diminish or eliminate a "significant view" insofar as the Vallejo Street view to Pier 9 is not considered a significant view as described previously in response to Policy 10.2, Page 10-11 of this Memo.

5. Elimination or reduction of open space which might feasibly be used for public recreation.

The Project will create the new park for use by the public and does not eliminate or reduce any open space.

6. Elimination of street space adjacent to a public facility, such as a park, where retention of the street might be of advantage to the public facility.

The Project does not propose to eliminate any street space adjacent to a public facility.

7. Elimination of street space that has formed the basis for creation of any lot, or construction or occupancy of any building according to standards that would be violated by discontinuance of the street.

The Project does not eliminate any street space that has formed the basis for creation of any lot or occupancy of any building.

8. Enlargement of a property that would result in (i) additional dwelling units in a multi-family area; (ii) excessive density for workers in a commercial area; or (iii) a building of excessive height or bulk.

The Project would not result in additional dwelling units in a multi-family area, excessive density of workers in a commercial area and the building will be built to conform to the 40-X height and bulk district for the area.

9. Reduction of street space in areas of high building intensity, without provision of new open space in the same area of equivalent amount and quality and reasonably accessible for public enjoyment.

The Project not reduce street space, but instead creates the new POPOS that will be accessible to the public for public enjoyment.

10. Removal of significant natural features, or detriment to the scale and character of surrounding development.

The Project does not remove any significant natural feature because it is redeveloping an undeveloped, surface parking lot, nor does it cause any detriment to the scale and character of the surrounding area because it is being designed to conform to the 40-X height and bulk district for the area and in accordance with the Secretary of the Interiors Standards, the City's Planning Code Article 10, the Northeastern Waterfront Area Plan and the Port's Waterfront Land Use Plan.

11. Adverse effect upon any element of the General Plan or upon an area plan or other plan of the Department of City Planning.

The Project does not have an adverse effect any element of the General Plan or upon an area plan or other plan of the Department of City Planning. Rather, the Project is consistent with all of the other plans governing the Project Site.

12. Release of a street area in any situation in which the future development or use of such street area and any property of which it would become a part is unknown.

The site has been planned for a hotel, entertainment venue and park form more than two decades since the Port's Waterfront Land Use Plan was first adopted in 1996. As such, the ROW Parcel's use, and that of Seawall Lots 323 and 324, has been known for some time. Release of the ROW Parcel will facilitate a better and fully integrated design for the Project along The Embarcadero and the waterfront, as explained in greater detail in Section b. below.

As shown above, none of the 12 conditions that would discourage approval of a vacation action are present. Moreover, the vacation action meets the criteria listed under subsection b(1) and b(3), below, which results in a favorable finding in support of the proposed vacation given the following: (a) it would facilitate a public serving, Public Trust consistent project (hotel and entertainment venue) and (b) would create a signature public space, the POPOS, that would offer a variety of high quality public spaces. The vacation would also meet the criteria of subsection b(5) in that they specifically support and are consistent with the policies of the Waterfront Land Use Plan and the Waterfront Design and Access Plan.

b. Release of a street area may be considered favorably when it would not violate any of the above criteria and when it would be:

1. Necessary for a subdivision, redevelopment Project or other Project involving assembly of a large site, in which a new and improved pattern would be substituted for the existing street pattern.

The Project allows for the Project to fulfill many of the Port's Waterfront Land Use Plan's preferred uses for the Project Site, which include preferred use designations for a hotel, theater and open space and the ROW Parcel vacation is necessary to complete the Project. Moreover, the Project meets this subsection of POLICY 2.9 because its streetscape improvements will improve the pattern of the existing street and pedestrian pattern in the area from its current state as a surface parking lot to new publicly accessible preferred uses. Additionally, the Project will create a new POPOS that will be accessible to the public which in addition to creating new open space will also improve pedestrian transit in and around the site without effecting the vehicular traffic at all on any of the four adjacent streets (The Embarcadero, Broadway, Davis and Vallejo).

2. In furtherance of an industrial Project where the existing street pattern would not fulfill the requirements of modern industrial operations.

This ROW Parcel vacation is not applicable to this subsection as the Project does not include an industrial project.

3. Necessary for a significant public or semi-public use, or public assembly use, where the nature of the use and the character of the development proposed present strong justifications for occupying the street area rather than some other site.

The street vacation is necessary for the Project to be built because of the nature of the public assembly uses (i.e. theater, entertainment, cultural uses in the Entertainment venue) and hotel and open space uses designed for the public, all of which are allowed by the Public Trust doctrine on the Site. As the hotel and entertainment venue need to share back of house spaces, it is essential to the Project's success that these uses be located adjacent to each other which requires in turn that the released ROW Parcel be occupied by the theatre use and the park be located to the north of the theatre use. Each of these uses also conform to the preferred use designations of the Port's Waterfront Land Use

Plan, and which are consistent with the General Plan, the Northeastern Waterfront Area Plan and San Francisco Administrative Code Section 90A.

4. For the purpose of permitting a small-scale pedestrian crossing consistent with the principles and policies of The Urban Design Element.

The Project will create the new park that will have small-scale pedestrian walkways through the open space, including a paved crossing from Davis and Vallejo through the site to The Embarcadero and from Davis Street through the site to Green Street to the north.

5. In furtherance of the public values and purposes of streets as expressed in The Urban Design Element and elsewhere in the General Plan.

The Project furthers the public values and purposes of streets as expressed in the Urban Design Element and elsewhere in the General Plan as described in the memorandum.

Policy 2.10

Permit release of street areas, where such release is warranted, only in the least extensive and least permanent manner appropriate to each case.

The Project involves the ROW Parcel, which is an unmapped, undeveloped, right-of-way areas, not active or even proposed to be active street areas, and it will be constructed pursuant to a Port ground lease, which means that the Port will always retain ownership to the Project Site and the ROW Parcel. The Project also meets POLICY 2.10 because the release of the unused ROW Parcel furthers the public values and purposes of streets as expressed in the Urban Design Element and elsewhere in the General Plan and is consistent with the preferred uses for the Project Site as set forth in the Port's Waterfront Land Use Plan.

TRANSPORTATION ELEMENT

Objectives and Policies

OBJECTIVE 16:

DEVELOP AND IMPLEMENT PROGRAMS THAT WILL EFFICIENTLY MANAGE THE SUPPLY OF PARKING AT EMPLOYMENT CENTERS THROUGHOUT THE CITY SO AS TO DISCOURAGE SINGLE-OCCUPANT RIDERSHIP AND ENCOURAGE RIDESHARING, TRANSIT AND OTHER ALTERNATIVES TO THE SINGLE-OCCUPANT AUTOMOBILE.

Policy 16.1

Reduce parking demand through the provision of comprehensive information that encourages the use of alternative modes of transportation.

Policy 16.3

Reduce parking demand through the provision of incentives for the use of carpools and vanpools at new and existing parking facilities throughout the City.

Policy 16.5

Reduce parking demand through limiting the absolute amount of spaces and prioritizing the spaces for short-term and ride-share uses.

Policy 16.6

Encourage alternatives to the private automobile by locating public transit access and ride-share vehicle and bicycle parking at more close-in and convenient locations on-site, and by locating parking facilities for single-occupant vehicles more remotely.

The Project encourages alternatives to private automobiles, emphasizes public transit access and by utilizing off-site parking facilities and a comprehensive system of information technology to address transportation needs.

OBJECTIVE 17:

DEVELOP AND IMPLEMENT PARKING MANAGEMENT PROGRAMS IN THE DOWNTOWN THAT WILL PROVIDE ALTERNATIVES ENCOURAGING THE EFFICIENT USE OF THE AREA'S LIMITED PARKING SUPPLY AND ABUNDANT TRANSIT SERVICES.

Policy 17.2

Encourage collaboration and cooperation between property owners, neighboring uses and developers to allow for the most efficient use of existing and new parking facilities.

The Project encourages collaboration and cooperation between off-site parking facilities and the development.

OBJECTIVE 23:

IMPROVE THE CITY'S PEDESTRIAN CIRCULATION SYSTEM TO PROVIDE FOR EFFICIENT, PLEASANT, AND SAFE MOVEMENT.

Policy 23.1

Provide sufficient pedestrian movement space with a minimum of pedestrian congestion in accordance with a pedestrian street classification system.

The Project will provide improved pedestrian movement in accordance with City standards.

OBJECTIVE 24:

IMPROVE THE AMBIANCE OF THE PEDESTRIAN ENVIRONMENT.

Policy 24.5

Where consistent with transportation needs, transform streets and alleys into neighborhood-serving open spaces or "living streets" by adding pocket parks in sidewalks or medians, especially in neighborhoods deficient in open space.

The Project transforms the ROW Parcel into a neighborhood-serving open space.

ENVIRONMENTAL PROTECTION ELEMENT
Objectives and Policies

OBJECTIVE 7:

ASSURE THAT THE LAND RESOURCES IN SAN FRANCISCO ARE USED IN WAYS THAT BOTH RESPECT AND PRESERVE THE NATURAL VALUES OF THE LAND AND SERVE THE BEST INTERESTS OF ALL THE CITY'S CITIZENS.

Policy 7.1

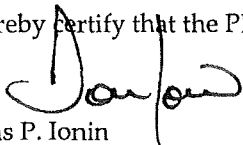
Preserve and add to public open space in accordance with the objectives and policies of the Recreation and Open Space Element.

The Project adds to public open space in accordance with applicable City and Port policies.

On May 2, 2019, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed findings of General Plan conformity with Application No. 2016-011011GPR.

NOW THEREFORE BE IT RESOLVED that the Commission hereby finds the proposed street vacations on portions of Vallejo Street and Davis Street, as modified by conditions described above, for the Teatro ZinZanni Development Project in Case No. 2015-016326CUA to be, on balance, consistent with the General Plan of the City and County of San Francisco, including, but not limited to the Urban Design Element, and consistent with the eight Priority Policies in City Planning Code Section 101.1 for reasons set forth in this Resolution.

I hereby certify that the Planning Commission ADOPTED the foregoing Resolution on May 2, 2019.



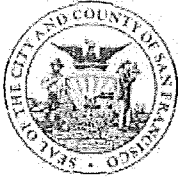
Jonas P. Ionin
Commission Secretary

AYES: Hillis, Moore, Koppel, Richards, Johnson, Fung

NAYS: None

ABSENT: Melgar

ADOPTED: May 2, 2019



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Motion No. 20444

HEARING DATE: MAY 2, 2019

1650 Mission St.
Suite 400
San Francisco,
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Reception:
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Information:
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Record No.: 2015-016326CUA
Project Address: SEAWALL LOTS 323 AND 324 (DBA TEATRO ZINZANNI)
Zoning: C-2 (Community Business) Zoning District
40-X Height and Bulk District
Waterfront Special Use District No. 3
Article 10 Northeast Waterfront Landmark District
Block/Lots: 0138/001 & 0139/002 (2 lots)
Project Sponsor: Jay Wallace
TKZ Broadway, LLC
170 Columbus Avenue, #240
San Francisco, CA 94133
(415) 955-100 ext. 4007
Property Owner: Port of San Francisco
Pier One
San Francisco, CA 94111
Staff Contact: Christy Alexander – (415) 575-8724
christy.alexander@sfgov.org

ADOPTING FINDINGS TO APPROVE A CONDITIONAL USE AUTHORIZATION PURSUANT TO PLANNING CODE SECTIONS 210.1, 240.3, AND 303 TO CONSTRUCT A TOURIST HOTEL AT SEAWALL LOTS 323 AND 324, LOT 001 IN ASSESSOR'S BLOCK 0138 AND LOT 002 IN ASSESSOR'S BLOCK 0139, WITHIN THE C-2 (COMMUNITY BUSINESS) ZONING DISTRICT, THE WATERFRONT SPECIAL USE DISTRICT NO. 3, AND A 40-X HEIGHT AND BULK DISTRICT, AND ADOPTING FINDINGS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

THE PROJECT WOULD DEMOLISH THE EXISTING SURFACE PARKING LOT AND CONSTRUCT A NEW MIXED-USE DEVELOPMENT THAT CONSISTS OF THREE COMPONENTS: AN APPROXIMATELY 26,100 GSF ENTERTAINMENT VENUE KNOWN AS TEATRO ZINZANNI; A 40 FOOT-TALL, FOUR-STORY, APPROXIMATELY 112,700 GSF HOTEL THAT WOULD ACCOMMODATE 192 GUEST ROOMS; AND AN APPROXIMATELY 14,000 GSF PRIVATELY FINANCED AND MAINTAINED PUBLIC PARK. THE PROJECT WOULD ALSO INCLUDE THE VACATION OF PORTIONS OF VALLEJO STREET AND DAVIS STREET.

PREAMBLE

On December 30, 2015, Jay Wallace of TZK Broadway, LLC (hereinafter "Project Sponsor") filed Application No. 2015-016326ENV (hereinafter "Application") with the Planning Department (hereinafter "Department") for an Environmental Review Application that includes the demolition of an existing surface parking lot and construction of a new mixed-use development consisting of three components: an approximately 26,100 gross-square-foot (gsf) entertainment venue; an approximately 112,700 gsf 4-story 40-foot hotel that would accommodate 192 guest rooms, and; an approximately 14,000 gsf privately

financed and maintained public park, on two lots plus the vacation of portions of Vallejo Street and Davis Street (hereinafter "Project") at Seawall Lots 323 and 324, Block 0138 Lot 001 and Block 0139 Lot 002 (hereinafter "Project Site").

On October 17, 2018 a Draft Mitigated Negative Declaration (MND) for the Project was prepared and published for public review; and

The Final MND was available for public comment until November 19, 2018; and

On December 21, 2018, the Planning Department reviewed and considered the Final Mitigated Negative Declaration (FMND) and found that the contents of said report and the procedures through which the FMND was prepared, publicized, and reviewed complied with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.) (CEQA), Title 14 California Code of Regulations Sections 15000 et seq. (the "CEQA Guidelines") and Chapter 31 of the San Francisco Administrative Code ("Chapter 31"); and

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

The Planning Department Commission Secretary is the custodian of records, located in the File for Case No. 2015-016326ENV, at 1650 Mission Street, Fourth Floor, San Francisco, California.

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

The Planning Department found that the Project could not have a significant impact on the environment pursuant to a final Mitigated Negative Declaration issued on December 21, 2018. The Planning Commission (hereinafter "Commission") has reviewed and concurs with said determination.

On April 14, 2016 the Project Sponsor filed an application with the Department for a Conditional Use Authorization to demolish the existing parking lot at the subject property in order to demolish an existing surface parking lot and construct a new mixed-use development consisting of three components: an approximately 26,100 gross-square-foot (gsf) entertainment venue; an approximately 112,700 gsf hotel that would accommodate 192 guest rooms, and; an approximately 14,000 gsf privately financed and maintained public park, on two lots plus the vacation of portions of Vallejo Street and Davis Street.

On August 25, 2016 the Department received a General Plan Referral Application submitted by the Project Sponsor, for street vacations associated with the Project.

WHEREAS, the Department found that the Project could not have a significant impact on the environment pursuant to a final Mitigated Negative Declaration issued on December 21, 2018.

On March 6, 2019, the Historic Preservation Commission conducted a duly noticed public hearing on the current Project, Case No. 2015-016326COA, and found the Project to be consistent with Article 10 of the Planning Code and the Secretary of the Interior's Standards for Rehabilitation subject to conditions.

On May 2, 2019, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Authorization Application and General Plan Referral Nos. 2015-016326CUA and 2016-011011GPR.

The Planning Department Commission Secretary is the custodian of records; the File for Record No. 2015-016326CUA is located at 1650 Mission Street, Suite 400, San Francisco, California.

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

MOVED, that the Commission hereby authorizes the Conditional Use Authorization as requested in Application No. 2015-016326CUA, subject to the conditions contained in "EXHIBIT A" of this Motion, based on the following findings:

FINDINGS

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

1. The above recitals are accurate and constitute findings of this Commission.
2. **Project Description.** The Project includes the demolition of an existing surface parking lot and construction of a new mixed-use development consisting of three components: an approximately 26,100 gross-square-foot (gsf) entertainment venue; an approximately 112,700 gsf, 4-story, 40-foot tall hotel that would accommodate 192 guest rooms; and an approximately 14,000 gsf privately financed and maintained public park. The Project would include the vacation of portions of Vallejo Street and Davis Street (approximately 14,461 square feet of street). Currently, Vallejo Street does not exist as an actual road and the easement bisects the Project Site at the location contemplated for the proposed privately-owned publicly-accessible park, and the continued existence of a functional public street would make this park space infeasible. The proposed street vacation area would be incorporated into the proposed park. Currently, Davis Street does not exist as an actual road and the easement is included in the existing surface parking lot which bisects the Project Site and the television station to the west.

3. **Site Description and Present Use.** The Project Site is located on two Port of San Francisco parcels that are triangular in shape and contain a combined surface area of approximately 42,719 square feet. The Project Site is bounded by the Embarcadero to the east, Broadway to the south, and Davis Street to the West. The Project Site also includes two unimproved adjacent street stubs located along Davis Street and Vallejo Street. The unimproved Davis Street portion is approximately 9,619 square feet and the unimproved Vallejo Street portion is approximately 4,842 square feet. The Project Site also includes a small lot adjustment to the Davis Street property line at the corner of Davis Street and Vallejo Streets which is approximately 608 square feet. All of the above combined Project Site totals approximately 57,788 square feet. The Project Site is currently being used as a surface parking lot with approximately 225-stripped, self-parked stalls and leased on an interim basis to a parking operator. The Port retains the net parking revenues from the Project Site's current use.
4. **Surrounding Properties and Neighborhood.** The Project Site is located within the C-2 Zoning District in the Waterfront Special Use District No. 3, Northeastern Waterfront Special Sign District, Northeast Waterfront Historic District (Article 10), Northeast Waterfront Area Plan, Northeast Embarcadero Study Area Plan, and is governed by the Port of San Francisco's Waterfront Land Use Plan (WLUP). The Project Site is located approximately four blocks north of the City's Central Business District, approximately two blocks west/southwest of Port's James R. Herman Cruise Terminal, and approximately five blocks south of Pier 39. The northern edge of the Project Site abuts a 3-story office building that is occupied by KGO television. The Gateway Apartments, an approximately 65-foot 5-story apartment building is located across Broadway from the Project Site. Small 2—and 3-story office buildings are located across Davis Street from the Project Site, and various Port tenants, including the Waterfront Restaurant, are across the Embarcadero from the Project Site. The Port and City and County of San Francisco have recently approved a 100% affordable housing project at 88 Broadway and 735 Davis Street which is across the street to the west of the Project Site.
5. **Public Outreach and Comments.** The Department has received correspondence from two people regarding the Project. This correspondence has primarily expressed opposition to the Project, though the Department has received twenty letters in support from neighborhood groups, labor unions, civic organizations, and business groups (see attachment). Much of the opposition expressed concerns losing extra vehicular surface parking for visitors to the nearby buildings and a desire to see housing built in place of an entertainment venue.
6. **Planning Code Compliance.** The Commission finds that the Project is consistent with the relevant provisions of the Planning Code in the following manner:
 - A. **Use.** Planning Code Section 210.1 establishes permitted uses within the C-2 Zoning District. Entertainment and recreation uses as well as retail sales and service uses are principally permitted. Hotel/Motel uses require a Conditional Use Authorization and are subject to Section 303 and 240.3.

The Project proposes a 192 guest-room hotel which requires a Conditional Use Authorization (see Item #7 for discussion of Conditional Use Findings). The 290-seat theater, welcoming and bar area, kitchen and restaurant at the ground floor of the Project are all principally permitted uses.

- B. **Floor Area Ratio (Sections 123, 124, and 210.2).** Planning Code Section 124 establishes basic floor area ratios (FAR) for all zoning districts. For C-2 zoning districts, the numerical basic FAR limit is set out in Section 210.1. The FAR for the Project Site in this C-2 District is 4.8 to 1 due to its proximity to an RC-4 District.

The Project Site is approximately 57,778 square feet in size, including the portions of Vallejo Street and Davis Street proposed to be vacated. Therefore, up to 288,890 square feet of gross floor area ("gfa") is allowed under the basic FAR limit. The Project's total gross floor area is 182,932 gross square feet ("gsf"), for a floor-area ratio of approximately 3.2-to-1.

- C. **Streetscape and Pedestrian Improvements (Section 138.1).** Planning Code Section 138.1(b) requires that when a new building is constructed in C-2 Districts, street trees, enhanced paving, and other amenities such as lighting, seating, bicycle racks, or other street furnishings must be provided.

The Project Sponsor shall comply with this requirement. The conceptual plan shows sidewalk enlargement, enhanced paving, installation of street trees, lighting, and street furniture on various public rights-of-way. The precise location, spacing, and species of the street trees, as well as other streetscape improvements, will be further refined throughout the building permit review process, including the privately-financed public park which would go where the portions of Vallejo Street and Davis Street are proposed.

- D. **Street Frontage in Commercial Districts (145.1(c)).** Section 145.1(c)(3) of the Planning Code requires that within Downtown Commercial Districts, space for "active uses" shall be provided within the first 25 feet of building depth on the ground floor. Spaces such as lobbies are considered active uses only if they do not exceed 25% of the building's frontage at the ground level, or 40 feet, whichever is greater. Section 145.1(c)(2) of the Planning Code requires that no more than one-third of the width or 20 feet, whichever is less, of any given street frontage of a new or altered structure parallel to and facing a street shall be devoted to parking and loading ingress or egress. With the exception of space allowed for parking and loading access, building egress, and access to mechanical systems, space for active uses as defined in Subsection (b)(2) and permitted by the specific district in which it is located shall be provided within the first 25 feet of building depth on the ground floor and 15 feet on floors above from any facade facing a street at least 30 feet in width. Section 145.1(c)(4) of the Planning Code requires that ground floor non-residential uses in all C-2 Districts shall have a minimum floor-to-floor height of 10 feet, as measured from grade when located in a 40-foot height district. Section 145.1(c)(5) requires the floors of street-fronting interior spaces housing non-residential active uses and lobbies shall be as close as possible to the level of

the adjacent sidewalk at the principal entrance to these spaces. Section 145.1(c)(6) of the Planning Code requires that within Downtown Commercial Districts, frontages with active uses must be fenestrated with transparent windows and doorways for no less than 60 percent of the street frontage at the ground level and allow visibility to the inside of the building.

The Project includes two buildings, with collective frontage onto Davis Street, Broadway, and the Embarcadero. The ground-floor building height will be minimum 10-feet and all facades of the building are proposed to be properly fenestrated with transparent windows and doorways.

- E. **Off-Street Freight Loading.** Planning Section 152.1 of the Planning Code requires one off-street freight loading space for retail sales and services use between 10,001-60,000 gsf and one off-street freight loading space for all other uses between 100,001-200,000 gsf.

The Project provides façade openings for pedestrian access at Broadway, the Embarcadero and Davis Street. Vehicular access for freight loading is provided via Davis Street with a curb cut of 30-feet wide and garage opening of less than 27-feet wide. The Project includes approximately 26,100 square feet of entertainment use and 112,700 square feet of hotel use; thus, the Project requires at two off-street freight loading spaces. The Project is proposing two off-street loading spaces along Davis Street.

- F. **Bicycle Parking (155.1-155.2).** Sections 155.1- 155.2 establish bicycle parking requirements for new developments, depending on use. For projects with an entertainment use Five Class 1 spaces are required for facilities with a capacity of less than 500 guests. Also, for entertainment uses one Class 2 space for every 500 seats or for every portion of each 50-person capacity. For hotel uses, one Class 1 space for every 30 rooms is required and Minimum two spaces. For hotel uses, one Class 2 space for every 30 rooms-plus-One Class 2 space for every 5,000 square feet of Occupied Floor Area of conference, meeting or function rooms. A Class 1 space is located in a secure, weather-protected facility and intended for long-term use by guests and employees. A Class 2 space is located in a publicly-accessible and visible location, and intended for use by visitors, guests, and patrons.

The Project requires a total of 11 Class 1 bicycle parking spaces. The Class 1 parking spaces are provided in secure rooms on level one of the hotel, accessed off Davis Street and includes 20 spaces. The Project requires 8 Class 2 bicycle parking spaces. In the conceptual plan, Class 2 bicycle parking is shown located on the Davis Street sidewalk and includes 14 spaces.

- G. **Shower Facilities and Lockers (Section 155.4).** Section 155.4 requires shower facilities and lockers for new developments, depending on use. For non-retail sales and services uses (i.e. hotel and entertainment), four showers and 24 lockers are required where occupied floor area exceeds 50,000 square feet.

The Project provides 4 showers and 24 lockers on the first floor, adjacent to the back of house area, meeting Code Section 155.4.

- H. **Transportation Demand Management (TDM) Plan.** Pursuant to Planning Code Section 169 and the TDM Program Standards, the Project shall finalize a TDM Plan prior Planning Department approval of the first Building Permit or Site Permit. As currently proposed, the Project must achieve a target of 7 points for both Land Use Category A and B.

The Project submitted a completed Environmental Evaluation Application prior to September 4, 2016. Therefore, the Project must only achieve 50% of the point targets established in the TDM Program Standards, resulting in a required target of 7 points for both Land Use Category A and B. As currently proposed, the Project will achieve its required points through the following TDM measures for both land use categories A and B:

- Bicycle Parking (Option A)
- Showers and Lockers
- Bicycle Repair Station
- Delivery Supportive Amenities
- Real Time Transportation Displays
- Parking Supply (Option K)

- I. **Public Art (Section 429).** In the case of all non-residential projects that involve construction of a new building or addition of floor area in excess of 25,000 sf in a C-2 District, Section 429 requires a project to include works of art costing an amount equal to one percent of the construction cost of the building.

The Project Sponsor shall comply with this Section by dedicating one percent of its construction cost to works of art. The Project Sponsor proposes art on-site that is adjacent to the entertainment venue and the rest of the Project's public open spaces—which can be enjoyed by everyone using that space. The art selection is not a requirement at this time, however some art locations are noted on plans in Exhibit B. The Project Sponsor is considering a few sculptures that are complimentary to the proposed entertainment use proposed at the Project Site.

7. **Conditional Use Findings.** Planning Code Section 303 establishes criteria for the Planning Commission to consider when reviewing applications for Conditional Use Authorization. Section 240.3(e) however, states "In considering any application for development on property under the jurisdiction of the Port Commission on which a specific use or uses require a conditional use, the specific use or uses requiring a conditional use within a project, and not the project in its entirety, shall be subject to the provisions set forth in Section 303 and Article 3.5 of this Code. The Planning Commission shall consider the following criteria in lieu of those stated in Section 303(c):" On balance, the Project complies with said criteria in that:

- A. That such use or feature as proposed is consistent with the Waterfront Land Use Plan (WLUP) and its WLUP Waterfront Design and Access goals, policies and criteria, adopted by the Port

Commission, including any amendments thereto which the Planning Commission has found to be consistent with the General Plan;

The Project is consistent with the WLUP as it will help reunite the City with the Waterfront by providing a new cultural and entertainment venue and new public park along the Embarcadero that will attract people to the Waterfront and connect the existing open spaces along the Embarcadero. The Project meets the Northeast Waterfront Historic District requirements and is consistent with the Secretary of the Interior's standards for new construction in historic districts.

- B. Assurance of a general profile for development having higher portions near Telegraph Hill or other inland areas and lower portions near The Embarcadero;

The unique shape of the Project Site does not lend well to creating a structure within the narrow triangular piece to the north of Vallejo Street and therefore the higher portion of the development will be next to Broadway while still maintaining Broadway as a view corridor to the water. The City and Port have recently approved entitlements for the construction of a new 100% affordable housing development project at 88 Broadway and 735 Davis Street. That housing development will be 6-stories in height. The Project's proposed 4-story hotel will step down in height from that housing development towards the waterfront.

- C. Assurance of view corridors along public streets between Telegraph Hill or other inland areas and the waterfront and Bay, in accordance with the view policies of the Northeastern Waterfront Plan, a part of the General Plan;

The WLUP designates this portion of Broadway as a "Street Corridor View of Water" and this portion of Vallejo Street as a "Street Corridor View of Architecture with Waterfront Identity". The Project has no impact on Broadway's existing public views, nor on Davis Street's existing public views. The Project will have an impact on the street level view from Vallejo Street to the Pier 9 Bulkhead Building if standing at Sansome Street and Front Street. However, Vallejo Street is not designated or considered a "Street with a major view", a "Street with views of maritime activities", or a "Street view street." The view from Vallejo Street will still include many valuable views of the Embarcadero and other places featuring a waterfront identity, such as Pier 15, Pier 7, and Pier 9 from the Davis Street and Vallejo Street intersection and the Project's public open spaces.

- D. Provision of open spaces available to the public consistent with the Waterfront Design and Access goals, policies and criteria; and

As mentioned above, the Project does not impact the street views from Davis Street and Broadway and provides a new privately-financed public park that will be open to the public 24/7 and connects to existing open spaces along the Embarcadero. The Project meets the design policies and criteria as it orients primary uses and pedestrian entrances toward Broadway and the Embarcadero by providing a clear expression of pedestrian entrances and orientation toward the new public park.

E. Adherence to the character of surrounding areas of the City.

The Historic Preservation Commission found the Project to be consistent with the Secretary of Interior Standards in a historic district. The Project's architectural design and articulation, including use of dimensional brick construction creates a visually interesting street façade that is consistent with the surrounding buildings in this neighborhood.

The Planning Commission shall consider the following criteria as stated in Section 303(g) for hotels and motels in addition to the criteria set forth in Section 240.3(e) above : On balance, the Project complies with said criteria in that:

F. The impact of the employees of the hotel or motel on the demand in the City for housing, public transit, child-care, and other social services. To the extent relevant, the Commission shall also consider the seasonal and part-time nature of employment in the hotel or motel.

The Project's employment of hotel workers will have a positive impact on the job stability of this industry, providing Union jobs - H.E.R.E. Local 2 of the hotel works and Teamster Local 856 for the front desk and concierge workers. These workers will come primarily from the local, existing San Francisco population so adverse impacts from this employment will not be significant.

G. The measures that will be taken by the Project Sponsor to employ residents of San Francisco in order to minimize increased demand for regional transportation.

The Project will provide Union jobs - H.E.R.E. Local 2 of the hotel works and Teamster Local 856 for the front desk and concierge workers. These workers will come primarily from the local, existing San Francisco population so adverse impacts from this employment will not be significant. The Project Sponsor will also enter into a First Source Hiring Plan setting forth its good faith efforts to employ qualified economically disadvantaged San Franciscans, thereby minimizing increased demand for regional transportation.

H. The market demand for a hotel or motel of the type proposed.

There appears to be a good market for a boutique hotel along the Embarcadero, (see attached Hotel Market Study). At present, occupancy rates in San Francisco are above 80 percent, substantially above the 62 percent nationwide average. With this level of occupancy, the competitive market will be operating at capacity during peak periods and will be unable to accommodate additional demand especially given the unique nature of this integrally connected multi-use hotel and theater/cultural venue undertaken in partnership with Teatro ZinZanni, a dinner-theater-performance venue that operated for more than 11 years in San Francisco. The City of San Francisco is vastly under-served with regard to hotel supply and generates a significant amount of unsatisfied demand. It is anticipated that the addition of the proposed hotel with 192 guestrooms would be readily absorbed into the marketplace in 2021, without significantly affecting occupancy for any competitive properties. Market conditions clearly support the

need for new hotel stock, particularly in the upscale, branded hotel range that would appeal to both tourists and business travelers.

- I. In the Transit Center C-3-O(SD) Commercial Special Use District, the opportunity for commercial growth in the Special Use District and whether the proposed hotel, considered with other hotels and non-commercial uses approved or proposed for major development sites in the Special Use District since its adoption would substantially reduce the capacity to accommodate dense, transit-oriented job growth in the District.

The Project is not within the C-3-O(SD) Commercial Special Use District.

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

NORTHEASTERN WATERFRONT AREA PLAN ELEMENT

Objectives and Policies

OBJECTIVE 1:

TO DEVELOP AND MAINTAIN ACTIVITIES THAT WILL CONTRIBUTE SIGNIFICANTLY TO THE CITY'S ECONOMIC VITALITY AND PROVIDE ADDITIONAL ACTIVITIES WHICH STRENGTHEN THE PREDOMINANT USES IN EACH SUBAREA OF THE NORTHEASTERN WATERFRONT, WHILE LIMITING THEIR CONCENTRATION TO PRESERVE THE ENVIRONMENTAL QUALITY OF THE AREA.

Policy 1.1

Accommodate where appropriate, additional activities which will strengthen the predominant economic functions of each subarea of the Northeastern Waterfront.

Policy 1.2

Consistent with other policies of this Plan, encourage uses on Port property which return revenue to the Port to support and improve its facilities.

The Project is consistent with the other policies of the City's General Plan and encourages uses that return revenue to the Port through a long-term ground lease payment, hotel transient occupancy tax revenue, possessory interest tax payments and other fees and taxes associated with the Project. The Project will replace an underutilized surface parking lot with three new public-serving uses that will strengthen the predominant economic functions of the gateway to North Beach and Chinatown, serve as an important feature of The Embarcadero and provide new public uses and economic functions that are consistent with many of the Policies, Objectives and plans set forth in the City's General Plan and its Northeastern Waterfront Area Plan, the Port of San Francisco's Waterfront Land Use Plan and Waterfront Design and Access Plan.

OBJECTIVE 2:

TO DIVERSIFY USES IN THE NORTHEASTERN WATERFRONT, TO EXPAND THE PERIOD OF USE OF EACH SUBAREA AND TO PROMOTE MAXIMUM PUBLIC USE OF THE WATERFRONT WHILE ENHANCING ITS ENVIRONMENTAL QUALITY.

Policy 2.1

Develop uses which generate activity during a variety of time periods rather than concentrating activity during the same peak periods.

Policy 2.2

Diversify activities to encourage the use of the Northeastern Waterfront by a broad spectrum of the population.

Policy 2.3

Encourage land uses having different peak periods of activity within each subarea of the Northeastern Waterfront to contribute to the area's diversity, to expand the period of use, to decrease peak period traffic congestion, to facilitate efficient use of the transit system and to preserve and enhance the environmental quality of the waterfront.

Policy 2.4

Promote the development of new maritime activities, public open space and public access improvements as part of major new development on piers.

The Project will include public open space and public access improvements in, around and adjacent to the Project Site and as an integral part of the Project. The Project involves uses that generate activity during a variety of time periods (i.e. guests arriving and departing from the Hotel at various hours, pedestrians strolling along The Embarcadero during mid-day and afternoon excursions, visiting the public park and patrons to the entertainment venue), rather than concentrating activity only during the AM or PM peak periods. The creation of the entertainment venue will contribute to the area's diversity and create new jobs in the arts, culture, and hospitality industries consistent with this General Plan policy and Administrative Code 90A.2. The Project's use of off-site parking enhances numerous City policies and its adoption of convenient mass transit at the Project Site's front door will facilitate efficient use of the City's transit system. The Project will be designed with attention to details, streetscapes and landscape features and will be constructed consistent with the Secretary of the Interior's standards and Article 10 to ensure respect for the historic district and the waterfront.

OBJECTIVE 5:

TO DEVELOP LIMITED ADDITIONAL OFFICE AND COMMERCIAL SPACE IN ORDER TO SERVE THE CITY'S ECONOMIC NEEDS AND TO ENCOURAGE A MIXTURE OF USES AND ACTIVITIES ALONG THE NORTHEASTERN WATERFRONT.

Policy 5.4

Except on piers, permit additional hotel space in locations which would enhance the mixture of uses. In areas where hotels are already concentrated, additional such facilities should be limited and should only be provided if they complement adjacent uses.

The Project involves the development of a new 192-room hotel on Seawall Lots 323 and 324, two upland seawall lots that have been planned for hotel use in the Port's Waterfront Land Use Plan for more than more than two decades. Moreover, the Project meets POLICY 5.4 because hotels are not overly concentrated in the vicinity of the Project Site.

OBJECTIVE 7:

TO STRENGTHEN AND EXPAND THE RECREATION CHARACTER OF THE NORTHEASTERN WATERFRONT AND TO DEVELOP A SYSTEM OF PUBLIC OPEN SPACES AND RECREATION FACILITIES THAT RECOGNIZES ITS RECREATIONAL POTENTIAL, PROVIDES UNITY AND IDENTITY TO THE URBAN AREA, AND ESTABLISHES AN OVERALL WATERFRONT CHARACTER OF OPENNESS OF VIEWS, WATER AND SKY AND PUBLIC ACCESSIBILITY TO THE WATER'S EDGE.

Policy 7.1

Develop recreation facilities attractive to residents and visitors of all ages and income groups.

Policy 7.2

Provide a continuous system of parks, urban plazas, water-related public recreation, shoreline pedestrian promenades, pedestrian walkways and street greenways throughout the entire Northeastern Waterfront.

Policy 7.3

Connect the recreation and open space facilities of the Northeastern Waterfront with those of the Golden Gate National Recreation Area.

Policy 7.4

Encourage and provide open space and public recreation facilities as part of any development, to provide facilities for people residing and working in the Northeastern Waterfront and in adjoining neighborhoods.

Policy 7.7

Where desirable and feasible, provide amenities which enhance public enjoyment of open spaces and public access areas by providing public restrooms, drinking fountains, information kiosks, sales of refreshments from push carts and other services.

Policy 7.11

Develop a continuous bicycle path along the Northeastern Waterfront that is linked with the city-wide bicycle route system.

The Project develops the new POPOS, a new publicly accessible open space that will be designed and constructed to be attractive to residents and visitors and will provide amenities to enhance public enjoyment of the new POPOS such as information kiosks, push carts and other services. The Project will add to the continuous system of parks, urban plazas, water-related public recreation, pedestrian promenades and walkways that already exist in the Northeastern Waterfront and will extend the existing connections between the Northeastern Waterfront and the Golden Gate National Recreation Area along The Embarcadero. The Project will be linked to the city-side bicycle route system and public bicycles and Class 1 and Class 2 bicycle parking in full compliance with City Codes will be a part of the Project.

OBJECTIVE 8:

TO FACILITATE THE MOVEMENT OF PEOPLE AND GOODS WITHIN THE NORTHEASTERN WATERFRONT IN SUCH A WAY AS TO MINIMIZE THE ADVERSE IMPACT OF THIS MOVEMENT.

Policy 8.1

Intercept and divert as much automobile traffic as feasible away from the water's edge and areas of intense pedestrian activity in order to make conditions more pleasurable, safe, and interesting for the pedestrian, and in order to facilitate the commercial and recreational development of the area.

Policy 8.2

Limit additional parking facilities in the Northeastern Waterfront and minimize the impact of this parking. Discourage long-term parking for work trips which could be accommodated by transit. Restrict additional parking to: (a) Short-term (less than four hour) parking facilities to meet needs of additional business, retail, restaurant, marina, and entertainment activities; (b) Long-term parking facilities for maritime activities, hotel and residential uses. To the extent possible, locate parking away from areas of intense pedestrian activity. Encourage shared parking at adjacent or nearby facilities.

Policy 8.6

Remove or relocate inland those existing parking facilities on or near the water's edge or within areas of intense pedestrian activity.

Policy 8.7

Facilitate pedestrian access to the shoreline, including access for the handicapped, through the provision of convenient, safe pedestrian crossings along The Embarcadero. Provide promenades and walkways of sufficient width to accommodate comfortably and safely the movement of pedestrians throughout the Northeastern Waterfront.

The Project removes an existing parking facility near the water's edge and has been designed to locate parking away from the site by using shared parking at nearby facilities and to minimize the impact of parking by encouraging the use of transit and alternative forms of transportation, such as bicycles, walking and shared ride vehicles. The Project will facilitate pedestrian access to the inland side of the waterfront by providing a series of attractive amenities along The Embarcadero and will provide walkways of sufficient width as determined by relevant City agencies to accommodate all persons comfortably and safely.

OBJECTIVE 10:

TO DEVELOP THE FULL POTENTIAL OF THE NORTHEASTERN WATERFRONT; AND TO ENHANCE ITS UNIQUE AESTHETIC QUALITIES OFFERED BY WATER, TOPOGRAPHY, VIEWS OF THE CITY AND BAY, AND ITS HISTORIC MARITIME CHARACTER.

Policy 10.1

Preserve the physical form of the waterfront and reinforce San Francisco's distinctive hill form by maintaining low structures near the water, with an increase in vertical development near hills or the downtown core area. Larger buildings and structures with civic importance may be appropriate at important locations.

Policy 10.2

Preserve and create view corridors which can link the City and the Bay.

Policy 10.3

Use continuous planting and other ground surface treatment to physically and visually link the waterfront with adjacent inland areas.

Policy 10.9

Encourage the provision of street furniture which is of appropriate design to the historic maritime character of the Northeastern Waterfront.

Policy 10.13

Remove exposed surface parking from over water, and along the Embarcadero roadway to improve shoreline appearance and access to the Bay.

Policy 10.27

Locate buildings to minimize shadows and wind on public open spaces.

Waterfront views from Vallejo Street will not be substantially impacted due to the rising topography of Vallejo Street, the low height of the Project (40 feet) and the translucent (and bird-safe) design for the entertainment venue's glass pavilion. The Project will use planting and other ground surface treatment to physically and visually link the waterfront with adjacent land uses.

The Project is being built within the 40-X Height and Bulk District for the site thereby preserving the physical form of the waterfront and reinforcing San Francisco's hill form westerly from the Bay toward Telegraph Hill. Consistent with the Waterfront Land Use Plan, and other City policies. The Project will construct the new POPOS with public walkways and public open space around and through the Project Site which will provide new view corridors to the Bay and will provide new amenities in the neighborhood that will make for an inviting experience, in the place of a surface parking lot.

The entertainment venue and the hotel will attract many more members of the public to the waterfront, allowing a greater number of people to experience the historic district, other Port properties, and the Bay, and the POPOS will be a new public amenity for the neighborhood and the City.

OBJECTIVE 18:

TO DEVELOP A DIVERSITY OF ADDITIONAL ACTIVITIES WHICH WOULD STRENGTHEN THE EXISTING PREDOMINANT USES IN THE BASE OF TELEGRAPH HILL SUBAREA AND ACTIVITIES WHICH WOULD EXPAND THE PERIOD OF USE, BUT OF AN INTENSITY WHICH WOULD PROVIDE A RELIEF FROM THE ADJACENT DOWNTOWN AND FISHERMAN'S WHARF AREAS.

Policy 18.3

Encourage moderate development of uses such as shops, restaurants, entertainment and hotels which activate the waterfront during evenings and weekends, but to a lesser overall intensity and concentration than present in the adjacent downtown and Fisherman's Wharf areas.

Policy 18.4

Design new development on Seawall Lots 323 and 324 as an orientation point for the waterfront which also highlights the intersection of Broadway and The Embarcadero.

Policy 18.5

Plan and design new developments on inland sites and adjacent piers in a manner which complements and enhances the surrounding area, and which unites the waterfront with the rest of the City.

The Project involves a new development designed to conform to the site's Height and Bulk District (40X) involving restaurants, entertainment and a hotel that will activate the waterfront during evenings and weekends, as well as the new POPOS. It is designed to be an orientation point for the waterfront and its highlights the intersection of Broadway and The Embarcadero through the hotel's main entry point and enhancements to The Embarcadero and Broadway streetscapes and the unique entertainment venue and glass pavilion hosting Teatro Zinzanni and the historic entertainment tent.

ARTS ELEMENT

Objectives and Policies

GOAL I.

SUPPORT AND NURTURE THE ARTS THROUGH CITY LEADERSHIP.

OBJECTIVE I-1:

RECOGNIZE THE ARTS AS NECESSARY TO THE QUALITY OF LIFE FOR ALL SEGMENTS OF SAN FRANCISCO.

Policy I-1.1

Promote inclusion of artistic considerations in local decision-making.

Policy I-1.2

Officially recognize on a regular basis the contributions arts make to the quality of life in San Francisco.

Policy I-1.4

Provide access to the creative process and cultural resources for all neighborhoods, cultural communities, and segments of the city and its populations.

The Project will allow for the establishment of a new entertainment venue hosting local, regional, national and international performances and talent on a regular basis. The regular activity not only makes a contribution to the quality of artists lives, but also the hundreds of others who provide essential musical, costume, staging, lighting, set building, costuming, and other performance-related professional services and enriches the lives thousands of local, regional, national and international patrons who come to the show annually and it will open its doors to a variety of community groups for special events and school age children for workshops and special events.

OBJECTIVE I-2:

INCREASE THE CONTRIBUTION OF THE ARTS TO THE ECONOMY OF SAN FRANCISCO.

Policy I-2.1

Encourage and promote opportunities for the arts and artists to contribute to the economic development of San Francisco.

Policy I-2.2

Continue to support and increase the promotion of the arts and arts activities throughout the City for the benefit of visitors, tourists, and residents.

The Project will contribute to the San Francisco economy by providing a wide variety of jobs, goods and services in the theater and arts community and will play a significant role in attracting visitors and locals to the City's Northern Waterfront. It will generate jobs in theater and stage production and construction and design, and in costumes, make-up, music, food and beverage services, installation, security, transportation and many other industries necessary to the production, performance, and exhibition of entertainment at the entertainment venue.

OBJECTIVE II-2:

SUPPORT ARTS AND CULTURAL PROGRAMS WHICH ADDRESS THE NEEDS OF DIVERSE POPULATIONS.

The theater supports arts and cultural programs that are accessible to and performed by diverse populations.

OBJECTIVE II-3:

PROMOTE ARTS EDUCATION PROGRAMS THAT REFLECT THE CULTURAL DIVERSITY OF SAN FRANCISCO.

The theater supports arts and cultural programs that are accessible to and performed by diverse populations.

OBJECTIVE III-1:

ENHANCE THE CONTRIBUTION OF ARTISTS TO THE CREATIVE LIFE AND VITALITY OF SAN FRANCISCO.

Through the employment of hundreds of new artists and persons directly related to the arts community, the Project enhances the contribution of artists to the creative life and vitality of San Francisco.

OBJECTIVE V-3:

DEVELOP AND EXPAND ONGOING PARTNERSHIPS WITH THE PRIVATE SECTOR IN SUPPORT OF THE ARTS.

Policy V-3.1

Develop partnerships with the private sector and the business community to encourage monetary and non-monetary support of the arts, as well as sponsorships of arts organizations and events.

The Project involves a partnership between the private sector and the arts community through the construction and partnerships with the theater space and Zinzanni.

OBJECTIVE VI-1:

SUPPORT THE CONTINUED DEVELOPMENT AND PRESERVATION OF ARTISTS' AND ARTS ORGANIZATIONS' SPACES.

Policy VI-1.5

Develop and maintain a mid-sized downtown performing arts facility available to community-based, culturally diverse arts groups easily accessible to visitors.

Policy VI-1.9

Create opportunities for private developers to include arts spaces in private developments citywide.

Policy VI-1.10

Assist artists and arts organizations in attaining ownership or long-term control of arts spaces.

The Project develops and maintains a mid-sized downtown arts facility that is easily accessible to visitors and includes ZinZanni having a long-term lease at the Project.

OBJECTIVE VI-2:

INCREASE OPPORTUNITIES FOR PUBLIC ART THROUGHOUT THE CITY.

The Project will have public art as part of its development.

RECREATION AND OPEN SPACE ELEMENT

Objectives and Policies

OBJECTIVE 2:

INCREASE RECREATION AND OPEN SPACE TO MEET THE LONG-TERM NEEDS OF THE CITY AND THE BAY REGION.

Policy 2.4

Support the development of signature public open space along the shoreline.

Policy 2.8

Consider repurposing underutilized City-owned properties as open space and recreational facilities.

Policy 2.12

Expand the Privately-owned Public Open Spaces (POPOS) requirement to new mixed-use development areas and ensure that spaces are truly accessible, functional and activated.

The Project repurposes part of the City-owned property for open space and creates a new park along the waterfront.

OBJECTIVE 3:
IMPROVE ACCESS AND CONNECTIVITY TO OPEN SPACE

Policy 3.1
Creatively develop existing publicly-owned rights-of-way and streets into open space.

The Project takes a portion of the publicly-owned right-of-way and turns it into an open space.

URBAN DESIGN ELEMENT
Objectives and Policies

OBJECTIVE 1:
EMPHASIS OF THE CHARACTERISTIC PATTERN WHICH GIVES TO THE CITY AND ITS NEIGHBORHOODS AN IMAGE, A SENSE OF PURPOSE, AND A MEANS OF ORIENTATION.

Policy 1.1
Recognize and protect major views in the city, with particular attention to those of open space and water.

Policy 1.2
Recognize, protect and reinforce the existing street pattern, especially as it is related to topography.

Policy 1.5
Emphasize the special nature of each district through distinctive landscaping and other features.

Policy 1.6
Make centers of activity more prominent through design of street features and by other means.

Policy 1.8
Increase the visibility of major destination areas and other points for orientation.

The Project is designed to emphasize and be consistent with the Northeastern Waterfront Historic District and includes the distinctive glass pavilion for the entertainment venue and will become an orientation point as a gateway to North Beach and Chinatown. The Project does not impact any major views in the City because Vallejo Street is not designated as a street with a major view, as more particularly described below in response to Policy 10.2, nor does it alter the existing street pattern.

OBJECTIVE 2:
CONSERVATION OF RESOURCES WHICH PROVIDE A SENSE OF NATURE, CONTINUITY WITH THE PAST, AND FREEDOM FROM OVERCROWDING.

Policy 2.8
Maintain a strong presumption against the giving up of street areas for private ownership or use, or for construction of public buildings.

No active, or planned-for active, "street areas" are being given up for private ownership or use, or for the construction of public buildings. Rather, the ROW Parcel is not currently used as street areas or for street purposes (instead it is a surface parking lot), and there is no plan to use the ROW Parcel for a street. Moreover, the Port is not "giving up" street areas for private ownership as the Port will remain the fee owner of the ROW Parcel. Additionally, POLICY 2.8 creates a rebuttable presumption that allows for the giving up of street areas in certain circumstances as set forth in Policy 2.9. The ROW Parcel vacation would be offset by the new POPOS which will provide the public with new park areas, passive recreational areas, walkways and pathways and enhance pedestrian walkways and sidewalks in and around the Project, as well as a new easement for an emergency vehicle truck access easement through the ROW Parcel for the benefit of the San Francisco Fire Department.

Policy 2.9

Review proposals for the giving up of street areas in terms of all the public values that streets afford.

The Project creates a new hotel, entertainment venue and POPOS on the ROW Parcel. There is no plan to use the ROW Parcel for street purposes. The Project also meets POLICY 2.9 because the publicly accessible uses proposed at the Project are consistent with the General Plan, Planning Code, Port Policies and State Lands requirements and the Project when judged against the criteria of POLICY 2.9 tips heavily in support of the Project.

Any impacts from the ROW Parcel vacation will be offset by the building of the new POPOS which will afford the public with new park areas, passive recreational areas, walkways and pathways and enhanced pedestrian walkways and sidewalks in and around the Project. The Project also includes a new easement for emergency vehicle truck access through the ROW Parcel that was designed for the benefit of the San Francisco Fire Department and has been endorsed by the Fire Department during the design process.

The POLICY 2.9 characteristics that support the Project's proposal for the giving up of street areas are as follows:

- a. No release of a street area shall be recommended which would result in:

1. Detriment to vehicular or pedestrian circulation.

The Project will not cause any detriment to vehicular or pedestrian circulation insofar as the Project Site is not currently used for vehicular or pedestrian circulation but instead is used as a surface parking lot for short-term storage of private automobiles. There are no existing or future plans to use the ROW Parcel as a street and doing so would be contrary to City policy to reduce vehicular traffic on The Embarcadero.

2. Interference with the rights of access to any private property.

The Project will not interfere with the right of access to any private property.

3. Inhibiting of access for fire protection or any other emergency purpose, or interference with utility lines or service without adequate reimbursement.

The Project will not inhibit access of fire protection but instead has been designed with the direct input of, and approval from, the San Francisco Fire Department and the Port's Fire Marshal to ensure that the San Francisco Fire Department has adequate and safe passage through and around the Project Site for any emergency purposes. Moreover, the Project will not interfere with utility lines or services as all Project approvals and permits will require coordination and compliance with utility providers requirements.

4. Obstruction or diminishing of a significant view, or elimination of a viewpoint; industrial operations.

The Project does not obstruct, diminish or eliminate a "significant view" insofar as the Vallejo Street view to Pier 9 is not considered a significant view as described previously in response to Policy 10.2, Page 10-11 of this Memo.

5. Elimination or reduction of open space which might feasibly be used for public recreation.
The Project will create the new park for use by the public and does not eliminate or reduce any open space.
6. Elimination of street space adjacent to a public facility, such as a park, where retention of the street might be of advantage to the public facility.

The Project does not propose to eliminate any street space adjacent to a public facility.

7. Elimination of street space that has formed the basis for creation of any lot, or construction or occupancy of any building according to standards that would be violated by discontinuance of the street.

The Project does not eliminate any street space that has formed the basis for creation of any lot or occupancy of any building.

8. Enlargement of a property that would result in (i) additional dwelling units in a multi-family area; (ii) excessive density for workers in a commercial area; or (iii) a building of excessive height or bulk.

The Project would not result in additional dwelling units in a multi-family area, excessive density of workers in a commercial area and the building will be built to conform to the 40-X Height and Bulk District for the area.

9. Reduction of street space in areas of high building intensity, without provision of new open space in the same area of equivalent amount and quality and reasonably accessible for public enjoyment.

The Project will not reduce street space, but instead creates the new POPOS that will be accessible to the public for public enjoyment.

10. Removal of significant natural features, or detriment to the scale and character of surrounding development.

The Project does not remove any significant natural feature because it is redeveloping an undeveloped, surface parking lot, nor does it cause any detriment to the scale and character of the surrounding area because it is being designed to conform to the 40-X Height and Bulk District for the area and in accordance with the Secretary of the Interiors Standards, the City's Planning Code Article 10, the Northeastern Waterfront Area Plan and the Port's Waterfront Land Use Plan.

11. Adverse effect upon any element of the General Plan or upon an area plan or other plan of the Department of City Planning.

The Project does not have an adverse effect to any element of the General Plan or upon an area plan or other plan of the Department of City Planning. Rather, the Project is consistent with all of the other plans governing the Project Site.

12. Release of a street area in any situation in which the future development or use of such street area and any property of which it would become a part is unknown.

The site has been planned for a hotel, entertainment venue and park form more than two decades since the Port's Waterfront Land Use Plan was first adopted in 1996. As such, the ROW Parcel's use, and that of Seawall Lots 323 and 324, has been known for some time. Release of the ROW Parcel will facilitate a better and fully integrated design for the Project along The Embarcadero and the waterfront, as explained in greater detail in Section b. below.

As shown above, none of the 12 conditions that would discourage approval of a vacation action are present. Moreover, the vacation action meets the criteria listed under subsection b(1) and b(3), below, which results in a favorable finding in support of the proposed vacation given the following: (a) it would facilitate a public serving, Public Trust consistent project (hotel and entertainment venue) and (b) would create a signature public space, the POPOS, that would offer a variety of high quality public spaces. The vacation would also meet the criteria of subsection b(5) in that they specifically support and are consistent with the policies of the Waterfront Land Use Plan and the Waterfront Design and Access Plan.

- b. Release of a street area may be considered favorably when it would not violate any of the above criteria and when it would be:

1. Necessary for a subdivision, redevelopment Project or other Project involving assembly of a large site, in which a new and improved pattern would be substituted for the existing street pattern.

The Project allows for the Project to fulfill many of the Port's Waterfront Land Use Plan's preferred uses for the Project Site, which include preferred use designations for a hotel, theater and open space and the

ROW Parcel vacation is necessary to complete the Project. Moreover, the Project meets this subsection of POLICY 2.9 because its streetscape improvements will improve the pattern of the existing street and pedestrian pattern in the area from its current state as a surface parking lot to new publicly accessible preferred uses. Additionally, the Project will create a new POPOS that will be accessible to the public which in addition to creating new open space will also improve pedestrian transit in and around the site without effecting the vehicular traffic at all on any of the four adjacent streets (The Embarcadero, Broadway, Davis and Vallejo).

2. In furtherance of an industrial Project where the existing street pattern would not fulfill the requirements of modern industrial operations.

This ROW Parcel vacation is not applicable to this subsection as the Project does not include an industrial project.

3. Necessary for a significant public or semi-public use, or public assembly use, where the nature of the use and the character of the development proposed present strong justifications for occupying the street area rather than some other site.

The street vacation is necessary for the Project to be built because of the nature of the public assembly uses (i.e. theater, entertainment, cultural uses in the Entertainment venue) and hotel and open space uses designed for the public, all of which are allowed by the Public Trust doctrine on the Site. As the hotel and entertainment venue need to share back of house spaces, it is essential to the Project's success that these uses be located adjacent to each other which requires in turn that the released ROW Parcel be occupied by the theatre use and the park be located to the north of the theatre use. Each of these uses also conform to the preferred use designations of the Port's Waterfront Land Use Plan, and which are consistent with the General Plan, the Northeastern Waterfront Area Plan and San Francisco Administrative Code Section 90A.

4. For the purpose of permitting a small-scale pedestrian crossing consistent with the principles and policies of The Urban Design Element.

The Project will create the new park that will have small-scale pedestrian walkways through the open space, including a paved crossing from Davis and Vallejo through the site to The Embarcadero and from Davis Street through the Site to Green Street to the north.

5. In furtherance of the public values and purposes of streets as expressed in The Urban Design Element and elsewhere in the General Plan.

The Project furthers the public values and purposes of streets as expressed in the Urban Design Element and elsewhere in the General Plan as described in the memorandum.

Policy 2.10

Permit release of street areas, where such release is warranted, only in the least extensive and least permanent manner appropriate to each case.

The Project involves the ROW Parcel, which is an unmapped, undeveloped, right-of-way areas, not active or even proposed to be active street areas, and it will be constructed pursuant to a Port ground lease, which means that the Port will always retain ownership to the Project Site and the ROW Parcel. The Project also meets POLICY 2.10 because the release of the unused ROW Parcel furthers the public values and purposes of streets as expressed in the Urban Design Element and elsewhere in the General Plan and is consistent with the preferred uses for the Project Site as set forth in the Port's Waterfront Land Use Plan.

COMMERCE AND INDUSTRY ELEMENT
Objectives and Policies

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 1.7

Recognize the natural boundaries of districts and promote connections between districts.

The Project encourages a project that has substantial net benefits (jobs, revenues, art and entertainment, open space and the like) and it minimize undesirable consequences on the environment as determined by the Initial Study.

OBJECTIVE 2:

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

Policy 2.1

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

The Project attracts a new hotel and the entertainment venue 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.

The Project expands commercial uses in the hotel and entertainment fields which are strong industries for creating opportunities for unskilled and semi-skilled workers.

TRANSPORTATION ELEMENT
Objectives and Policies

OBJECTIVE 16:

DEVELOP AND IMPLEMENT PROGRAMS THAT WILL EFFICIENTLY MANAGE THE SUPPLY OF PARKING AT EMPLOYMENT CENTERS THROUGHOUT THE CITY SO AS TO DISCOURAGE SINGLE-OCCUPANT RIDERSHIP AND ENCOURAGE RIDESHARING, TRANSIT AND OTHER ALTERNATIVES TO THE SINGLE-OCCUPANT AUTOMOBILE.

Policy 16.1

Reduce parking demand through the provision of comprehensive information that encourages the use of alternative modes of transportation.

Policy 16.3

Reduce parking demand through the provision of incentives for the use of carpools and vanpools at new and existing parking facilities throughout the City.

Policy 16.5

Reduce parking demand through limiting the absolute amount of spaces and prioritizing the spaces for short-term and ride-share uses.

Policy 16.6

Encourage alternatives to the private automobile by locating public transit access and ride-share vehicle and bicycle parking at more close-in and convenient locations on-site, and by locating parking facilities for single-occupant vehicles more remotely.

The Project encourages alternatives to private automobiles, emphasizes public transit access and by utilizing off-site parking facilities and a comprehensive system of information technology to address transportation needs.

OBJECTIVE 17:

DEVELOP AND IMPLEMENT PARKING MANAGEMENT PROGRAMS IN THE DOWNTOWN THAT WILL PROVIDE ALTERNATIVES ENCOURAGING THE EFFICIENT USE OF THE AREA'S LIMITED PARKING SUPPLY AND ABUNDANT TRANSIT SERVICES.

Policy 17.2

Encourage collaboration and cooperation between property owners, neighboring uses and developers to allow for the most efficient use of existing and new parking facilities.

The Project encourages collaboration and cooperation between off-site parking facilities and the development.

OBJECTIVE 23:

IMPROVE THE CITY'S PEDESTRIAN CIRCULATION SYSTEM TO PROVIDE FOR EFFICIENT, PLEASANT, AND SAFE MOVEMENT.

Policy 23.1

Provide sufficient pedestrian movement space with a minimum of pedestrian congestion in accordance with a pedestrian street classification system.

The Project will provide improved pedestrian movement in accordance with City standards.

OBJECTIVE 24:

IMPROVE THE AMBIANCE OF THE PEDESTRIAN ENVIRONMENT.

Policy 24.5

Where consistent with transportation needs, transform streets and alleys into neighborhood-serving open spaces or "living streets" by adding pocket parks in sidewalks or medians, especially in neighborhoods deficient in open space.

The Project transforms the ROW Parcel into a neighborhood-serving open space.

ENVIRONMENTAL PROTECTION ELEMENT

Objectives and Policies

OBJECTIVE 7:

ASSURE THAT THE LAND RESOURCES IN SAN FRANCISCO ARE USED IN WAYS THAT BOTH RESPECT AND PRESERVE THE NATURAL VALUES OF THE LAND AND SERVE THE BEST INTERESTS OF ALL THE CITY'S CITIZENS.

Policy 7.1

Preserve and add to public open space in accordance with the objectives and policies of the Recreation and Open Space Element.

The Project adds to public open space in accordance with applicable City and Port policies.

OBJECTIVE 10:

MINIMIZE THE IMPACT OF NOISE ON AFFECTED AREAS.

Policy 10.1

Promote site planning, building orientation and design, and interior layout that will lessen noise intrusion.

Policy 10.2

Promote the incorporation of noise insulation materials in new construction.

The design of the glass pavilion for the entertainment venue lessens noise intrusion from that preferred use.

OBJECTIVE 12:

ESTABLISH THE CITY AND COUNTY OF SAN FRANCISCO AS A MODEL FOR ENERGY MANAGEMENT.

Policy 12.1

Incorporate energy management practices into building, facility, and fleet maintenance and operations.

The Project incorporate best practices for energy management into the building.

9. Planning Code Section 101.1(b) establishes eight priority-planning policies and requires review of permits for consistency with said policies. On balance, the Project complies with said policies in that:

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

The Project would demolish a surface parking lot and replace it with a mixed-use development that would include new entertainment and active hotel uses on the ground floor. Visitors that stay at the proposed hotel would help support existing neighborhood-serving retail uses.

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

The Project Site does not possess any existing housing. The Project would strengthen neighborhood character by respecting the character-defining features of the landmark district in conformance with the Secretary of the Interior's Standards. The creation of a new, compatible building would help fill out the subject landmark district and would be replacing a surface parking lot that does not contribute to the character of the district and neighborhood. For these reasons, the Project would protect and preserve the cultural and economic diversity of the neighborhood.

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

The Project does not currently possess any existing affordable housing. The Project would have no effect on the affordable housing supply of the City.

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

The Project Site is served by nearby public transportation options. The Project is located along a Muni E and F lines and is within walking distance of the BART Station at Embarcadero and Montgomery Streets. The Project would not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking. The Project also provides sufficient bicycle parking for employees and hotel guests.

- E. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced.

The Project does not include commercial office development. The Project would demolish a surface parking lot and replace it with a mixed-use development that would include new active uses on the ground floor. The Project would not have any effect on industrial jobs but may increase job opportunities in the service sector through employment at the proposed hotel.

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

The Project will be designed and will be constructed to conform to the structural and seismic safety requirements of the Building Code. This proposal will not impact the property's ability to withstand an earthquake.

- G. That landmarks and historic buildings be preserved.

A landmark or historic building does not occupy the Project Site. The Project, which lies within the boundaries of the Northeast Waterfront Landmark District, is in conformance with Article 10 of the Planning Code and the Secretary of the Interior's Standards.

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

The Project would not affect access to sunlight or vistas for existing parks and open spaces and would result in a new public park that would be privately financed and maintained.

10. The General Plan Consistency Findings set forth in Resolution No. 20443, Case #2016-011011GPR (Findings of Consistency with the General Plan Referral for Street Vacations) apply to this Motion and are incorporated herein by reference as though fully set forth.

11. The Project is consistent with and would promote the general and specific purposes of the Code provided under Section 101.1(b) in that, as designed, the Project would contribute to the character and stability of the neighborhood and would constitute a beneficial development.
12. The Commission hereby finds that approval of the Conditional Use Authorization would promote the health, safety and welfare of the City.

DECISION

That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby **APPROVES Conditional Use Authorization Application No. 2015-016326CUA** subject to the following conditions attached hereto as "EXHIBIT A" in general conformance with plans on file, dated December 21, 2018, and stamped "EXHIBIT B", which is incorporated herein by reference as though fully set forth.

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

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

APPEAL AND EFFECTIVE DATE OF MOTION: Any aggrieved person may appeal this Conditional Use Authorization to the Board of Supervisors within thirty (30) days after the date of this Motion. The effective date of this Motion shall be the date of this Motion if not appealed (after the 30-day period has expired) OR the date of the decision of the Board of Supervisors if appealed to the Board of Supervisors. For further information, please contact the Board of Supervisors at (415) 554-5184, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

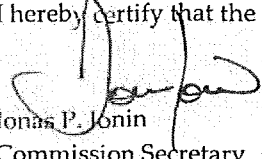
Protest of Fee or Exaction: You may protest any fee or exaction subject to Government Code Section 66000 that is imposed as a condition of approval by following the procedures set forth in Government Code Section 66020. The protest must satisfy the requirements of Government Code Section 66020(a) and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

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

Motion No. 20444
May 2, 2019

RECORD NO. 2015-016326CUA
Seawall Lots 323 and 324

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on May 2, 2019.


Jonas P. Jonin
Commission Secretary

AYES: Hillis, Moore, Koppel, Richards, Johnson, Fung

NAYS: None

ABSENT: Melgar

ADOPTED: May 2, 2019

EXHIBIT A

AUTHORIZATION

This authorization is for a conditional use to allow a mixed-use development consisting of three components: an approximately 26,100 gross-square-foot (gsf) entertainment venue; an approximately 112,700 gsf hotel that would accommodate 192 guest rooms, and; an approximately 14,000 gsf privately financed and maintained public park (d.b.a. Teatro ZinZanni) located at Seawall Lots 323 and 324, Block 0138 and Lot 00, and Block 0139 and Lot 002, pursuant to Planning Code Section(s) 210.1, 240.3, AND 303 within the C-2 Zoning District and a 40-X Height and Bulk District; in general conformance with plans, dated December 21, 2018, and stamped "EXHIBIT B" included in the docket for Record No. 2015-016326CUA and subject to conditions of approval reviewed and approved by the Commission on May 2, 2019 under Motion No. 20444. This authorization and the conditions contained herein run with the property and not with a particular Project Sponsor, business, or operator.

RECORDATION OF CONDITIONS OF APPROVAL

Prior to the issuance of the building permit or commencement of use for the Project the Zoning Administrator shall approve and order the recordation of a Notice in the Official Records of the Recorder of the City and County of San Francisco for the subject property. This Notice shall state that the project is subject to the conditions of approval contained herein and reviewed and approved by the Planning Commission on May 2, 2019 under Motion No. 20444.

PRINTING OF CONDITIONS OF APPROVAL ON PLANS

The conditions of approval under the "EXHIBIT A" of this Planning Commission Motion No. 20444 shall be reproduced on the Index Sheet of construction plans submitted with the site or building permit application for the Project. The Index Sheet of the construction plans shall reference to the Conditional Use authorization and any subsequent amendments or modifications.

SEVERABILITY

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

CHANGES AND MODIFICATIONS

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

Conditions of Approval, Compliance, Monitoring, and Reporting PERFORMANCE

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

6. **Conformity with Current Law.** No application for Building Permit, Site Permit, or other entitlement shall be approved unless it complies with all applicable provisions of City Codes in effect at the time of such approval.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org
7. **Additional Project Authorization.** The Project Sponsor must obtain a General Plan Referral for vacations for portions of Vallejo Street and Davis Street and satisfy all the conditions thereof. The conditions set forth below are additional conditions required in connection with the Project. If these conditions overlap with any other requirement imposed on the Project, the more restrictive or protective condition or requirement, as determined by the Zoning Administrator, shall apply.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org
8. **Mitigation Measures.** Mitigation measures described in the MMRP attached as "EXHIBIT C" are necessary to avoid potential significant effects of the proposed project and have been agreed to by the project sponsor. Their implementation is a condition of project approval.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

DESIGN – COMPLIANCE AT PLAN STAGE

9. **Final Materials.** The Project Sponsor shall continue to work with Planning Department on the building design. Final materials, glazing, color, texture, landscaping, and detailing shall be subject to Department staff review and approval. The architectural addenda shall be reviewed and approved by the Planning Department prior to issuance.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org
10. **Garbage, Composting and Recycling Storage.** Space for the collection and storage of garbage, composting, and recycling shall be provided within enclosed areas on the property and clearly labeled and illustrated on the building permit plans. Space for the collection and storage of recyclable and compostable materials that meets the size, location, accessibility and other standards specified by the San Francisco Recycling Program shall be provided at the ground level of the buildings.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org
11. **Rooftop Mechanical Equipment.** Pursuant to Planning Code 141, the Project Sponsor shall submit a roof plan to the Planning Department prior to Planning approval of the building permit application. Rooftop mechanical equipment, if any is proposed as part of the Project, is required to be screened so as not to be visible from any point at or below the roof level of the subject building.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

12. **Lighting Plan.** The Project Sponsor shall submit an exterior lighting plan to the Planning Department prior to Planning Department approval of the building / site permit application.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

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

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

14. **Signage.** The Project Sponsor shall develop a signage program for the Project which shall be subject to review and approval by Planning Department staff before submitting any building permits for construction of the Project. All subsequent sign permits shall conform to the approved signage program. Once approved by the Department, the signage program/plan information shall be submitted and approved as part of the site permit for the Project. All exterior signage shall be designed to complement, not compete with, the existing architectural character and architectural features of the building.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

15. **Transformer Vault Location.** The location of individual Project PG&E Transformer Vault installations has significant effects to San Francisco streetscapes when improperly located. However, they may not have any impact if they are installed in preferred locations. Therefore, the Planning Department in consultation with Public Works shall require the following location(s) for transformer vault(s) for this Project: inside the building along Davis Street. This location has the following design considerations: near the loading dock and with adequate street trees in front of the building to block the view of the blank wall. The above requirement shall adhere to the Memorandum of Understanding regarding Electrical Transformer Locations for Private Development Projects between Public Works and the Planning Department dated January 2, 2019.

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

16. **Overhead Wiring.** The Property owner will allow MUNI to install eyebolts in the building adjacent to its electric streetcar line to support its overhead wire system if requested by MUNI or MTA.

For information about compliance, contact San Francisco Municipal Railway (Muni), San Francisco Municipal Transit Agency (SFMTA), at 415-701-4500, www.sfmta.org

17. **Noise.** Plans submitted with the building permit application for the approved Project shall incorporate acoustical insulation and other sound proofing measures to control noise.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

18. **Landscaping.** Pursuant to Planning Code Section 132, the Project Sponsor shall submit a site plan to the Planning Department prior to Planning approval of the building permit application indicating that 50% of the front setback areas shall be surfaced in permeable materials and further, that 20% of the front setback areas shall be landscaped with approved plant species. The size and specie of plant materials and the nature of the permeable surface shall be as approved by the Department of Public Works.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

19. **Odor Control Unit.** In order to ensure any significant noxious or offensive odors are prevented from escaping the premises once the Project is operational, the building permit application to implement the Project shall include air cleaning or odor control equipment details and manufacturer specifications on the plans. Odor control ducting shall not be applied to the primary façade of the building.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

PARKING AND TRAFFIC

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

Prior to the issuance of the first Building Permit or Site Permit, the Zoning Administrator shall approve and order the recordation of a Notice in the Official Records of the Recorder of the City and County of San Francisco for the subject property to document compliance with the TDM Program. This Notice shall provide the finalized TDM Plan for the Project, including the relevant

details associated with each TDM measure included in the Plan, as well as associated monitoring, reporting, and compliance requirements.

For information about compliance, contact the TDM Performance Manager at tdm@sfgov.org or 415-558-6377, www.sf-planning.org.

21. **Bicycle Parking.** Pursuant to Planning Code Sections 155.1 and 155.4, the Project shall provide no fewer than 11 Class 1 or 8 Class 2 bicycle parking spaces. SFMTA has final authority on the type, placement and number of Class 2 bicycle racks within the public ROW. Prior to issuance of first architectural addenda, the Project Sponsor shall contact the SFMTA Bike Parking Program at bikeparking@sfmta.com to coordinate the installation of on-street bicycle racks and ensure that the proposed bicycle racks meet the SFMTA's bicycle parking guidelines. Depending on local site conditions and anticipated demand, SFMTA may request the Project Sponsor pay an in-lieu fee for Class II bike racks required by the Planning Code.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

22. **Showers and Clothes Lockers.** Pursuant to Planning Code Section 155.3, the Project shall provide no fewer than four showers and 24 clothes lockers.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

23. **Off-Street Loading.** Pursuant to Planning Code Section 152, the Project will provide two off-street loading spaces.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

24. **Managing Traffic During Construction.** The Project Sponsor and construction contractor(s) shall coordinate with the Traffic Engineering and Transit Divisions of the San Francisco Municipal Transportation Agency (SFMTA), the Police Department, the Fire Department, the Planning Department, and other construction contractor(s) for any concurrent nearby Projects to manage traffic congestion and pedestrian circulation effects during construction of the Project.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

PROVISIONS

25. **Transportation Sustainability Fee.** The Project is subject to the Transportation Sustainability Fee (TSF), as applicable, pursuant to Planning Code Section 411A.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

26. **Jobs-Housing Linkage.** The Project is subject to the Jobs Housing Linkage Fee, as applicable, pursuant to Planning Code Section 413.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org
27. **Child-Care Requirements for Office and Hotel Development.** In lieu of providing an on-site child-care facility, the Project has elected to meet this requirement by providing an in-lieu fee, as applicable, pursuant to Planning Code Section 414.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org
28. **First Source Hiring.** The Project shall adhere to the requirements of the First Source Hiring Construction and End-Use Employment Program approved by the First Source Hiring Administrator, pursuant to Section 83.4(m) of the Administrative Code. The Project Sponsor shall comply with the requirements of this Program regarding construction work and on-going employment required for the Project.
For information about compliance, contact the First Source Hiring Manager at 415-581-2335, www.onestopSF.org
29. **Art.** The Project is subject to the Public Art Fee, as applicable, pursuant to Planning Code Section 429.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org
30. **Art Plaques.** Pursuant to Planning Code Section 429(b), the Project Sponsor shall provide a plaque or cornerstone identifying the architect, the artwork creator and the Project completion date in a publicly conspicuous location on the Project Site. The design and content of the plaque shall be approved by Department staff prior to its installation.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org
31. **Art.** Pursuant to Planning Code Section 429, the Project Sponsor and the Project artist shall consult with the Planning Department during design development regarding the height, size, and final type of the art. The final art concept shall be submitted for review for consistency with this Motion by, and shall be satisfactory to, the Director of the Planning Department in consultation with the Commission. The Project Sponsor and the Director shall report to the Commission on the progress of the development and design of the art concept prior to the submittal of the first building or site permit application.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

32. **Art.** Pursuant to Planning Code Section 429, prior to issuance of any certificate of occupancy, the Project Sponsor shall install the public art generally as described in this Motion and make it available to the public. If the Zoning Administrator concludes that it is not feasible to install the work(s) of art within the time herein specified and the Project Sponsor provides adequate assurances that such works will be installed in a timely manner, the Zoning Administrator may extend the time for installation for a period of not more than twelve (12) months.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

MONITORING - AFTER ENTITLEMENT

33. **Enforcement.** Violation of any of the Planning Department conditions of approval contained in this Motion or of any other provisions of Planning Code applicable to this Project shall be subject to the enforcement procedures and administrative penalties set forth under Planning Code Section 176 or Section 176.1. The Planning Department may also refer the violation complaints to other city departments and agencies for appropriate enforcement action under their jurisdiction.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

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

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

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

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

OPERATION

36. **Eating and Drinking Uses.** As defined in Planning Code Section 202.2, Eating and Drinking Uses, as defined in Section 102, shall be subject to the following conditions:

- A. The business operator shall maintain the main entrance to the building and all sidewalks abutting the subject property in a clean and sanitary condition in compliance with the Department of Public Works Street and Sidewalk Maintenance Standards. In addition, the

operator shall be responsible for daily monitoring of the sidewalk within a one-block radius of the subject business to maintain the sidewalk free of paper or other litter associated with the business during business hours, in accordance with Article 1, Section 34 of the San Francisco Police Code.

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

- B. When located within an enclosed space, the premises shall be adequately soundproofed or insulated for noise and operated so that incidental noise shall not be audible beyond the premises or in other sections of the building, and fixed-source equipment noise shall not exceed the decibel levels specified in the San Francisco Noise Control Ordinance.

For information about compliance of fixed mechanical objects such as rooftop air conditioning, restaurant ventilation systems, and motors and compressors with acceptable noise levels, contact the Environmental Health Section, Department of Public Health at (415) 252-3800, www.sfdph.org.

For information about compliance with construction noise requirements, contact the Department of Building Inspection at 415-558-6570, www.sfdbi.org.

For information about compliance with the requirements for amplified sound, including music and television, contact the Police Department at 415-553-0123, www.sf-police.org.

- C. While it is inevitable that some low level of odor may be detectable to nearby residents and passersby, appropriate odor control equipment shall be installed in conformance with the approved plans and maintained to prevent any significant noxious or offensive odors from escaping the premises.

For information about compliance with odor or other chemical air pollutants standards, contact the Bay Area Air Quality Management District, (BAAQMD), 1-800-334-ODOR (6367), www.baaqmd.gov and Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

- D. Garbage, recycling, and compost containers shall be kept within the premises and hidden from public view, and placed outside only when being serviced by the disposal company. Trash shall be contained and disposed of pursuant to garbage and recycling receptacles guidelines set forth by the Department of Public Works.

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

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

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

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

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

39. **Notices Posted at Bars and Entertainment Venues.** Notices urging patrons to leave the establishment and neighborhood in a quiet, peaceful, and orderly fashion and to not litter or block driveways in the neighborhood, shall be well-lit and prominently displayed at all entrances to and exits from the establishment.

For information about compliance, contact the Entertainment Commission, at 415 554-6678, www.sfgov.org/entertainment

40. **Other Entertainment.** The Other Entertainment shall be performed within the enclosed building only. The building shall be adequately soundproofed or insulated for noise and operated so that incidental noise shall not be audible beyond the premises or in other sections of the building and fixed-source equipment noise shall not exceed the decibel levels specified in the San Francisco Noise Control Ordinance. Bass and vibrations shall also be contained within the enclosed structure. The Project Sponsor shall obtain all necessary approvals from the Entertainment Commission prior to operation. The authorized entertainment use shall also comply with all of the conditions imposed by the Entertainment Commission.

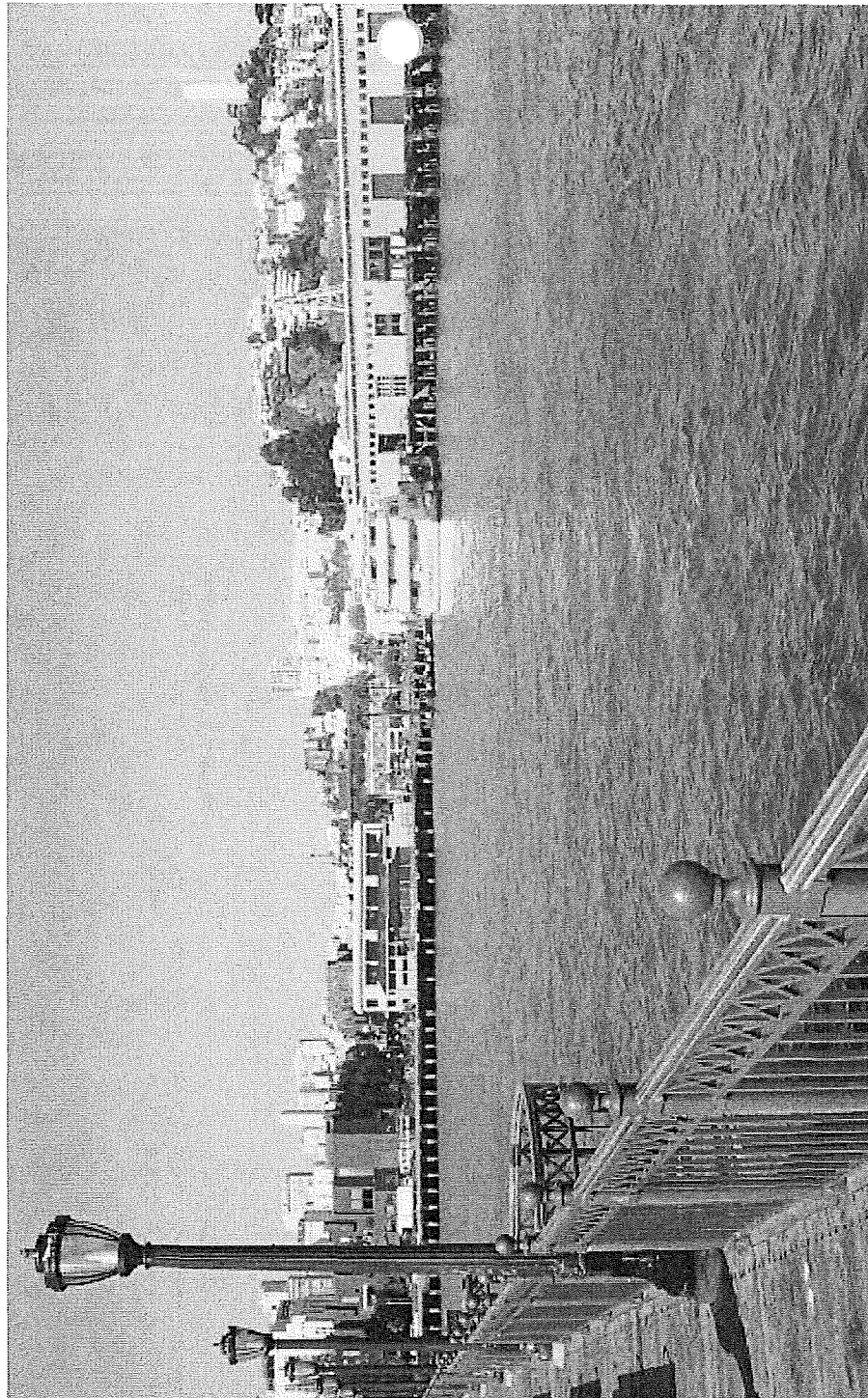
For information about compliance, contact the Entertainment Commission, at 415 554-6678, www.sfgov.org/entertainment

41. **Lighting.** All Project lighting shall be directed onto the Project Site and immediately surrounding sidewalk area only, and designed and managed so as not to be a nuisance to adjacent residents. Nighttime lighting shall be the minimum necessary to ensure safety, but shall in no case be directed so as to constitute a nuisance to any surrounding property.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

42. **Hours of Operation.** The entertainment use of the subject establishment is limited to the following public hours of operation: Sunday through Saturday from 5:30 p.m. to 11:30 p.m.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org



ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

A Teatro ZinZanni & Kenwood Investments Project

TKZ Broadway, LLC
December 21, 2018 Design Package

Teatro ZinZanni
presidiocompanies

KENWOOD INVESTMENTS

Hornberger **Worstell**
+
Prepared for:
Teatro ZinZanni, Presidio Companies,
and Kenwood Investments
by:
Hornberger Worstell

Site Context

ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

A Theatre ZinZanni & Kenwood Investments Project





Project Site

December 31, 2018 | 3

Hornberger

Hornberger + Wurster Architects

ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

A Theater & Hotel Investment Project

Worstell

presidio companies

Theater ZinZanni

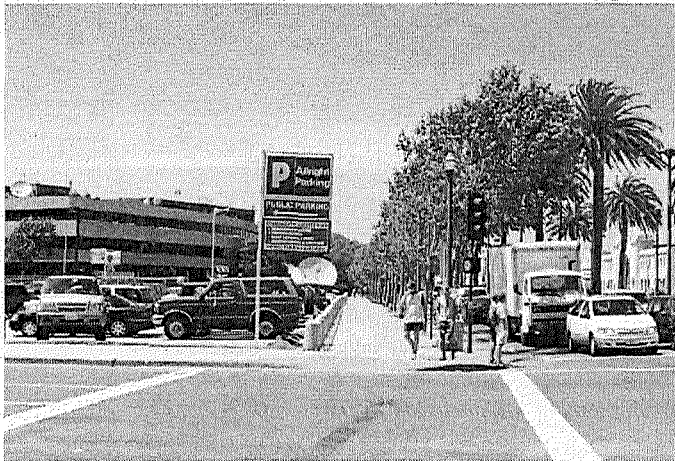
KENWOOD INVESTMENTS



Existing Site
Embarcadero Looking South



Existing Site
Davis Looking North



Existing Site
Broadway/Embarcadero Corner Looking North



Existing Site
Broadway/Davis Corner Looking East

Existing Site Images

December 21, 2018 | 4

Teatro ZinZanni

presidio companies

ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

A Teatro ZinZanni & Kenwood Investments Project

Hornberger + Worstell Architects

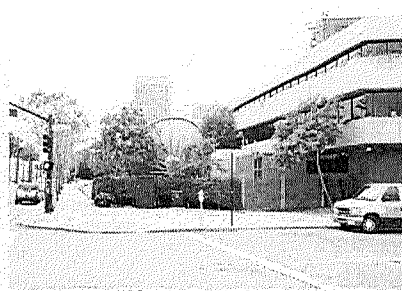
Hornberger

Worstell

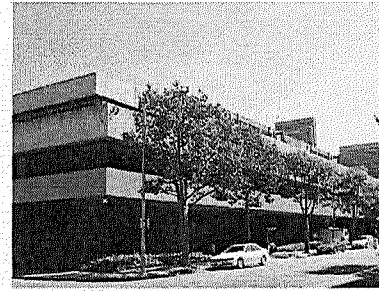
KENWOOD INVESTMENTS



KGO - from Davis & Vallejo



KGO - from Green St.



900 Front St. - KGO - from Front & Vallejo



KGO - from The Embarcadero across project park site



Golden Gateway Commons - Broadway



Golden Gateway Commons - Broadway



Golden Gateway Commons - from The Embarcadero



Golden Gateway Commons - from The Embarcadero



The Waterfront Restaurant & Cafe - Pier 7 & The Embarcadero



Pier 9 & The Embarcadero



60 Broadway - from Davis St.



753 Davis - from across project site

Existing Context Images / Nearby Buildings

TEATRO ZINZANNI

presidio companies

ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

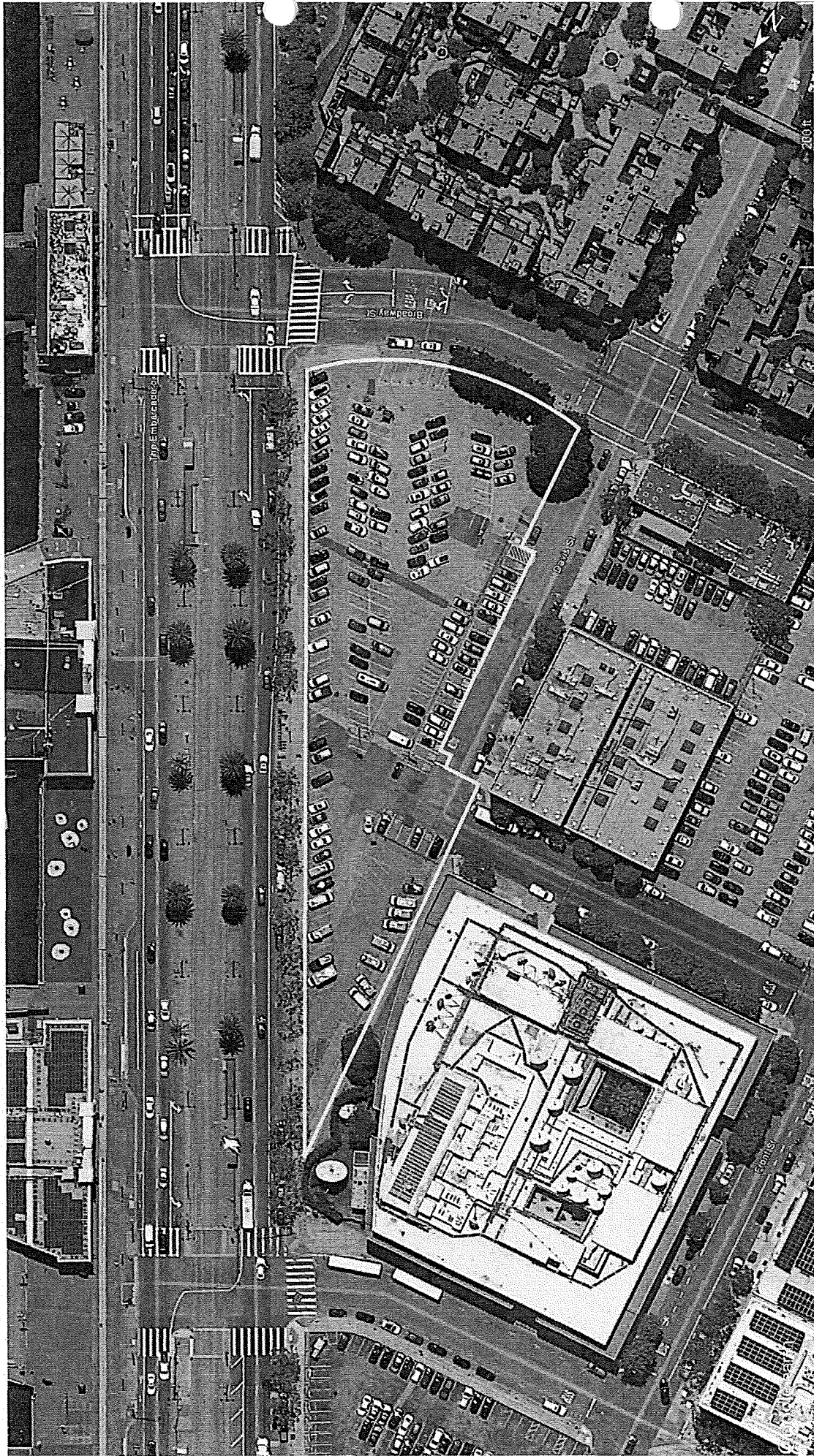
A Teatro ZinZanni & Kenwood Investments Project

Hornberger & Worstell Architects

Hornberger

Worstell

December 21, 2018 | 5



Project Site

November 21, 2018 18

Hornberger

Hornberger + Worstell Architects

Zinzanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

A Theater, Zinzanni & Kenwood Investments Project

Worstell

presidio companies

Team Zinzanni

KENWOOD INVESTMENTS

Historic District Images

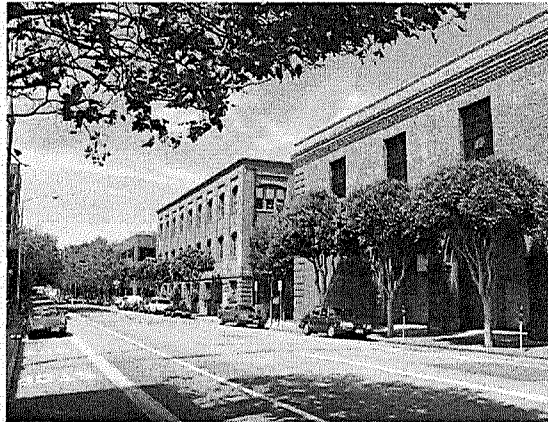
ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

© 2008 ZINZANNI & KENNEDY INVESTMENTS, INC.





151 Union



1050 Battery

1010 Battery

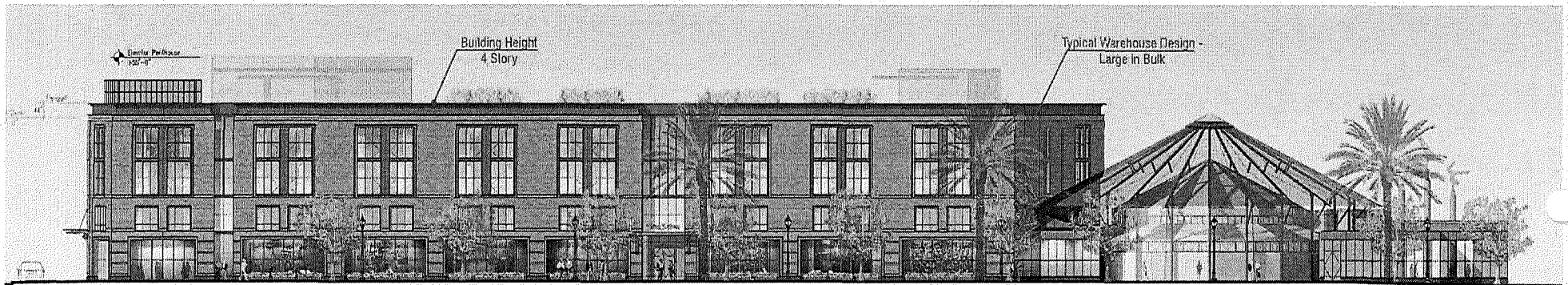
Section 6. FEATURES

(a) Overall Form and Continuity.

- Building height is generally within a six-story range, with the higher structures closer to the base of Telegraph Hill and lower buildings near the water. Many of the oldest structures are one or two stories in height.

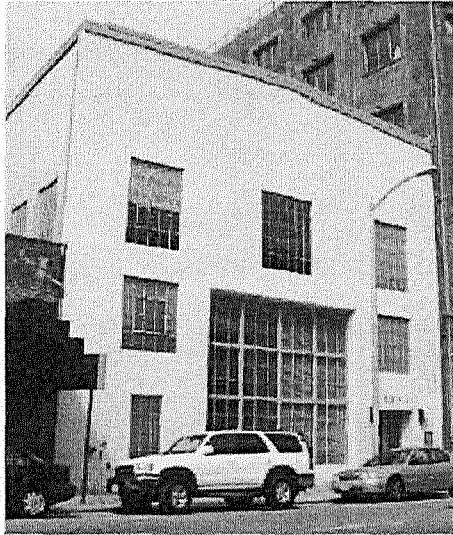
Northeast Waterfront Historic District Appendix D, Article 10 San Francisco Planning Code

All quotes from Article 10: Preservation of Historical Architectural and Aesthetic Landmarks, Appendix D: Northeast Waterfront Historic District - San Francisco Planning Code

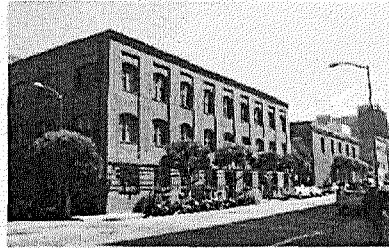


Embarcadero Elevation - Proposed Scheme

Historic District Images



1035 Battery



1050 Battery



1050 Battery

1010 Battery

Section 6. FEATURES

(b) Scale & Proportion:

- The buildings are of typical warehouse design, large in bulk, often with large arches and openings originally designed for easy vehicular access. The earlier brick structures blend easily with the scaled-down Beaux Arts forms of the turn of the century and the plain reinforced-concrete structures characteristic of twentieth century industrial architecture.

Northeast Waterfront Historic District

Appendix D, Article 10 San Francisco Planning Code

All quotes from Article 10: Preservation of Historical Architectural and Aesthetic Landmarks, Appendix D: Northeast Waterfront Historic District - San Francisco Planning Code



Embarcadero Elevation - Proposed Scheme

Historic District Images

Teatro ZinZanni

presidio companies

ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

A Teatro ZinZanni & Kenwood Investments Project

Hornberger + Worstell Architects

Hornberger

Worstell

December 21, 2010 | 9



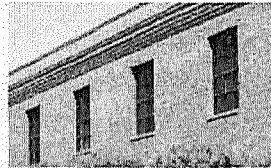
151 Union Street



1088 Sansome Street



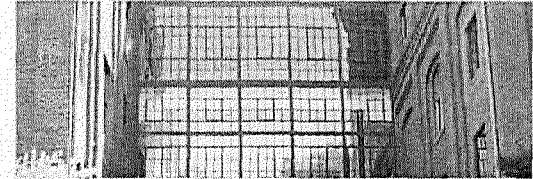
150 Green Street



1010 Battery



847 Front Street



Icehouse Alley: glass bridge approved by HRC 1992

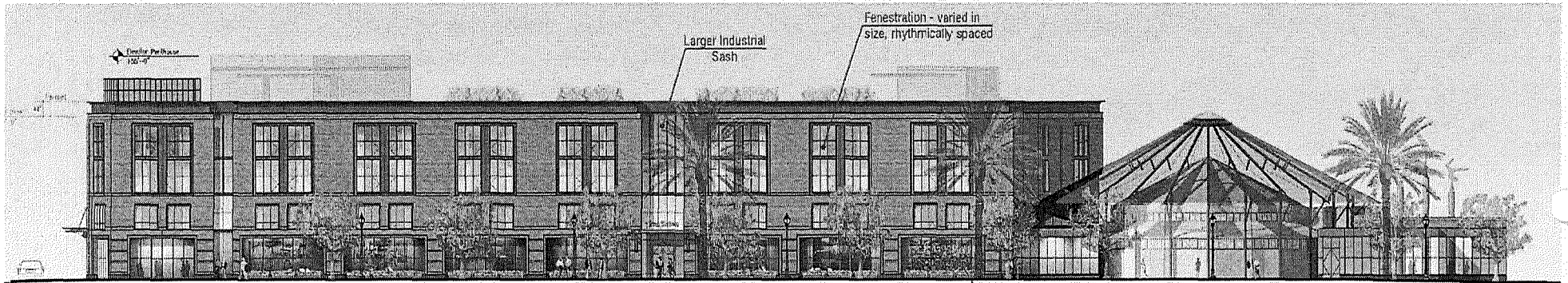
(c) Fenestration.

- Minimal glazing is deeply recessed, producing a strong shadow line. The earliest structures have a few windows expressing their warehouse function. They are varied in size, rhythmically spaced and relate in shape and proportion to those in nearby buildings. Larger industrial sash window began to be incorporated in structures built from the 1920's and onward. Door openings are often massive to facilitate easy access of bulk materials.

Northeast Waterfront Historic District

Appendix D, Article 10 San Francisco Planning Code

All quotes from Article 10: Preservation of Historical Architectural and Aesthetic Landmarks, Appendix D: Northeast Waterfront Historic District - San Francisco Planning Code



Embarcadero Elevation - Proposed Scheme

Strong Shadow Lines

Historic District Images

TESTA ZINZANNI

presidio companies

ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

A Testa ZinZanni & Kenwood Investments Project

Hornberger + Worstell Architects

Hornberger

Worstell

December 21, 2018 | 19



Embarcadero | Teatro ZinZanni Entrance

Section 6. FEATURES

(c) Fenestration

- They are varied in size, rhythmically spaced and relate in shape and proportion to those in nearby buildings. Larger industrial sash window began to be incorporated in structures built from the 1920's and onward. Door openings are often massive to facilitate easy access of bulk materials.

(d) Materials:

- Standard brick masonry is predominant for the oldest buildings in the District, with reinforced concrete introduced after the 1906 fire. Some of the brick facades have been sluccoed over. One of the structures still has its metal shutters, which were once typical of the area.

(e) Color

- Red brick is typical, with some yellow and painted brick. Muted earth tones predominate in shades of red, brown, green, gray and blue.

(f) Texture

- Typical facing materials give a rough-textured appearance. The overall texture of the facades is rough-grained.

Northeast Waterfront Historic District

Appendix D, Article 10 San Francisco Planning Code

All quotes from Article 10: Preservation of Historical Architectural and Aesthetic Landmarks, Appendix D: Northeast Waterfront Historic District - San Francisco Planning Code

Teatro ZinZanni

presidio companies

ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

A Teatro ZinZanni & Kenwood Investments Project

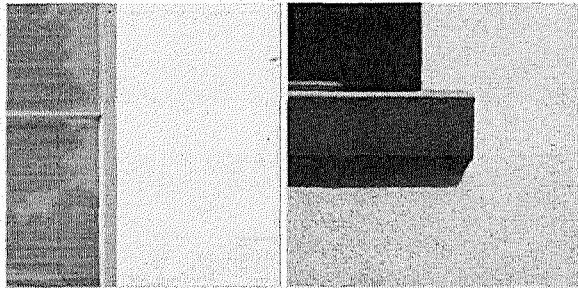
KENWOOD INVESTMENTS

Hornberger + Worstall Architects

Architects

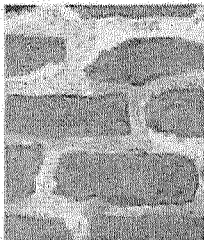
Hornberger

Worstall

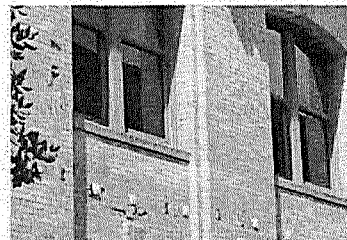


60 Broadway

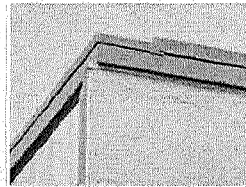
150 Green Street



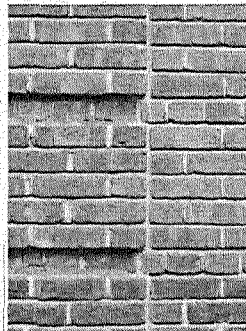
Cobblestones - John Maher St.



55 Union St.



1035 Battery



1010 Battery

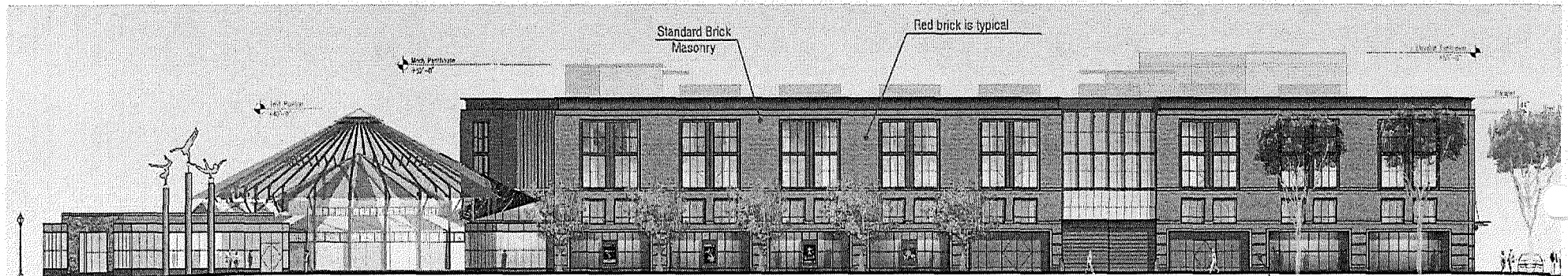
Section 6. FEATURES

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Northeast Waterfront Historic District Appendix D, Article 10 San Francisco Planning Code

All quotes from Article 10: Preservation of Historical Architectural and Aesthetic Landmarks, Appendix D: Northeast Waterfront Historic District - San Francisco Planning Code



Davis Elevation - Proposed Scheme

Rough-textured
Rough-grained
Brick

Historic District Images

December 21, 2018 | 12

Testing ZinZanni

presidio companies

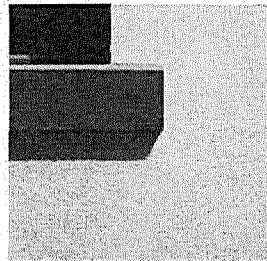
ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

A Testing ZinZanni & Kenwood Investments Project

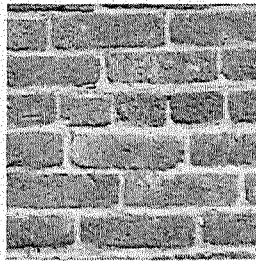
Hornberger + Worstell Architects

Hornberger

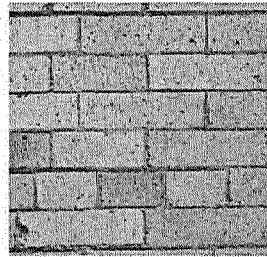
Worstell



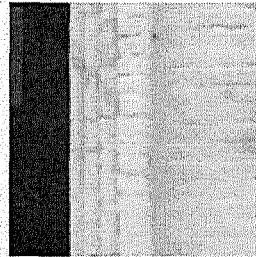
150 Green St.



825 Battery



55 Union



100 Green St.

Section 6. FEATURES

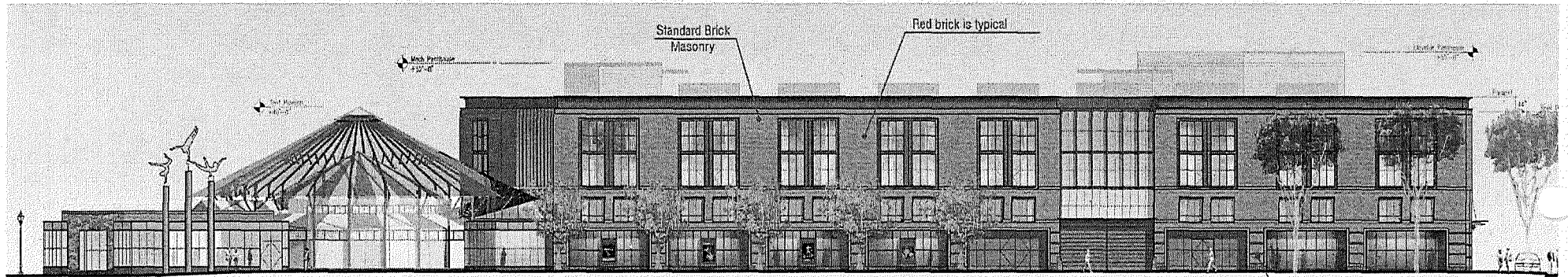
(e) Color.

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Northeast Waterfront Historic District

Appendix D, Article 10 San Francisco Planning Code

All quotes from Article 10: Preservation of Historical Architectural and Aesthetic Landmarks, Appendix D: Northeast Waterfront Historic District - San Francisco Planning Code



Davis Elevation - Proposed Scheme

Rough-textured
Rough-grained
Brick

Historic District Images

TERESA ZINZANNI

presidio companies

ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

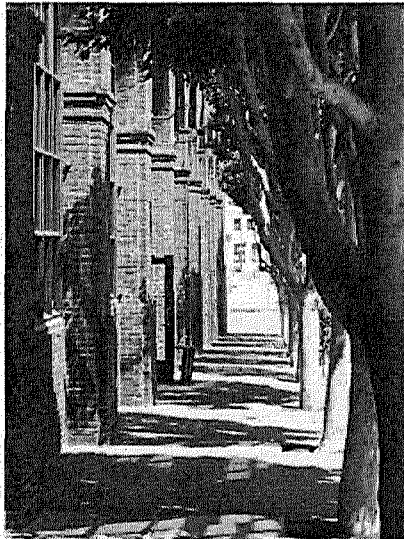
A TERESA ZINZANNI & KENWOOD INVESTMENTS PROJECT

Hornberger + Worstell Architects

Hornberger

Worstell

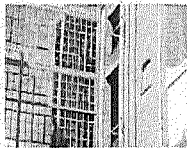
December 21, 2018 | 13



1010 Battery



1088 Sansome



Icehouse Alley: glass
bridge approved by
HRC 1992



1025 Battery

Section 6. FEATURES

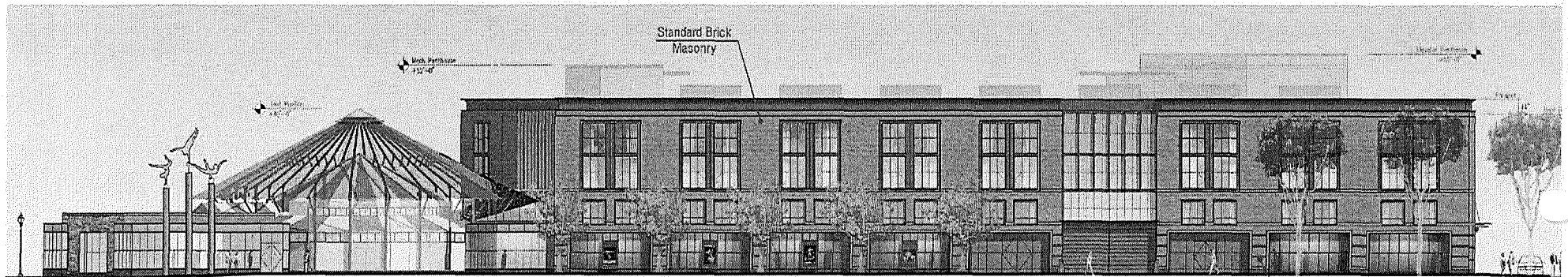
(f) Texture.

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Northeast Waterfront Historic District

Appendix D, Article 10 San Francisco Planning Code

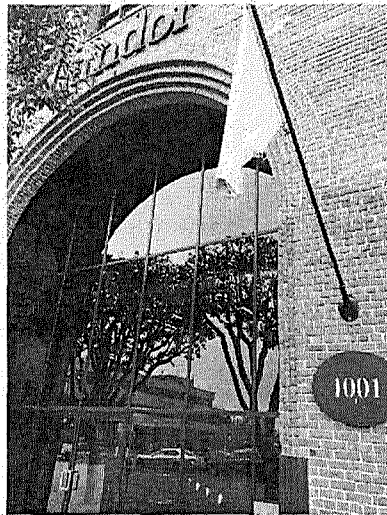
All quotes from Article 10: Preservation of Historical Architectural and Aesthetic Landmarks, Appendix D: Northeast Waterfront Historic District - San Francisco Planning Code



Davis Elevation - Proposed Scheme

Rough-textured
Rough-grained
Brick

Historic District Images



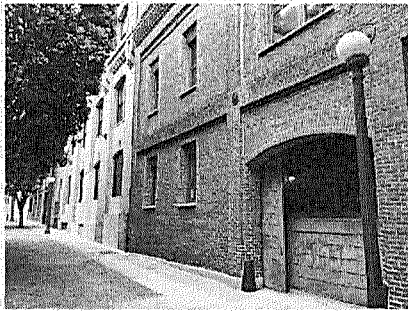
1001 Front St.



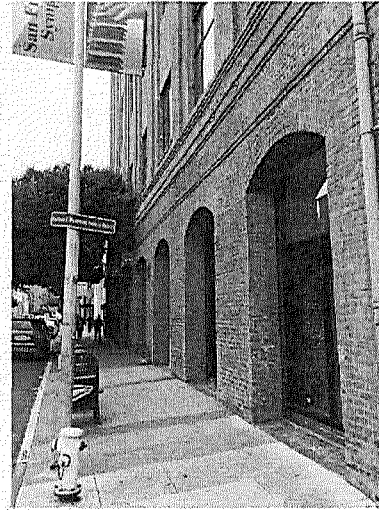
55 Union & 1050 Battery



1105 Battery



John Maher St.



101 Green St.

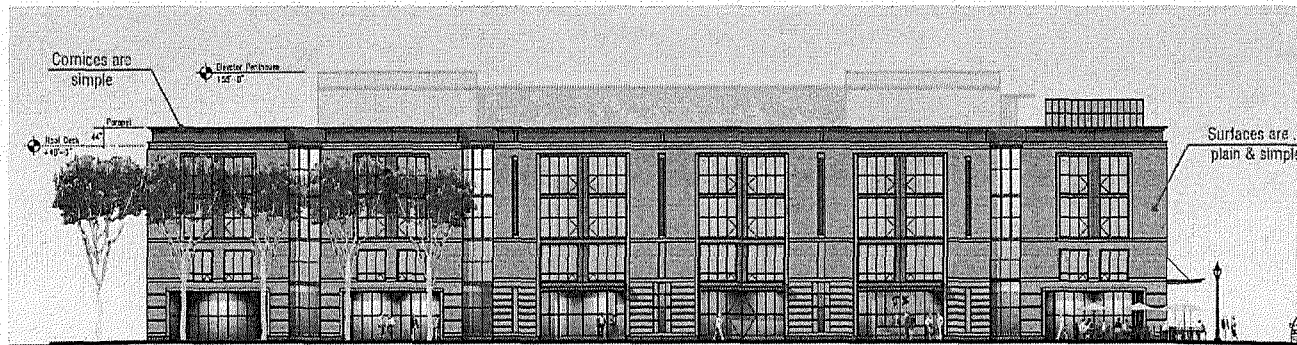
Section 6. FEATURES

(g) Detail.

- Arches are common on the ground floor, and are frequently repeated on upper floors. Flattened arches for window treatment are typical. Cornices are simple and generally tend to be abstract versions of the more elaborate cornices found on the downtown commercial structures from the nineteenth century. Most of the surfaces of the later buildings are plain and simple, reflecting their function, some of the earlier brickwork contains suggestions of pilasters, again highly abstracted. Where detail occurs, it is often found surrounding entryways.

Northeast Waterfront Historic District Appendix D, Article 10 San Francisco Planning Code

All quotes from Article 10: Preservation of Historical Architectural and Aesthetic Landmarks, Appendix D: Northeast Waterfront Historic District - San Francisco Planning Code



Broadway Elevation - Proposed Scheme

Historic District Images

December 21, 2018 | 15

TEARMS ZINZANNI

presidio companies

ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

A Tearms ZinZanni & Kenwood Investments Project

Hornberger + Worstell Architects

Hornberger

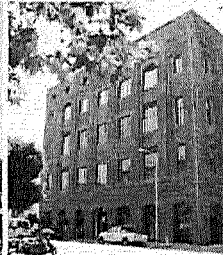
Worstell

KENWOOD INVESTMENTS

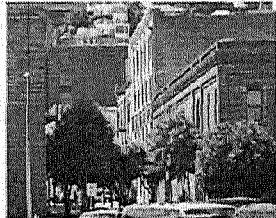
1088 Sansome



151 Union St.



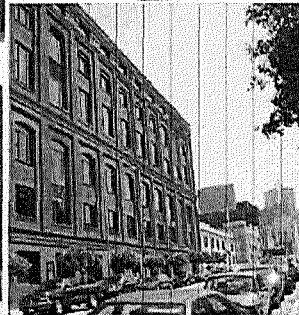
55 Union St.



1105 Battery



855 Battery



151 Union St.

Sec. 7. ADDITIONAL PROVISIONS FOR CERTIFICATES OF APPROPRIATENESS

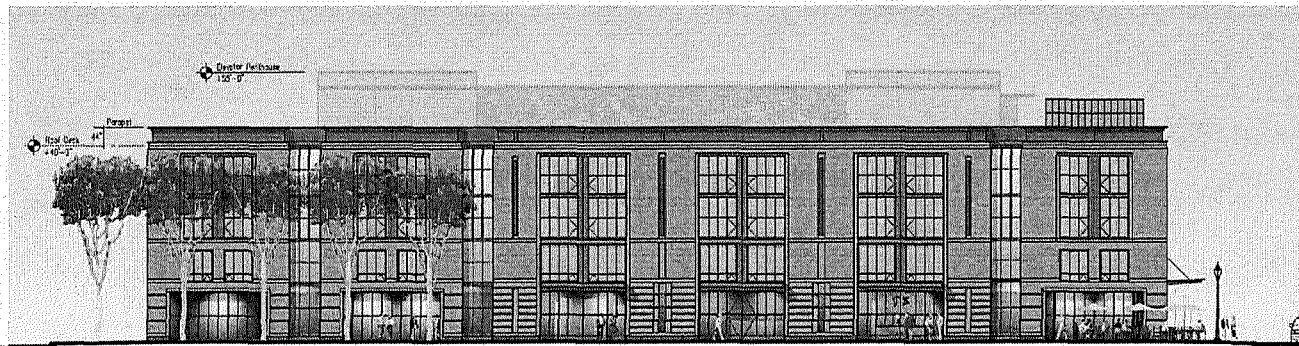
(b) Additional Standards for Certain Features.

(1) Facade Line Continuity.

- Facade line continuity is historically appropriate. Therefore, setbacks and arcades, not generally being features of the Northeast Waterfront Historic District, are not acceptable.

Northeast Waterfront Historic District
Appendix D, Article 10 San Francisco Planning Code

All quotes from Article 10: Preservation of Historical Architectural and Aesthetic Landmarks, Appendix D: Northeast Waterfront Historic District - San Francisco Planning Code



Broadway Elevation - Proposed Scheme

Historic District Images

THEATER ZINZANNI

presidio companies

ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

A Theater ZinZanni & Kenwood Investments Project

Hornberger + Worstell Architects

Hornberger

Worstell



Existing Rooftop View



Proposed Rooftop View

Sec. 7. ADDITIONAL PROVISIONS FOR CERTIFICATES OF APPROPRIATENESS

(3) Roof Treatment.

- Historically the view from Telegraph Hill over the Northeast Waterfront District has been one of roofs characterized by numerous regularly spaced industrial skylights. In renovation or new construction, these particular design features should be retained or incorporated.



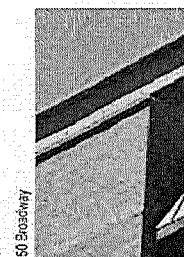
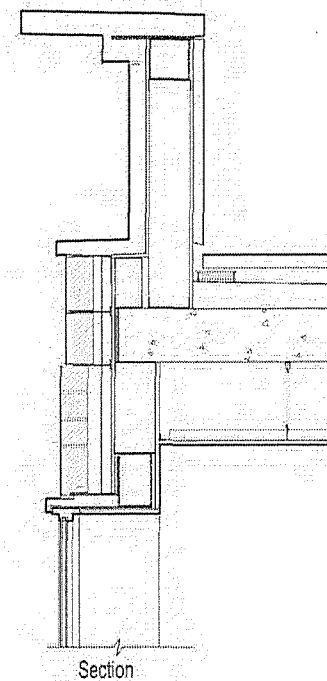
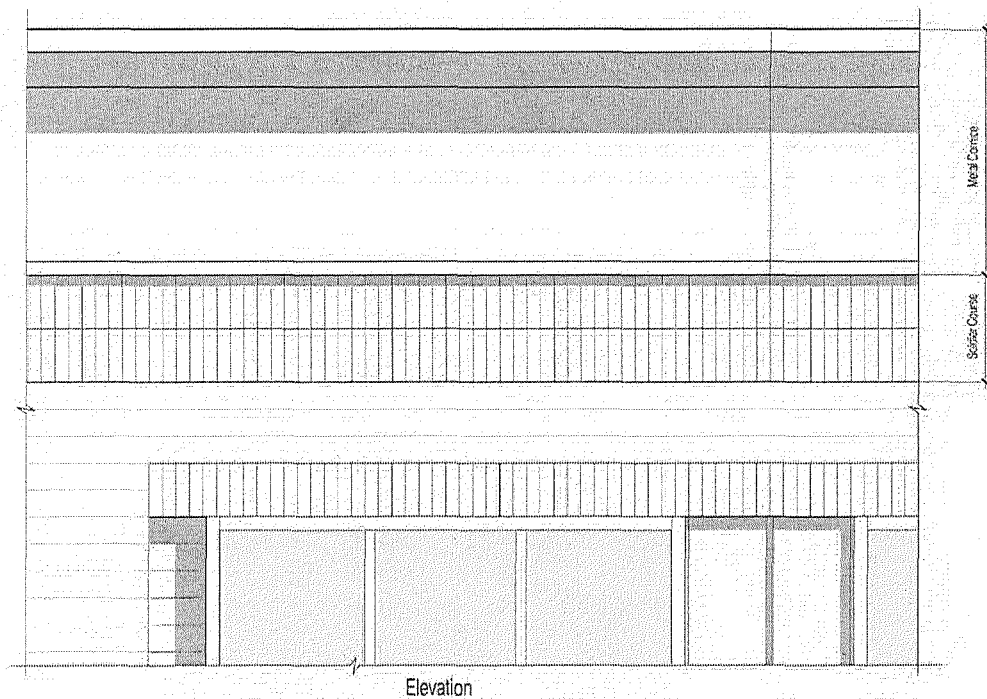
Davis Elevation - Proposed Scheme

All quotes from Article 10: Preservation of Historical Architectural and Aesthetic Landmarks, Appendix D: Northeast Waterfront Historic District - San Francisco Planning Code

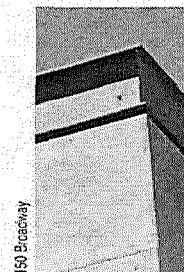
Northeast Waterfront Historic District
Appendix D, Article 10 San Francisco Planning Code

Historic District Images

December 21, 2018 | 17



HPC Approved 2003

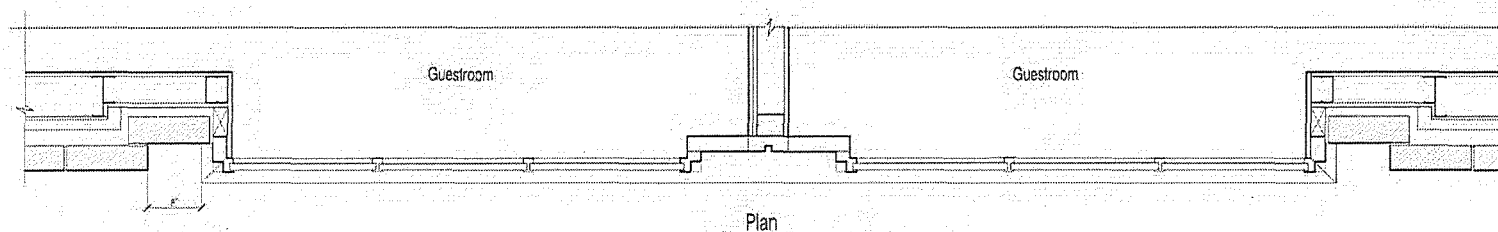


District Images

Sec. 6. FEATURES.

(g) Detail.

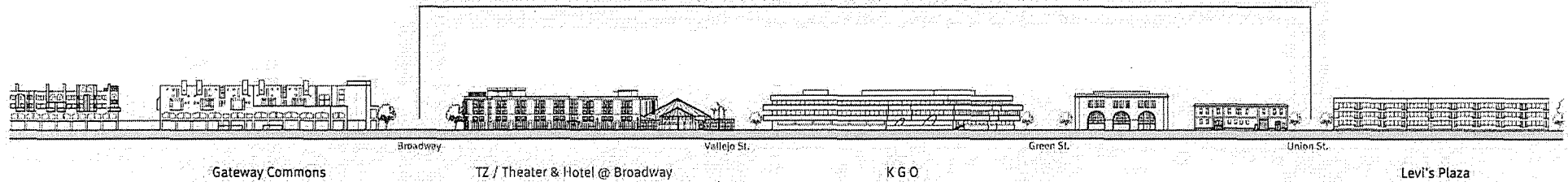
Cornices are simple and generally tend to be abstract versions of more elaborate cornices found on downtown commercial structures from the nineteenth century.



1050 Battery

Metal Cornice @ Flush Bay

Northeast Waterfront Historic District



All quotes from Article 10: Preservation of Historical Architectural and Aesthetic Landmarks, Appendix D: Northeast Waterfront Historic District - San Francisco Planning Code.

Northeast Waterfront Historic District
Appendix D, Article 10 San Francisco Planning Code

Northeast Waterfront Historic District

Appendix D, Article 10 San Francisco Planning Code

Section 6. FEATURES

(b) Scale & Proportion:

- The buildings are of typical warehouse design, large in bulk, often with large arches and openings originally designed for easy vehicular access. The earlier brick structures blend easily with the scaled-down Beaux Arts forms of the turn of the century and the plain reinforced-concrete structures characteristic of twentieth century industrial architecture.

Embarcadero Elevation & Building Height Comparison

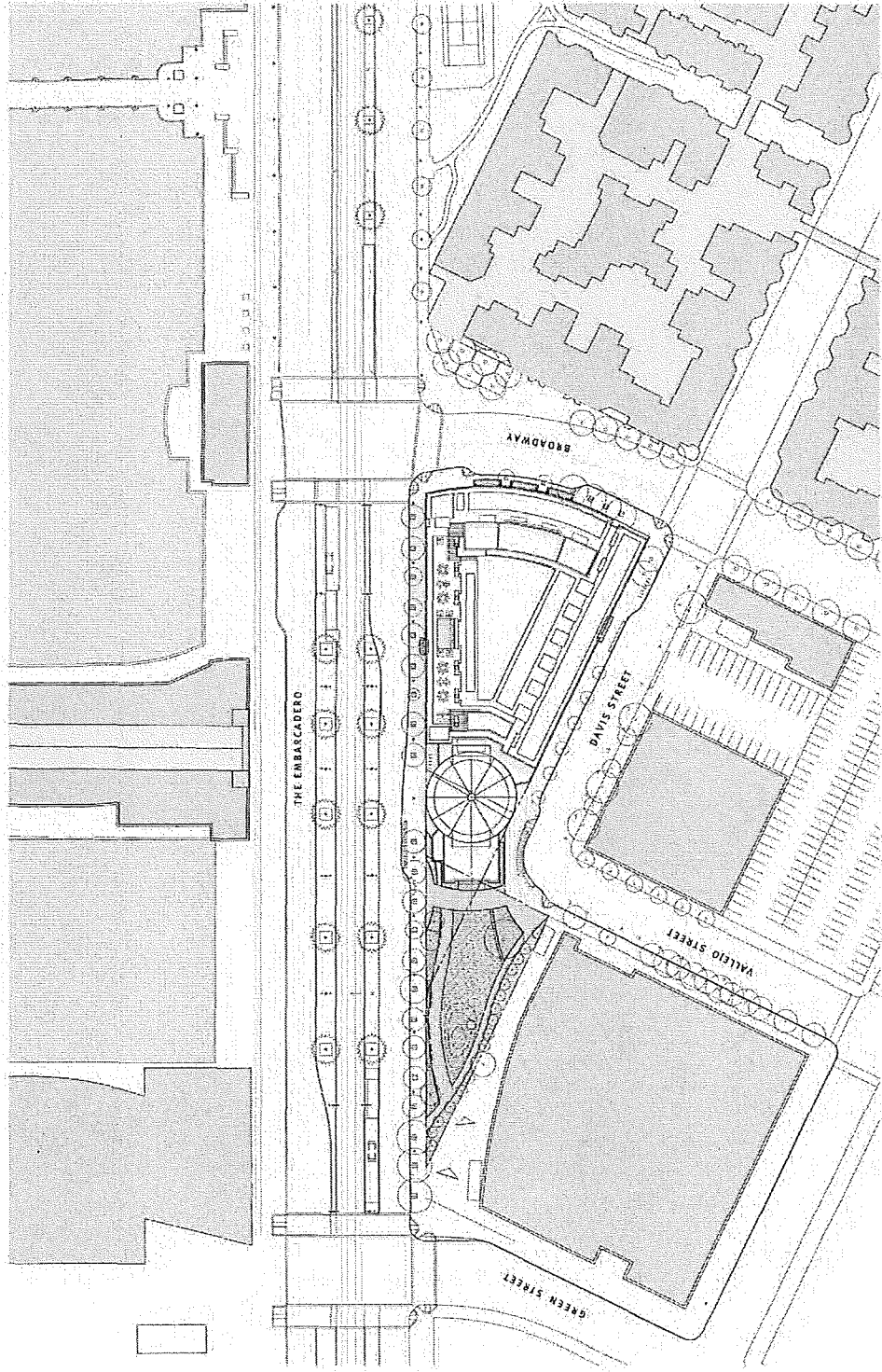
December 21, 2018 / 10

Proposed Project

ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

A ZinZanni / Kenwood Investments Project





Project Area Plan

December 21, 2018 | 21

Hornberger

Worstell

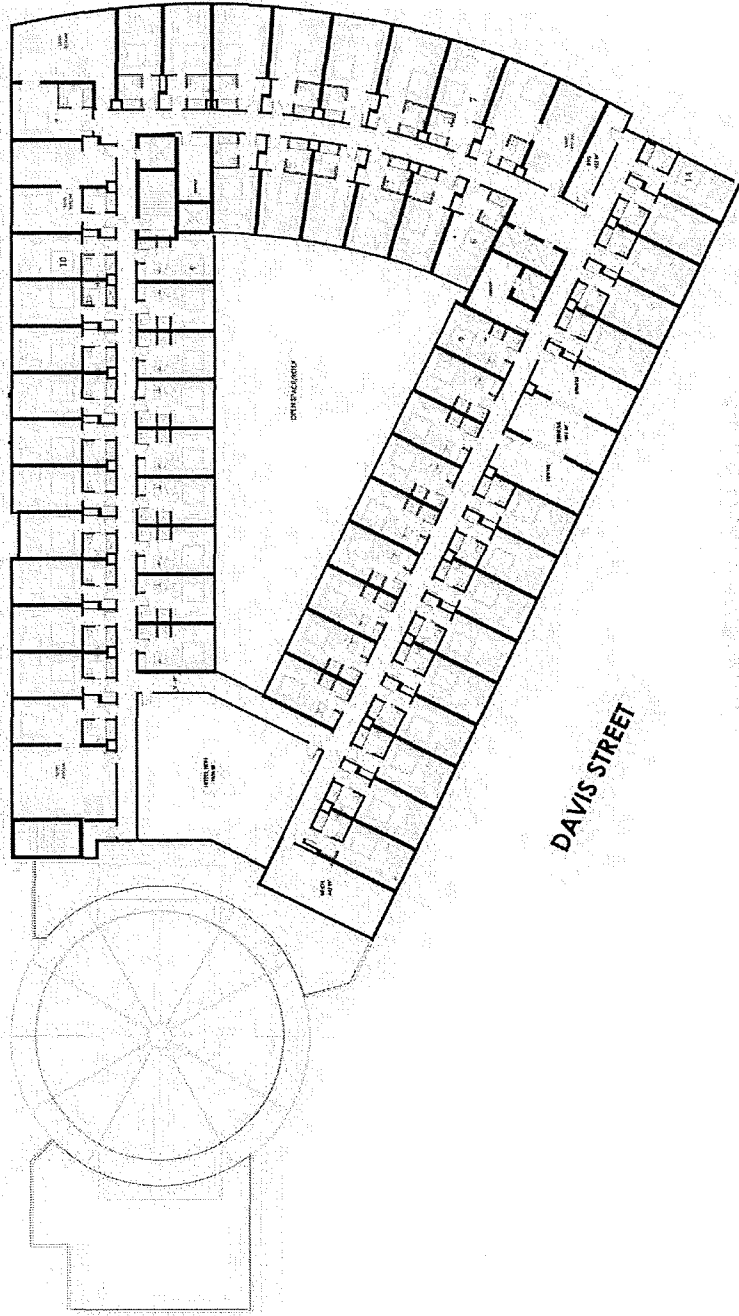
ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

presidio companies

Theater ZinZanni

KENWOOD INVESTMENTS

THE EMBARCADERO



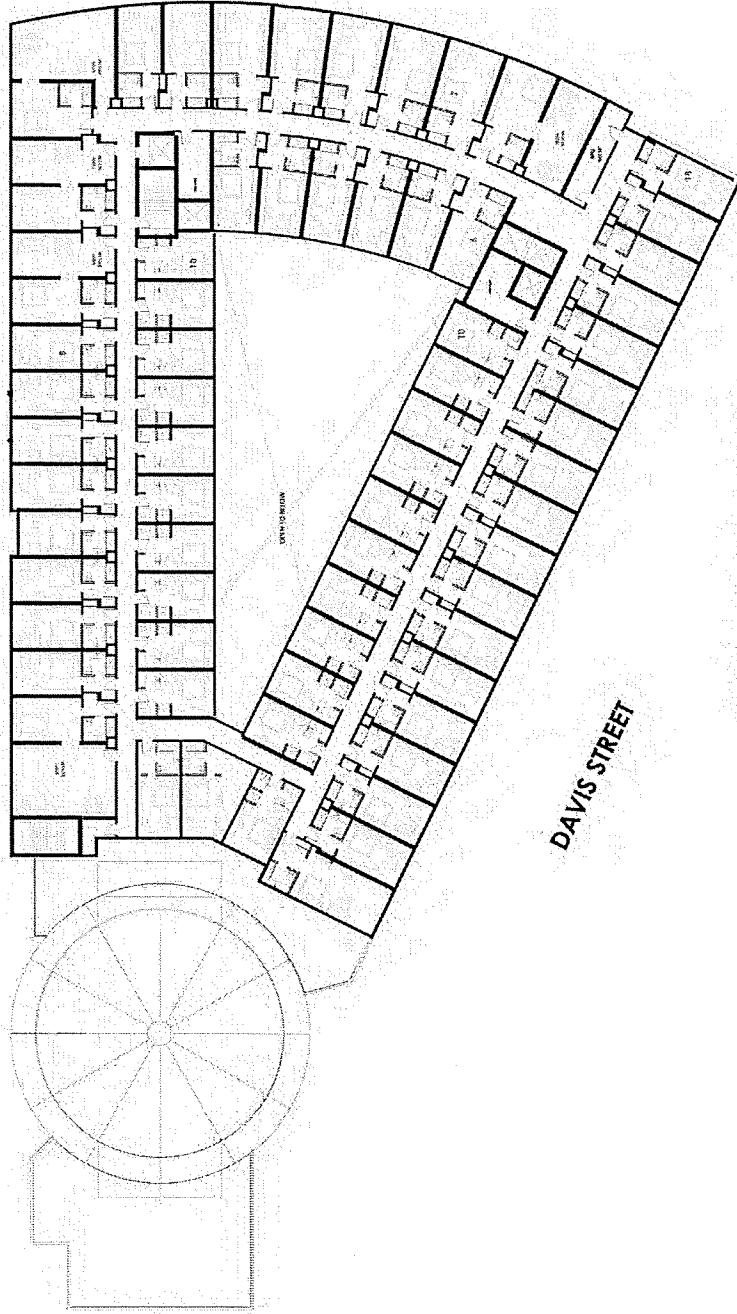
GUEST ROOM - 2ND FLOOR

1



December 21, 2018 24

THE EMBARCADERO



GUEST ROOM -3RD FLOOR

Level 3



December 21, 2018 | 25

presidio

companies

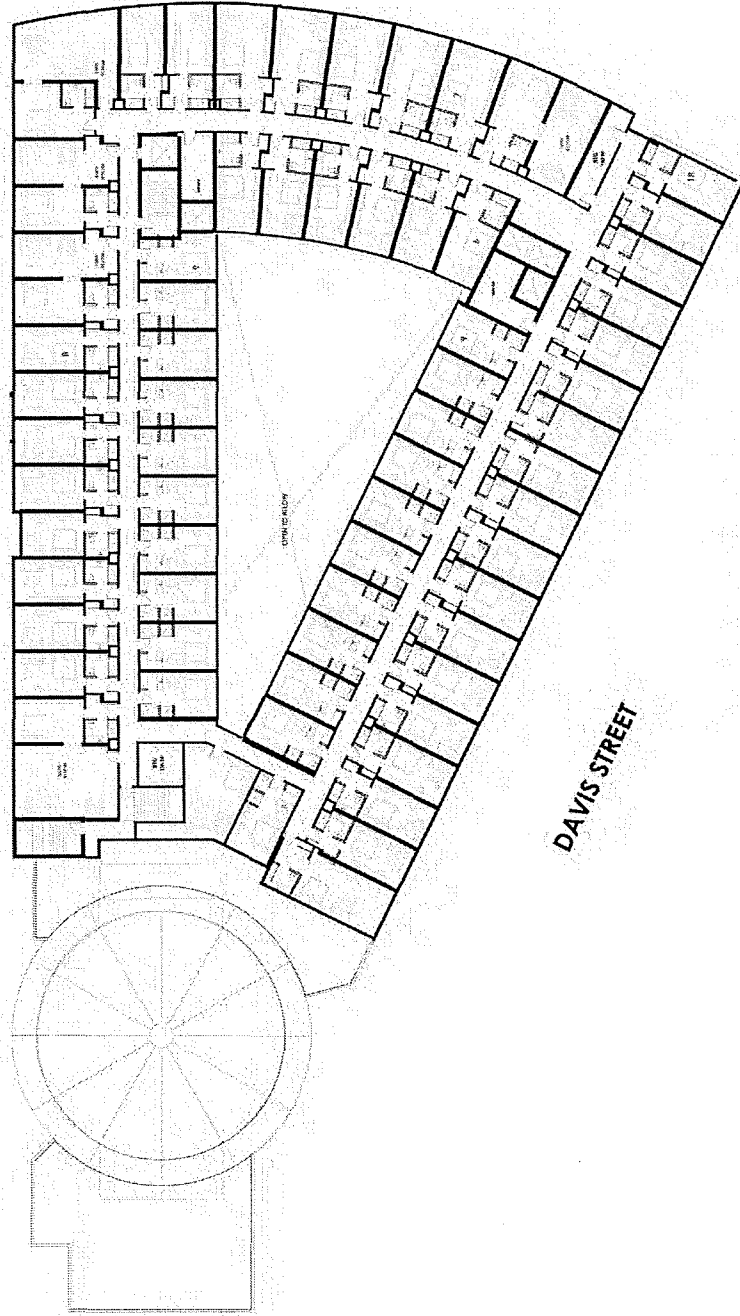
KENWOOD INVESTMENTS

ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

A Theater & Hotel @ Broadway Investments Project

HRCA

THE EMBARCADERO



GUEST ROOM - 4TH FLOOR

Level 4



December 21, 2018 / 20

HRGA

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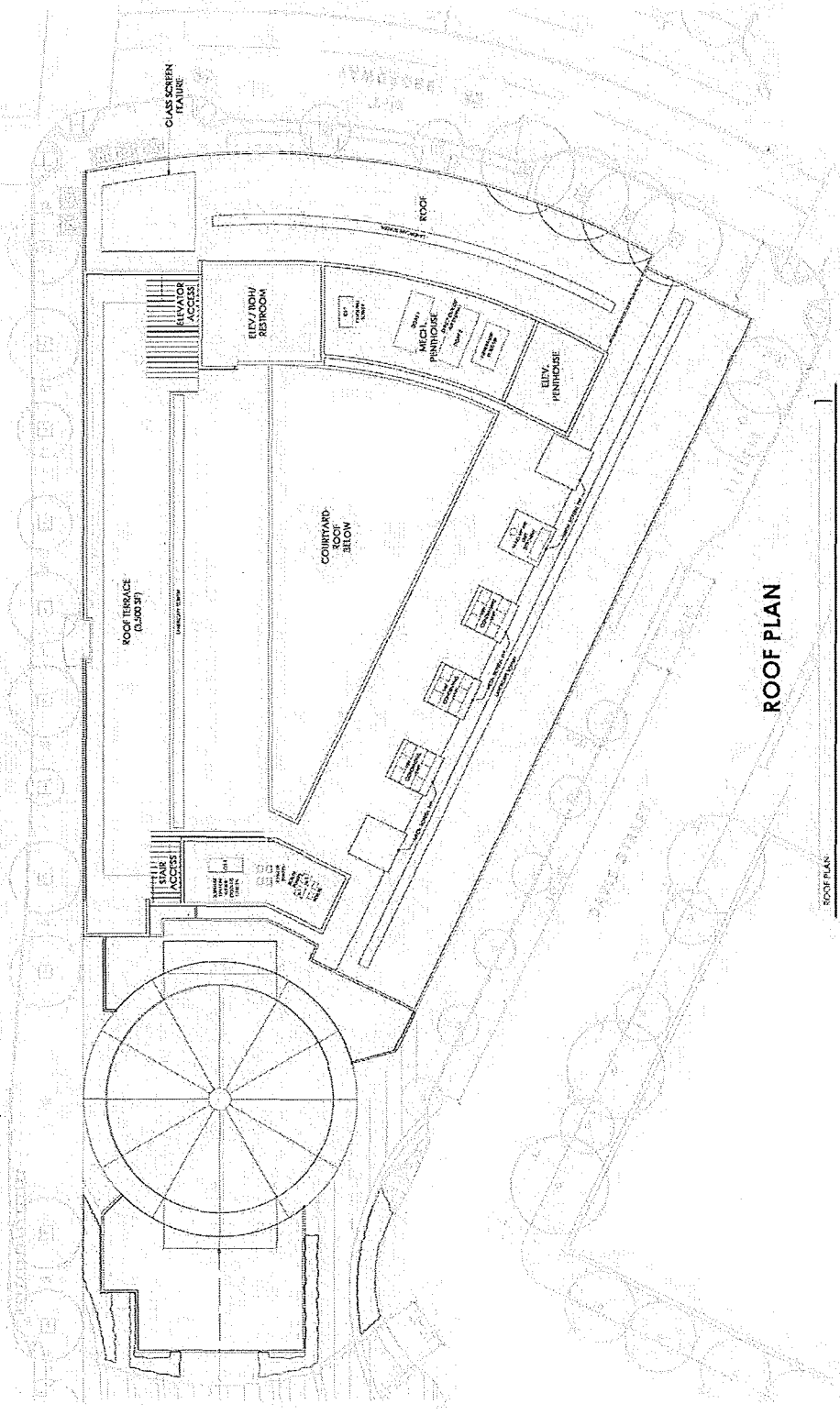
A Theater ZinZanni & Kenwood Investments Project

presidio

companies

Kenwood Investments

THE EMBARCADERO



ROOF PLAN

ROOF PLAN



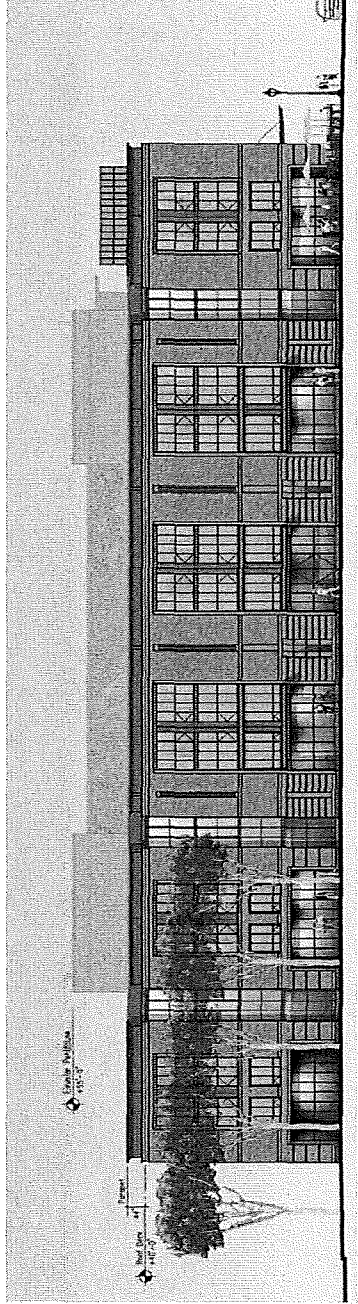
December 21, 2018 | 27

Architectural Drawings

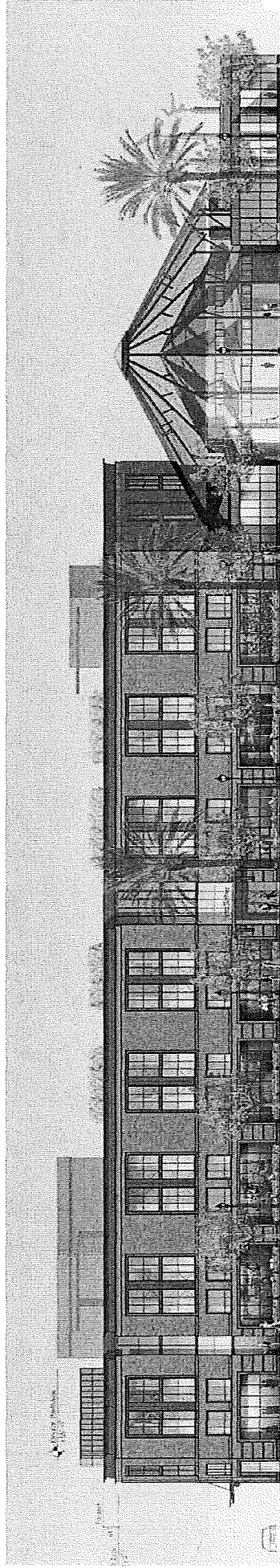
ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

A THEATRE ZINZANNI & KENWOOD PRODUCTION PROJECT





Broadway



The Embarcadero

Building Elevations

THEATERS ZINZANNI

presidio companies

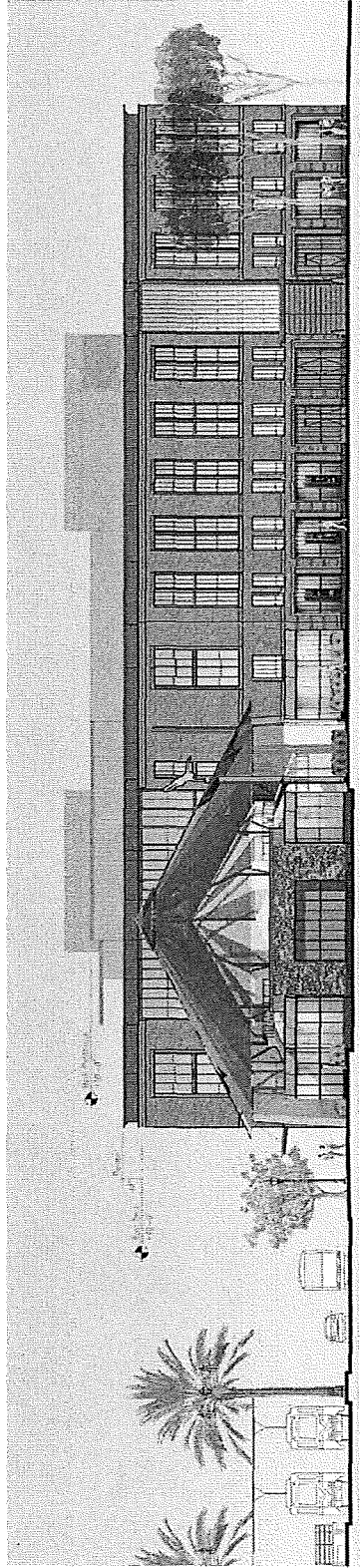
KENWOOD INVESTMENTS

ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

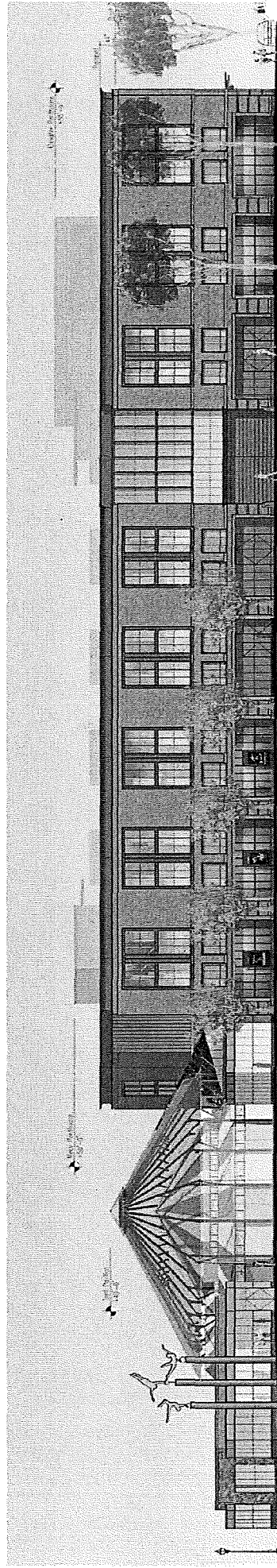
A Teatro ZinZanni & Kenwood Investments Project

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 415.398.1234
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Park



Davis Street

Building Elevations

presidio companies

Teaming Zinzanni

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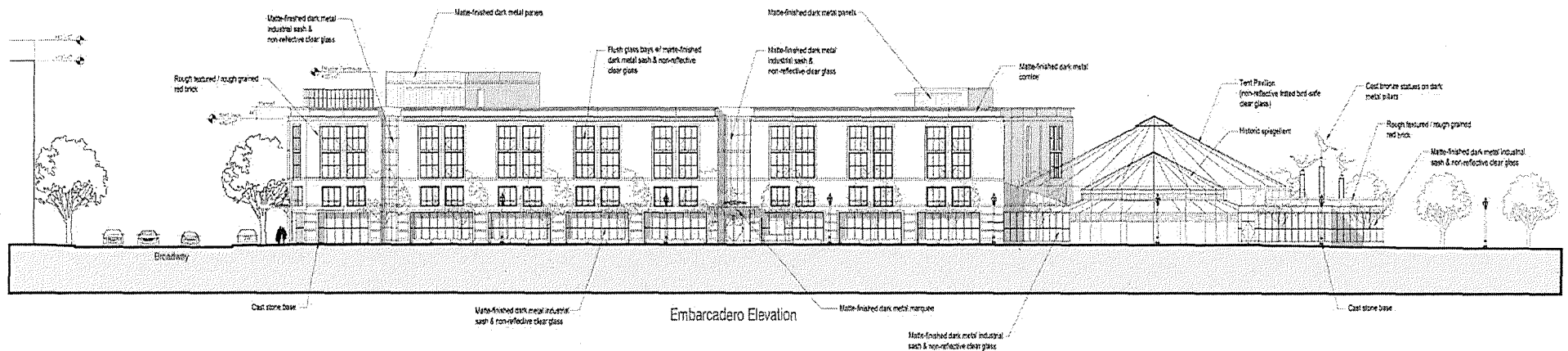
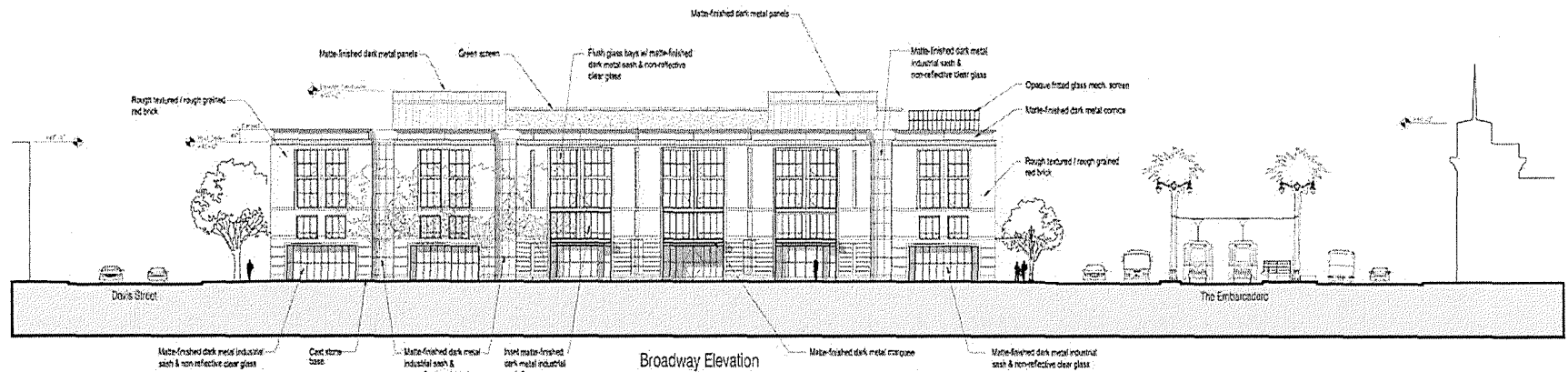
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KENWOOD INVESTMENTS

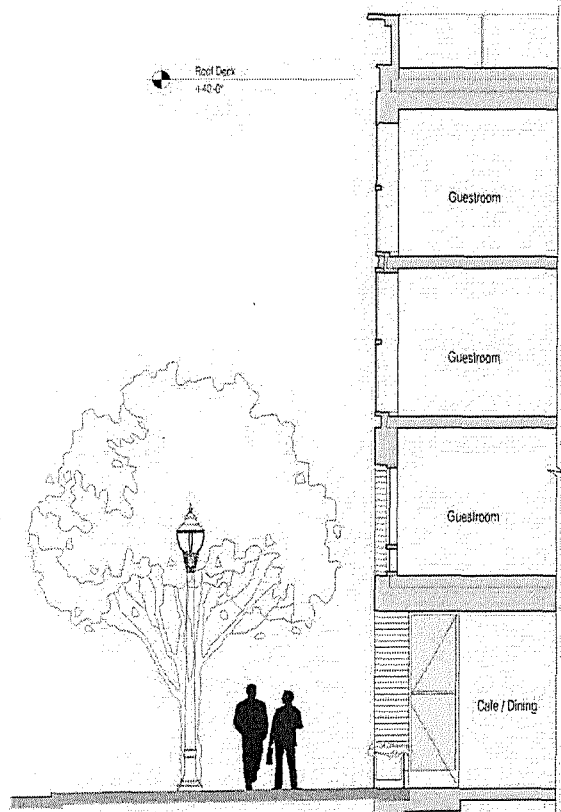
A Theater ZinZanni & Kenwood Investments Project

February 6, 2019 | 30

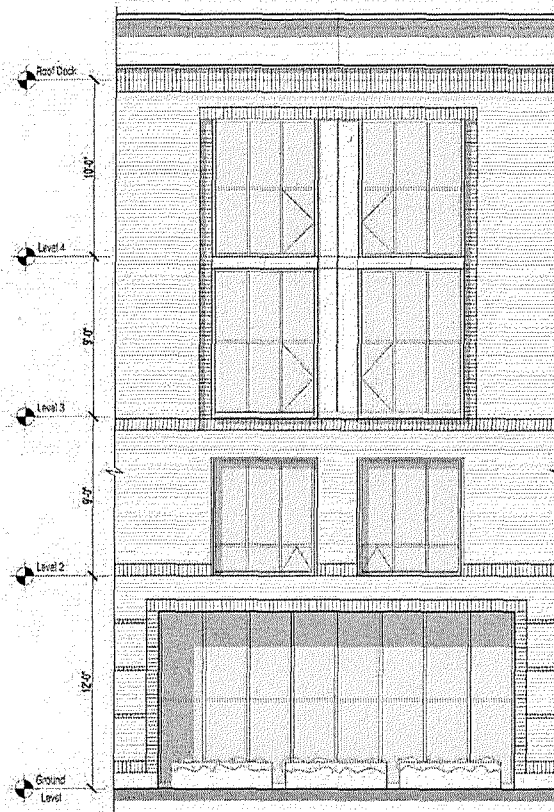


Building Elevations | Preferred Proposal | Reviewed by Planning Staff & ARC

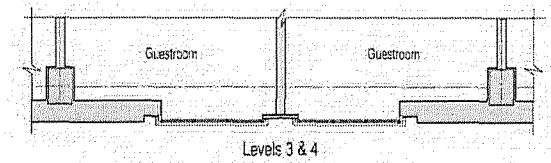
February 6, 2019 | 31



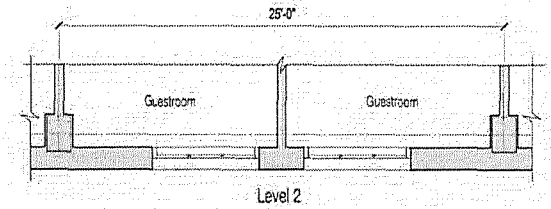
Wall Section



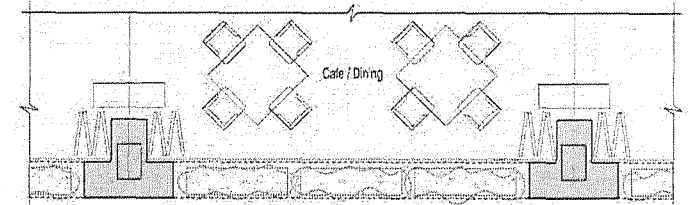
Elevation



Levels 3 & 4



Level 2



Ground Floor

Plan Sections

Embarcadero | Rectangular Shoulder & Flush Bay

TERESA ZINZANNI

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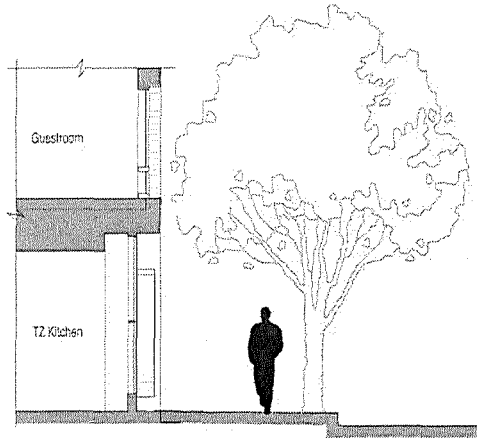
A TERESA ZINZANNI & KENWOOD INVESTMENTS PROJECT

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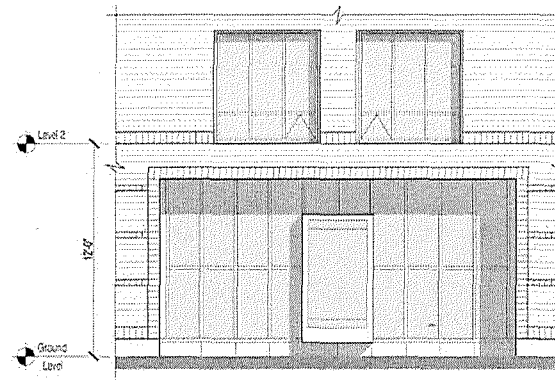
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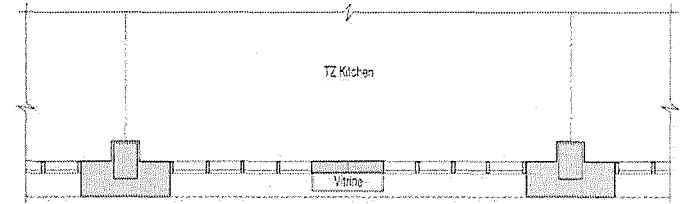
December 21, 2013 | 33



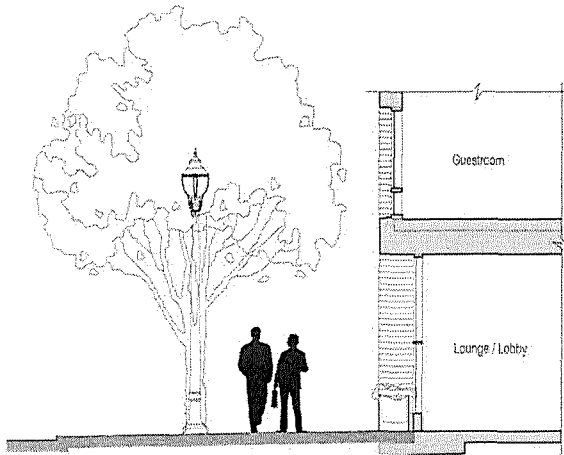
Partial Wall Section @ Davis



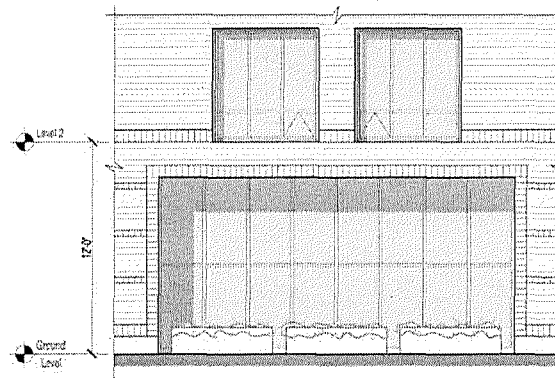
Davis St. Bay - Fixed Storefront & Vitrine



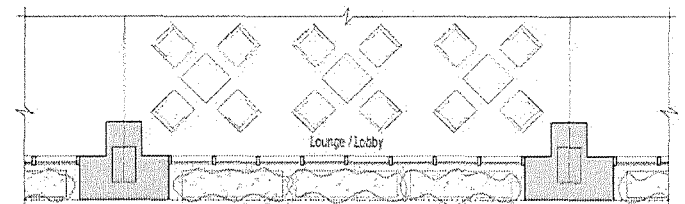
Partial Plan - Ground Floor



Partial Wall Section @ Embarcadero

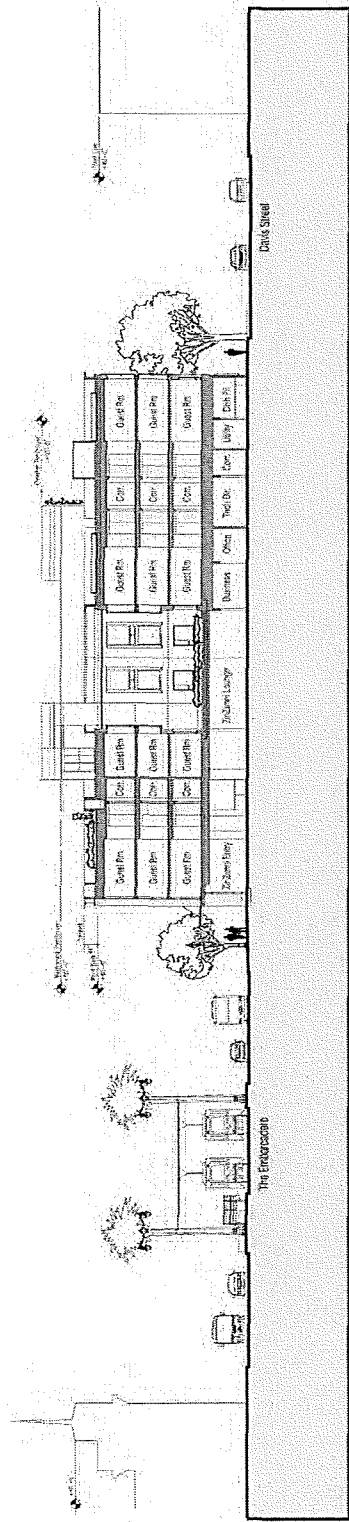


Embarcadero Bay - Fixed Storefront

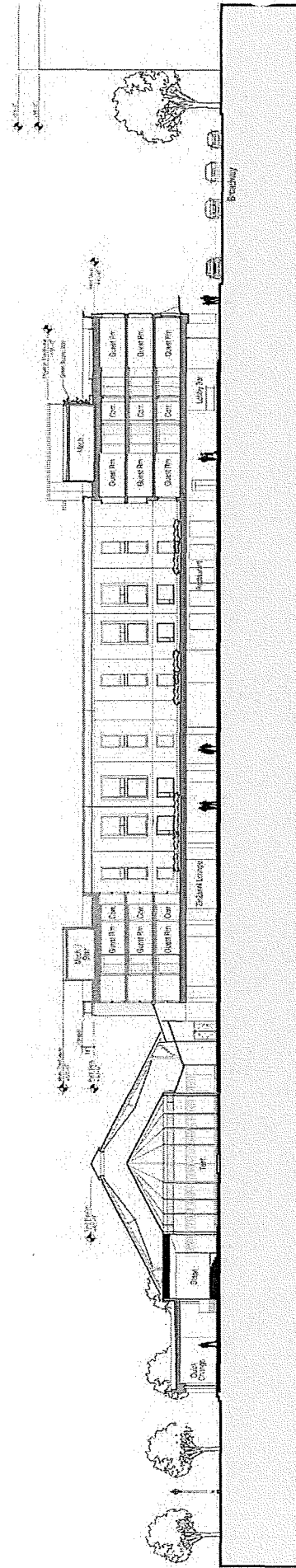


Partial Plan - Ground Floor

Enlarged Bay - Fixed Storefront



Cross Section looking South



Longitudinal Section looking East

Building Sections

December 21, 2018 | 34

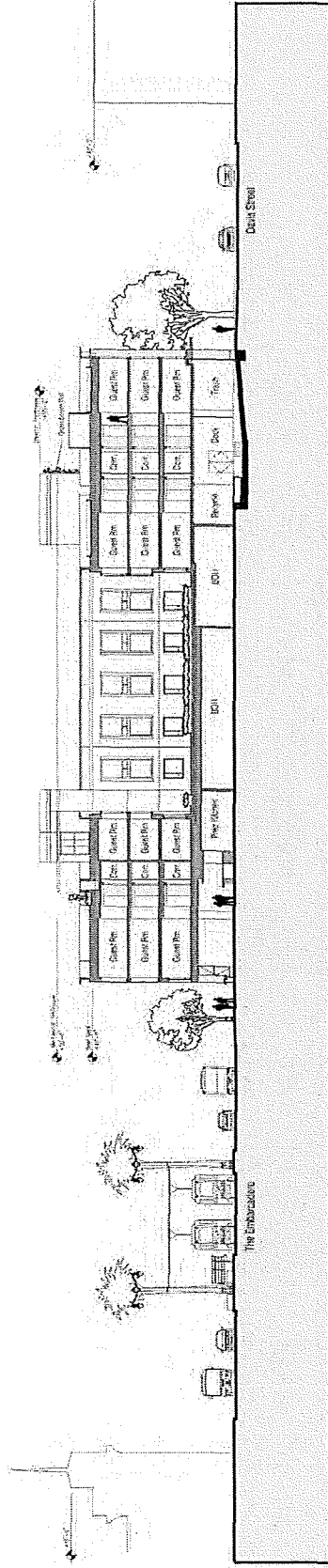
Hornberger + Moser Architects
Hornberger

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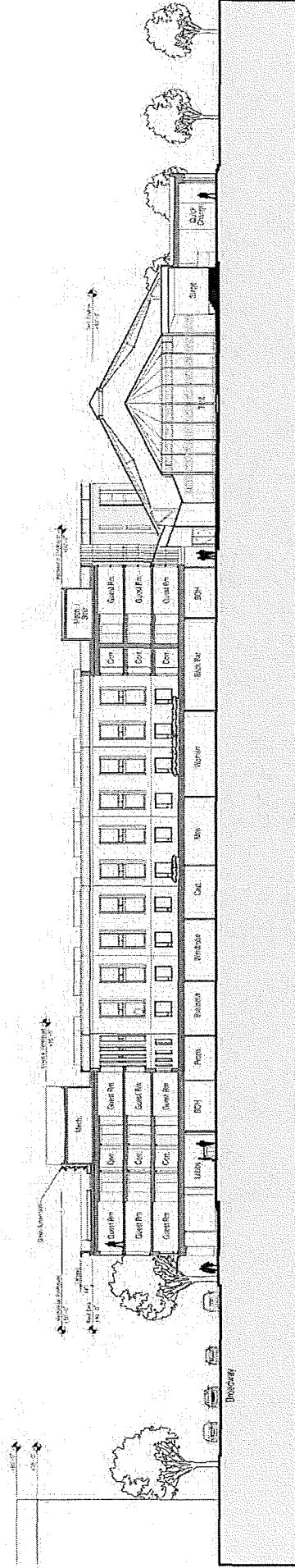
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Cross Section looking South



Longitudinal Section looking West

Building Sections

Project Characteristics & Dimensions

ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

A Teatro ZinZanni & Kenwood Investments Project



TABLE 1 PROJECT CHARACTERISTICS

Lot		Dimensions
Size		59,750 square feet (HRGA cannot confirm. No data)
Length		600 feet (Embarcadero) 210 feet (Broadway) 290 feet (Davis Street)
Proposed Building		Area (gsf)
Height		40 feet (4 stories) (55 feet with elevator penthouse)
Ground Floor (Hotel and Theater)	Lobby (Hotel Lobby + Elev Lobby + Elev Lobby)	1,460
	Pre-function (TZ Lounge + TZ Lobby)	3,010
	Food & Beverage (Restaurant/bar)	4,420
	Retail (TZ Merchant STG + Merch Sale)	1,900
	Tent	4,630
	Meeting (net) (Hotel)	2,360
	Mechanical/Circulation/Back of House	26,920
	<i>Total</i>	<i>43,700</i>
Roof	Level 2 ¹	30,600
	Level 3 ¹	30,500
	Level 4 ¹	30,500
	Open Roof Terrace	3,500
	Elevator/Mechanical Penthouse	4,220
	<i>Total</i>	<i>143,020</i>
Uses		Area (gsf)
Entertainment Venue		26,100 (includes all ground-floor uses, circulation, and back-of-house uses)
Hotel		112,700
Open Space	Publicly Accessible ²	14,000
	Common ³	3,500
	Private ⁴	0
Vehicle Parking Spaces		Number 0
Bicycle Parking Spaces	Class I	20 (on ground floor)
	Class II	24 (in current site plan) (in two locations along project frontage); 15 existing (along The Embarcadero)
Loading Spaces		2

Notes:

- ¹ Proposed room numbers: Level 2, 59 rooms; level 3, 67 rooms; and level 4, 66 rooms.
- ² Publicly accessible open space provided as a park in the northern corner of the site.
- ³ Common open space provided as an open roof terrace that would be accessible to hotel guests only.
- ⁴ No private open space (including patios/decks off of hotel rooms) would be provided.

Source: Homberger + Worstell Architects and HRGA Architects, 2018

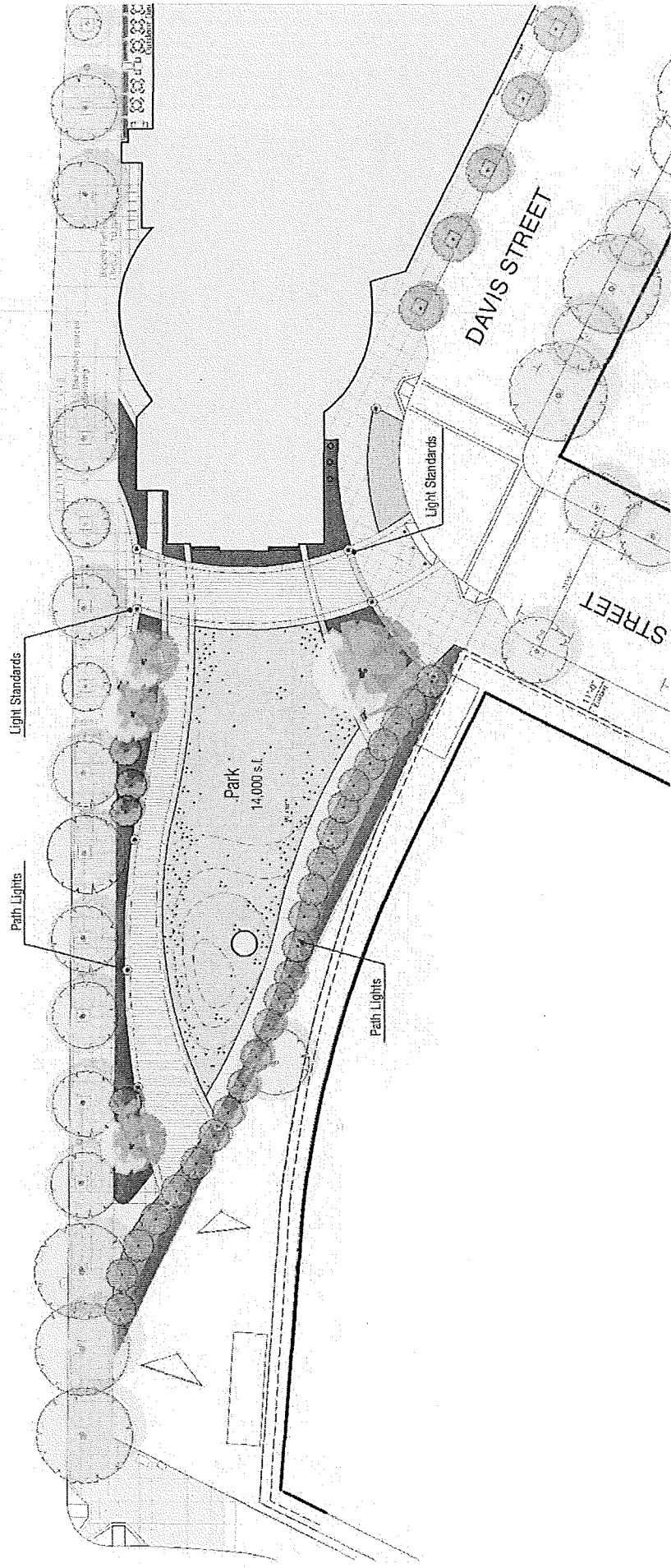
Landscape Plan

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A Theater & Hotel Development Project



THE EMBARCADERO



Site Plan | New Theater and Hotel Park

December 21, 2015 | 39

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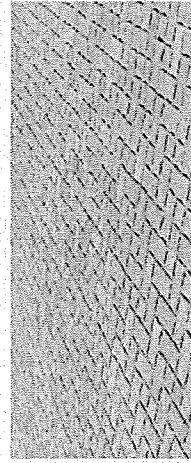
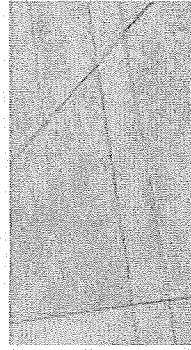
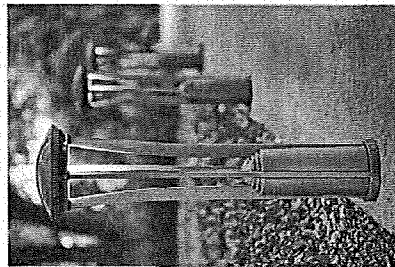
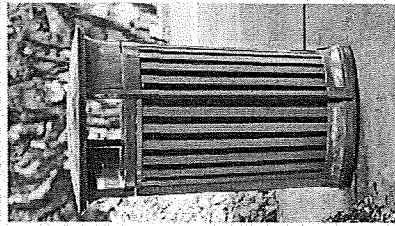
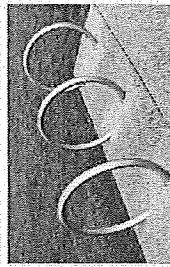
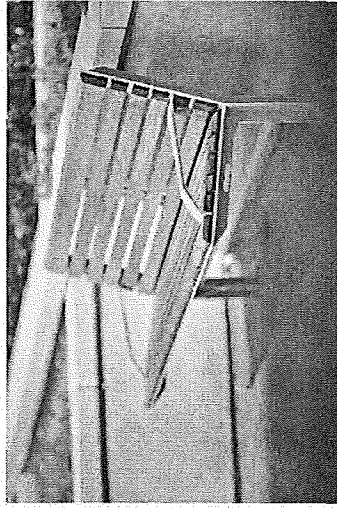
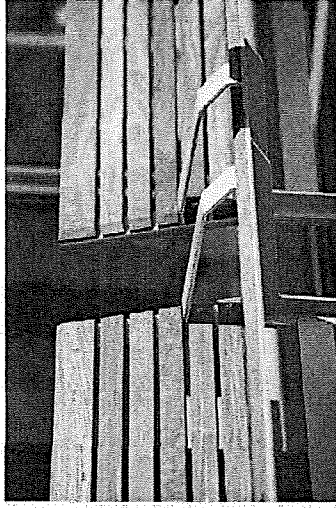
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Telling ZinZanni

KENWOOD INVESTMENTS

LANDSCAPE ARCHITECT & URBAN DESIGNER

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Landscape Images

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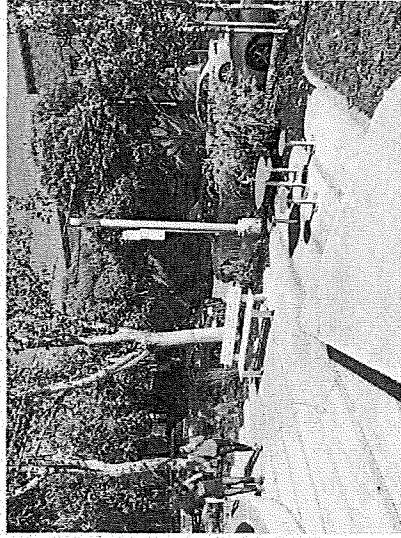
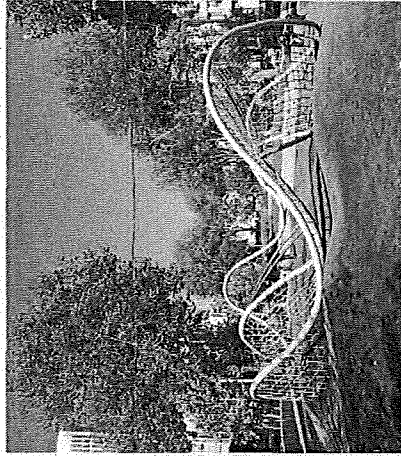
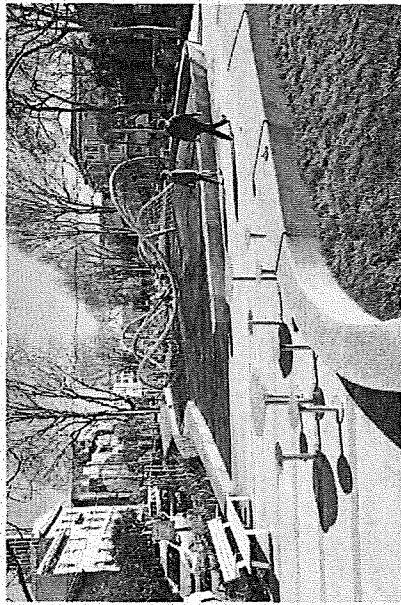
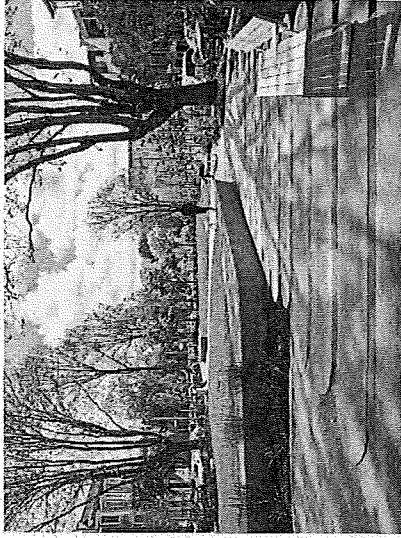
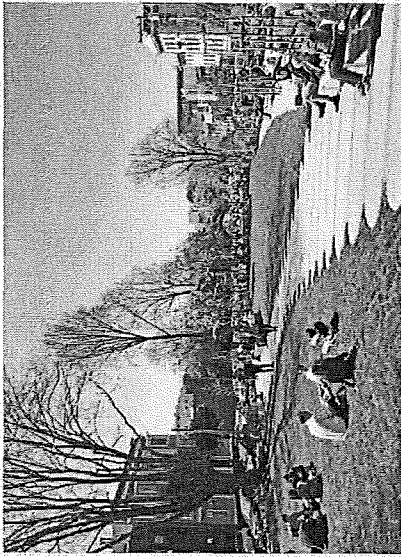
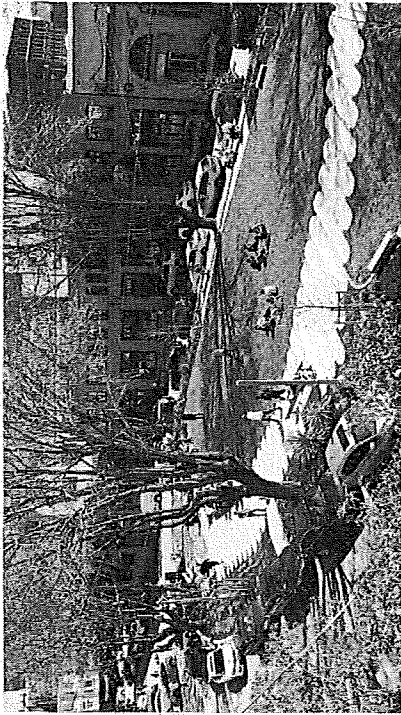
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Park Images - South Park, San Francisco

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Hornberger & Worstell Architects

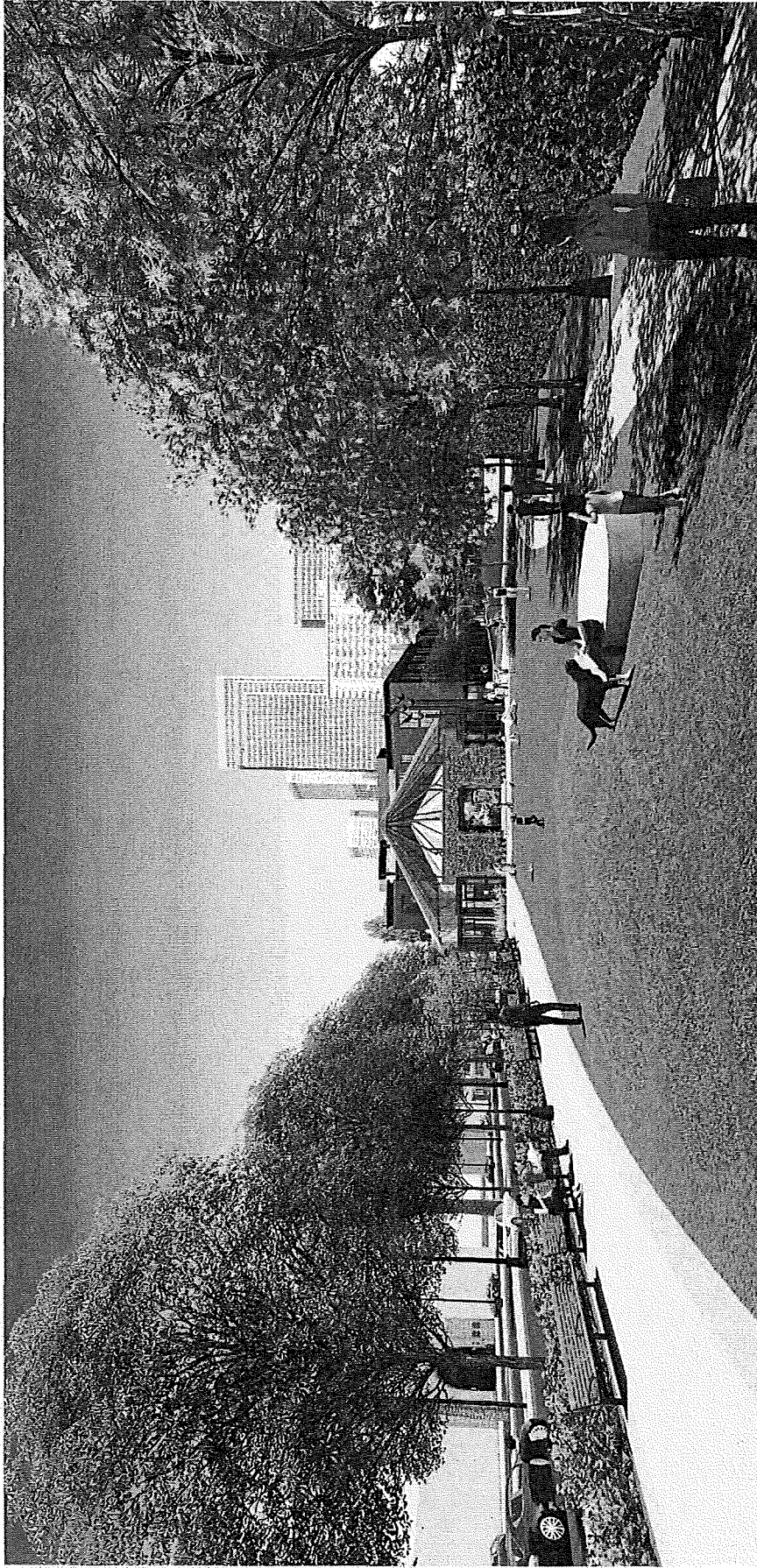
December 21, 2018 | 41

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Visual Analysis | Park View looking South

December 21, 2016 | 42

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Theater ZinZanni

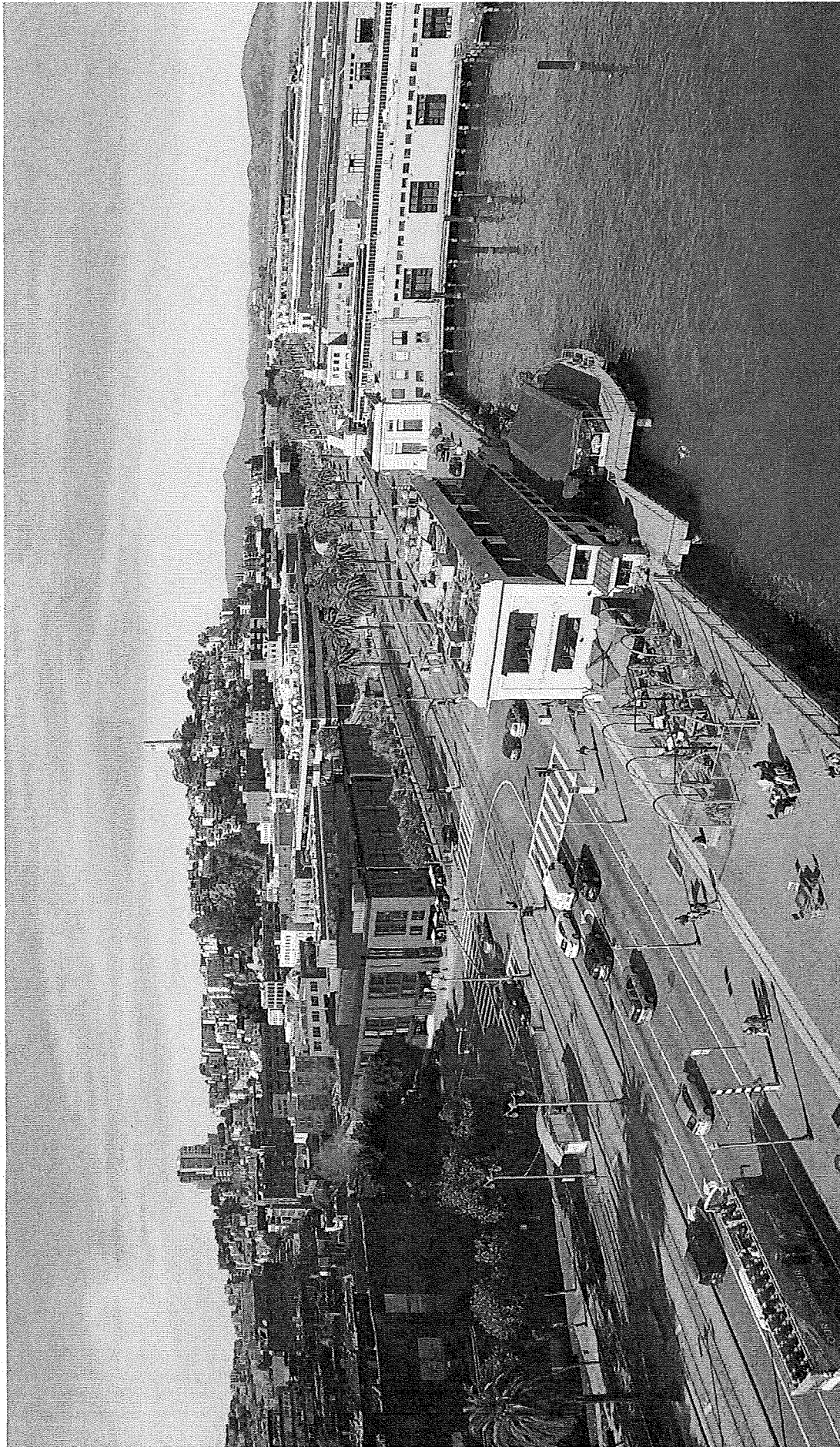
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Project Renderings

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Aerial View

December 21, 2013 | 44

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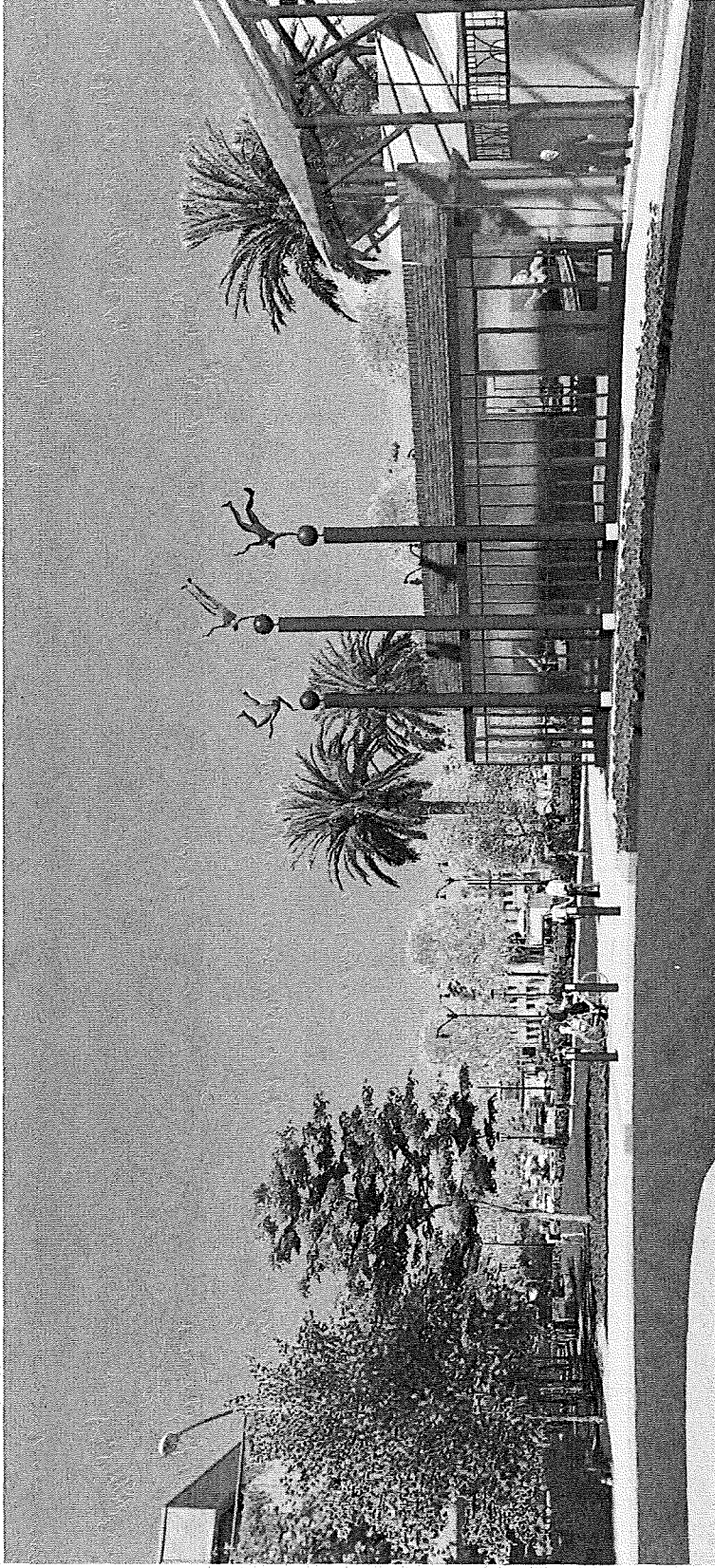
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A Theater, Hotel, and Broadway Development Project

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Visual Analysis | Park View from Davis Street

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Theater ZinZanni

KENWOOD INVESTMENTS



View: Broadway and The Embarcadero

December 21, 2018 | 48

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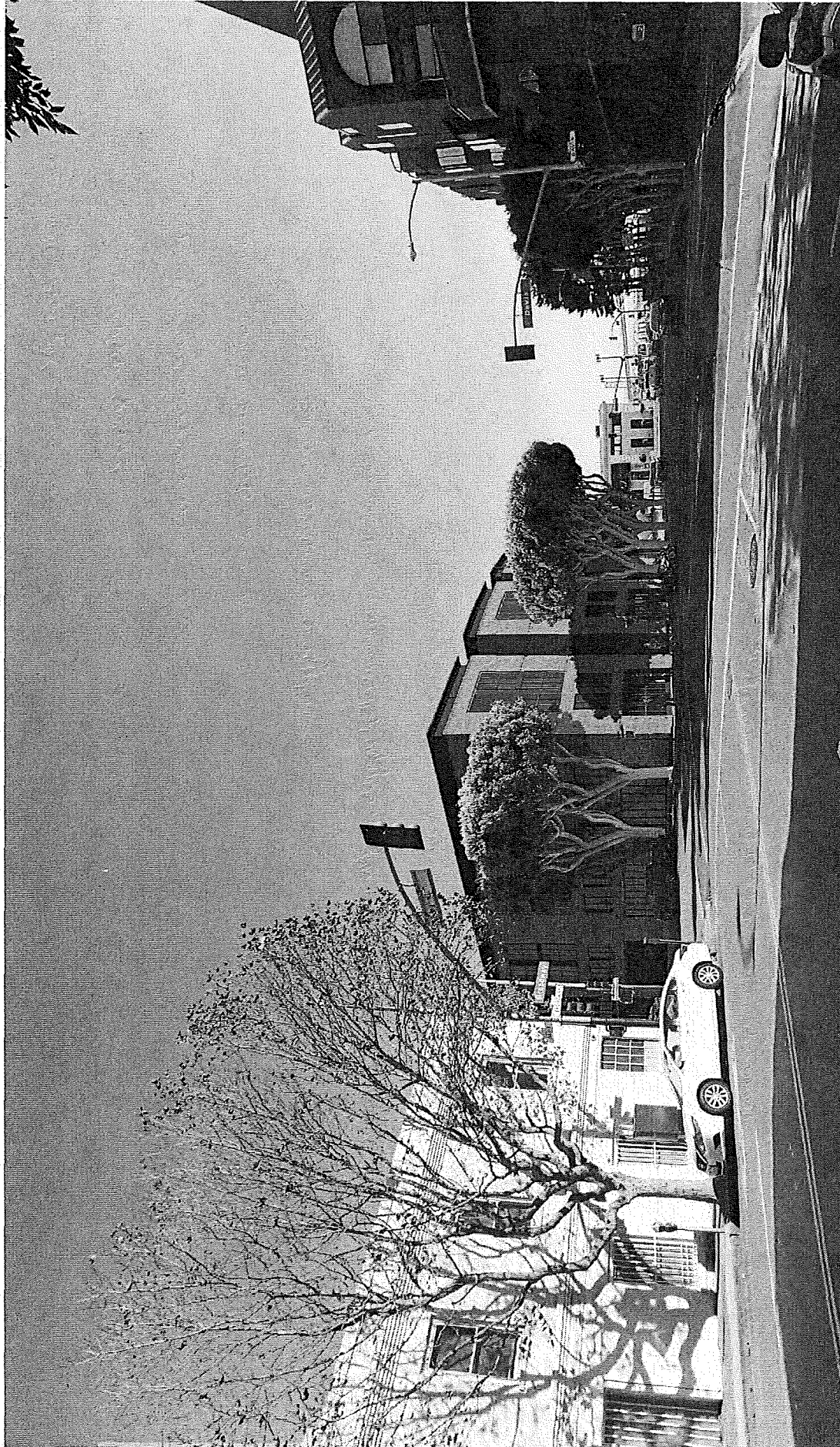
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View: Broadway and Davis

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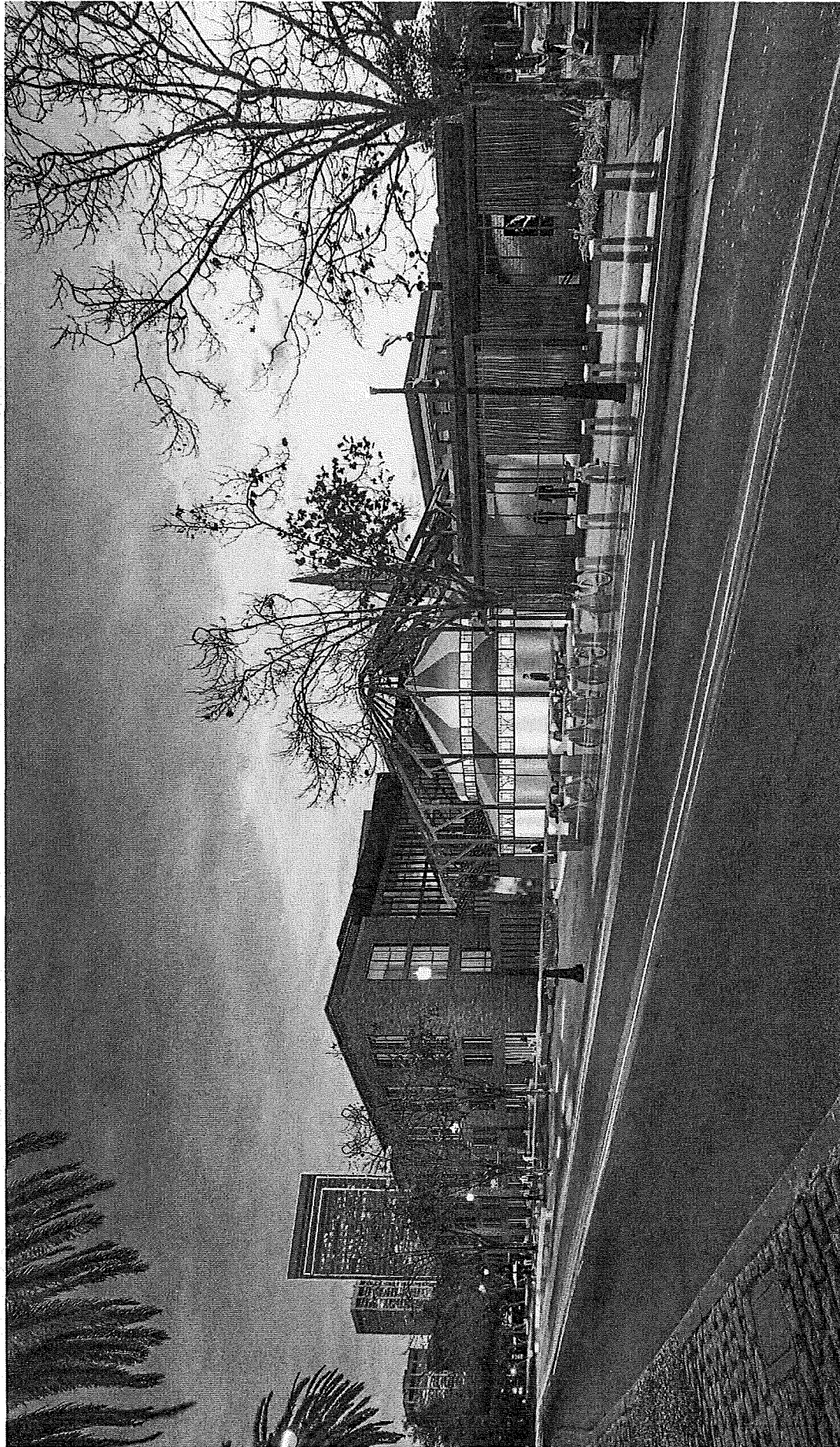
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View: South Along The Embarcadero

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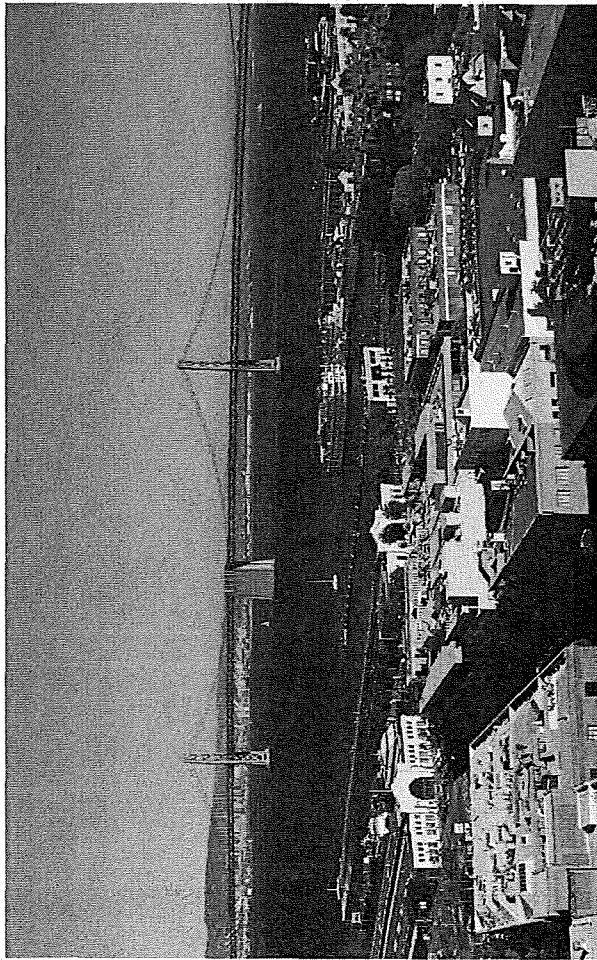
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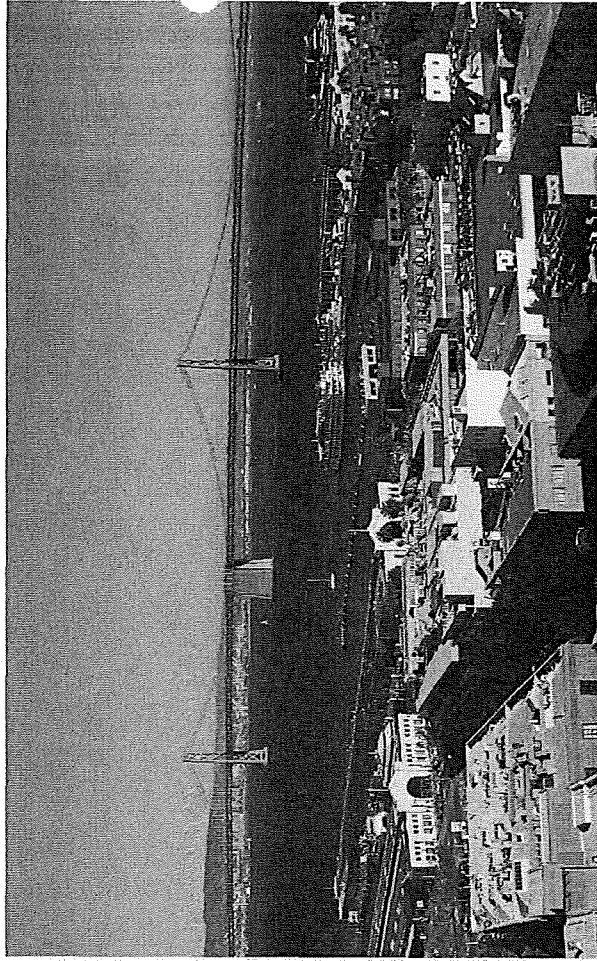
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THEATER ZINZANNI
KENWOOD INVESTMENTS

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Existing



Proposed

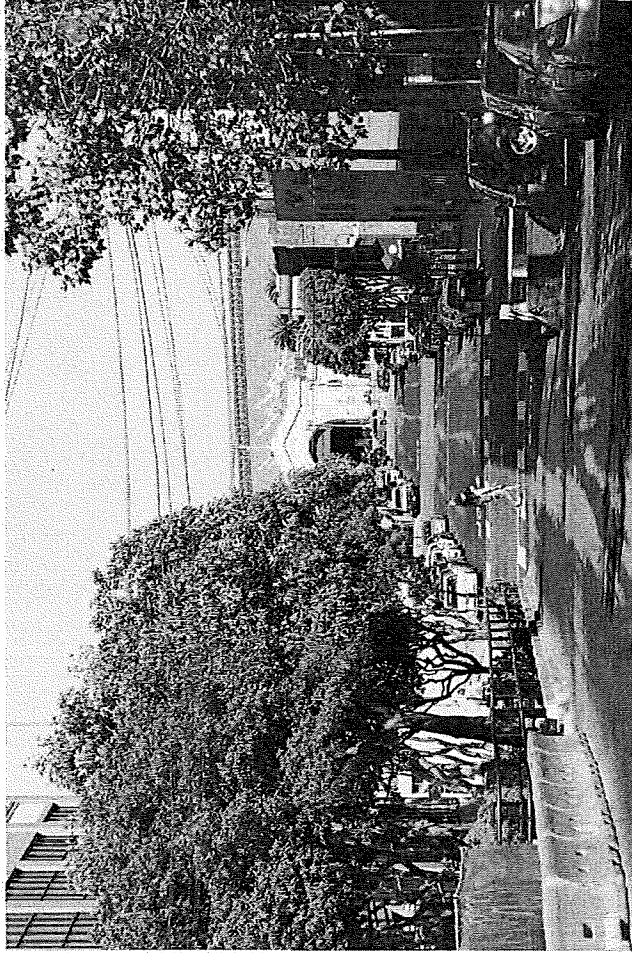
Visual Analysis | View From Telegraph Hill

Zinzanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

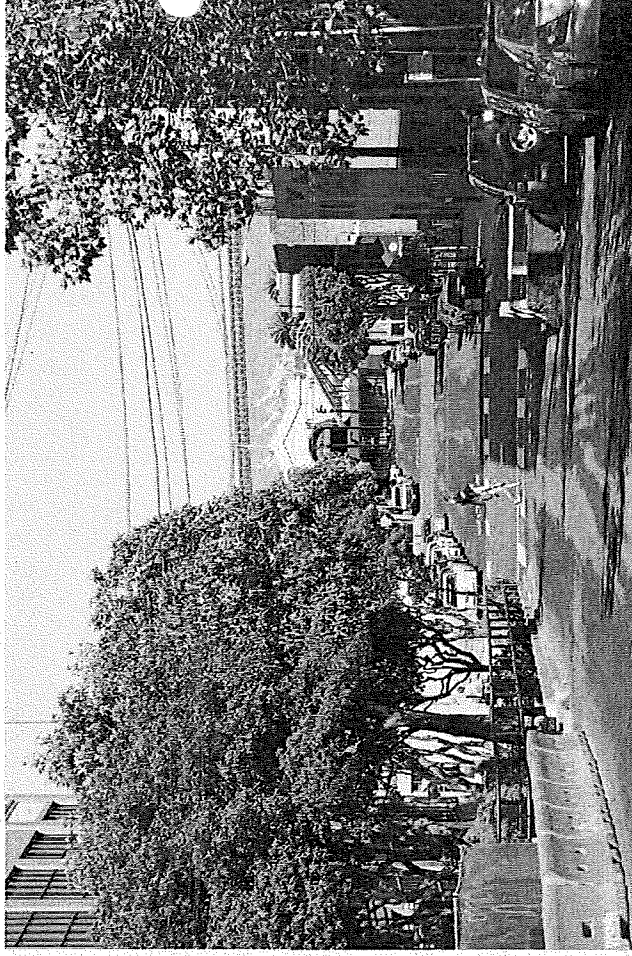
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Existing



Proposed

Visual Analysis | View from Sansome & Vallejo

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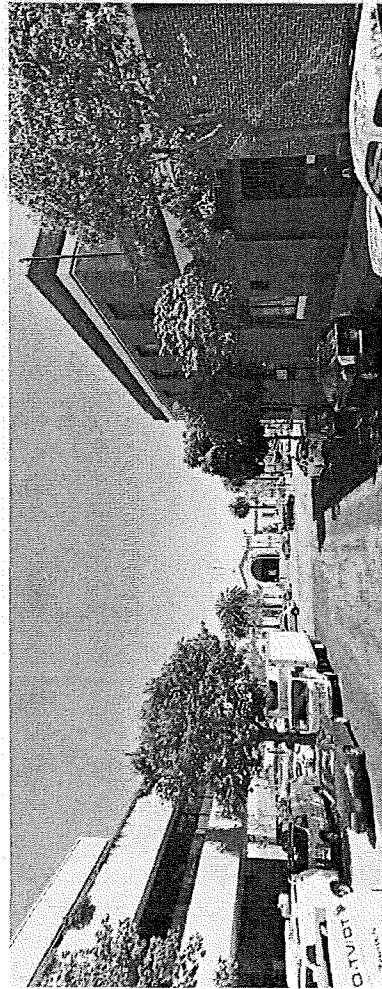
Zinzanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

Hornberger + Hornberger Architects

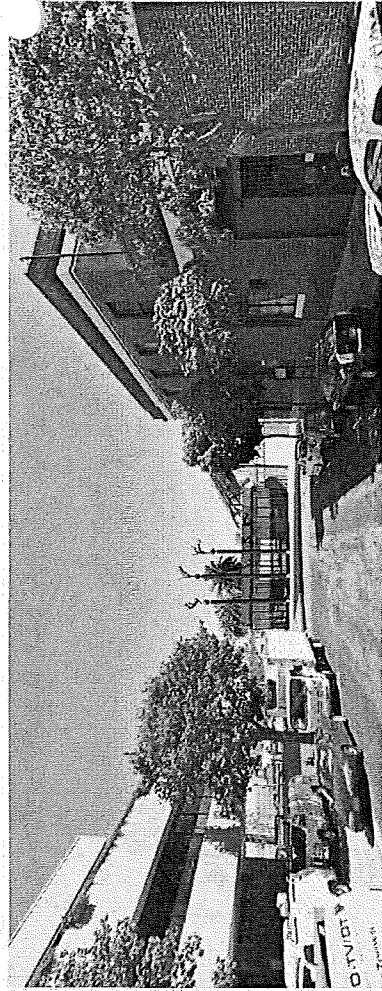
December 21, 2018 | 50

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Worstell



Existing



Proposed

Visual Analysis | View from Vallejo

Team ZinZanni

presidiocompanies

KENWOOD INVESTMENTS

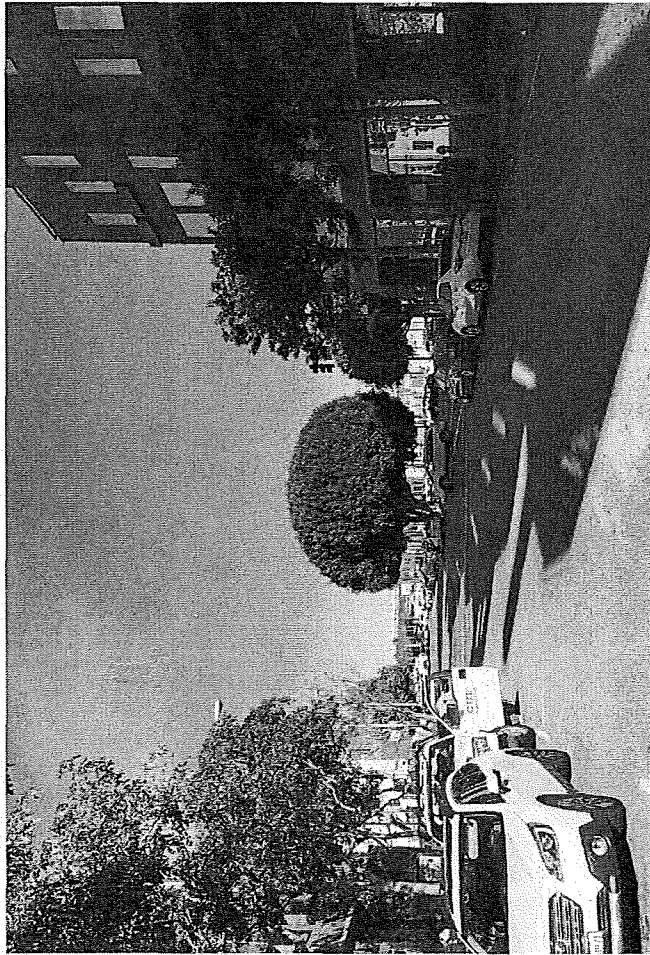
ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

A TEARDROP ZINZANNI & KENWOOD ARCHITECTURAL PROJECT

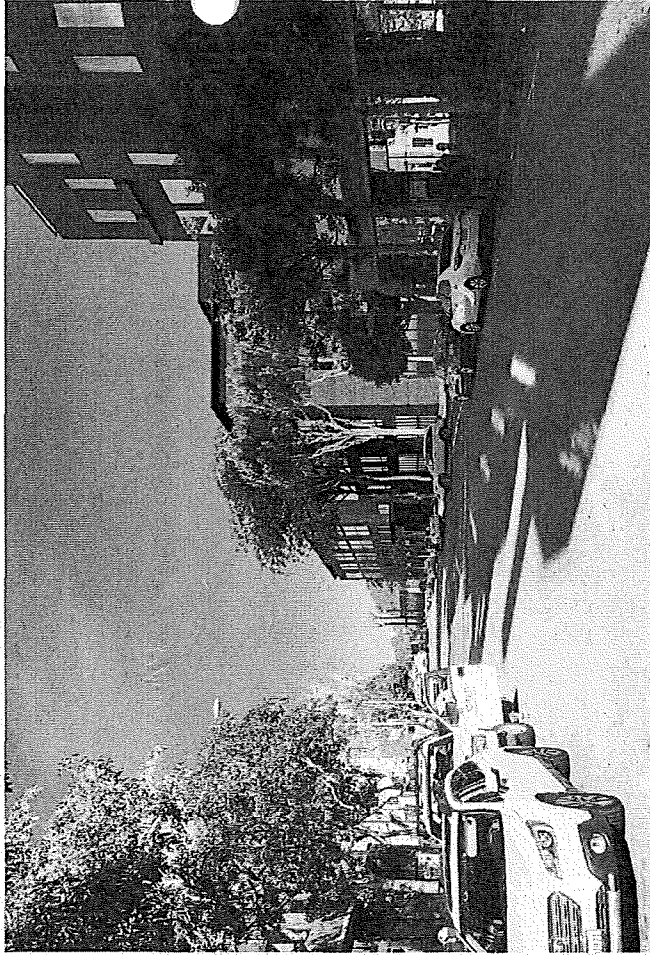
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Existing



Proposed

Visual Analysis | View 3 - Looking North Along Davis Street

Theatre Zinzanni

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KENWOOD INVESTMENTS

ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

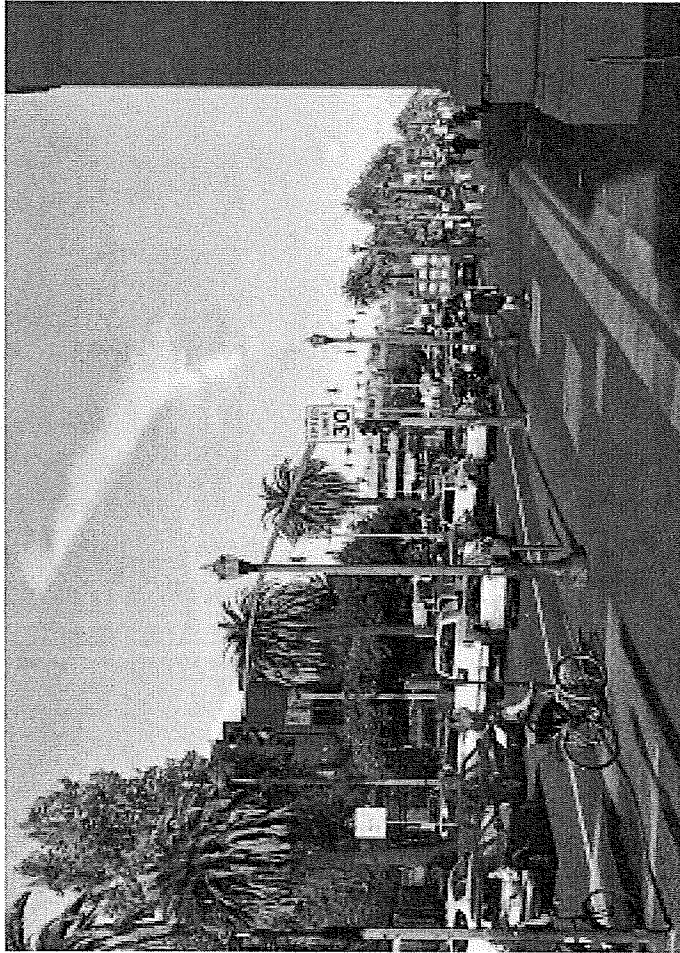
A Theatre Zinzanni & Kenwood Investments Project

Horibarger + Worstell Architects

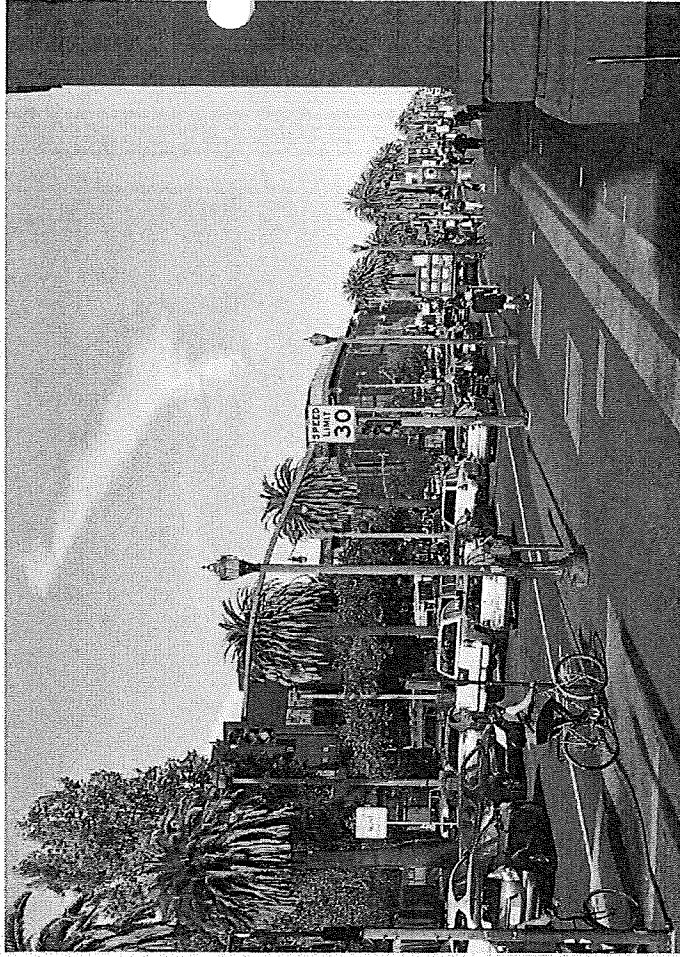
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Worstell



Existing



Proposed

Visual Analysis | View Looking North Along The Embarcadero

THE ZINZANNI **presidio**companies

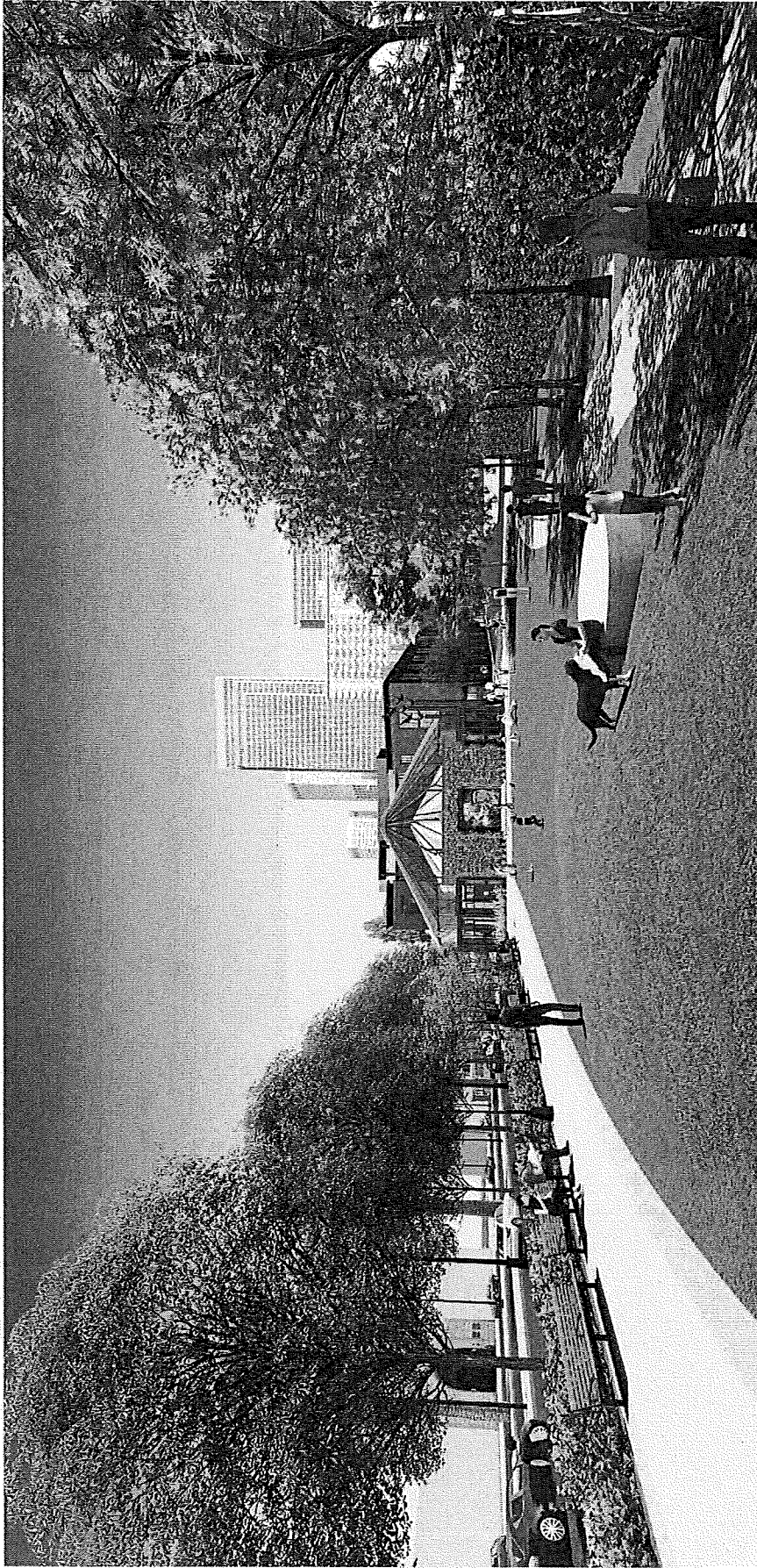
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Visual Analysis | Park View looking South

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Hornberger + Worstel Architects

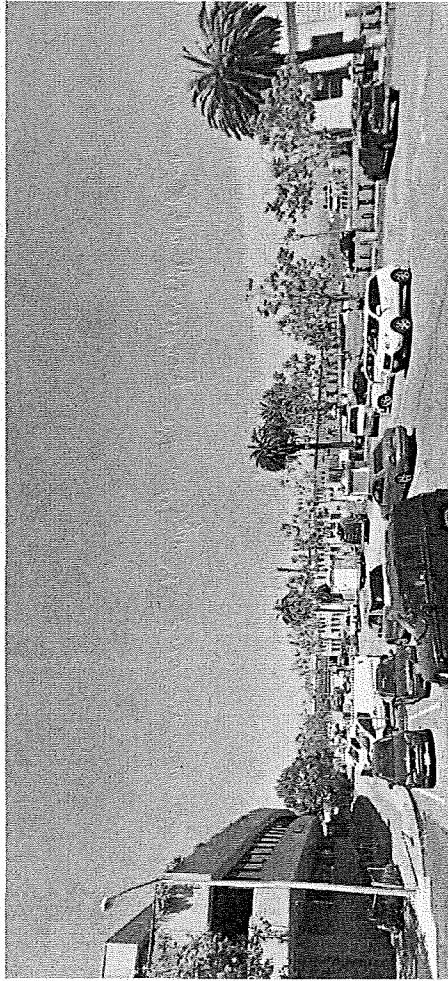
ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

A Theater & Hotel @ Broadway & Kenwood Investments Project

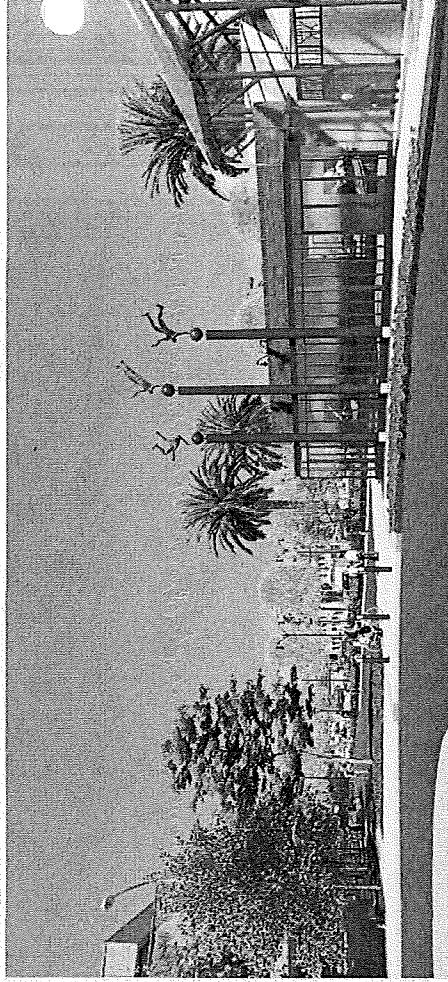
Worstel

presidio companies

Kenwood Investments



Existing



Proposed

Visual Analysis | Park View from Davis Street

Materials

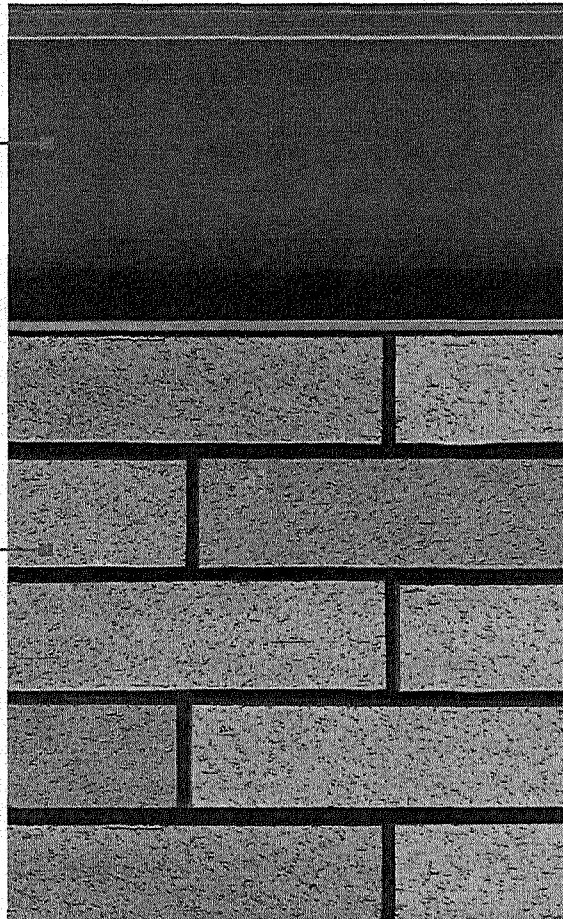
ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California

A ZinZanni / Kenwood Investments Project



Dark anthracite
color matte-finish
metal cornice &
marquis

Red brick
3-color blend



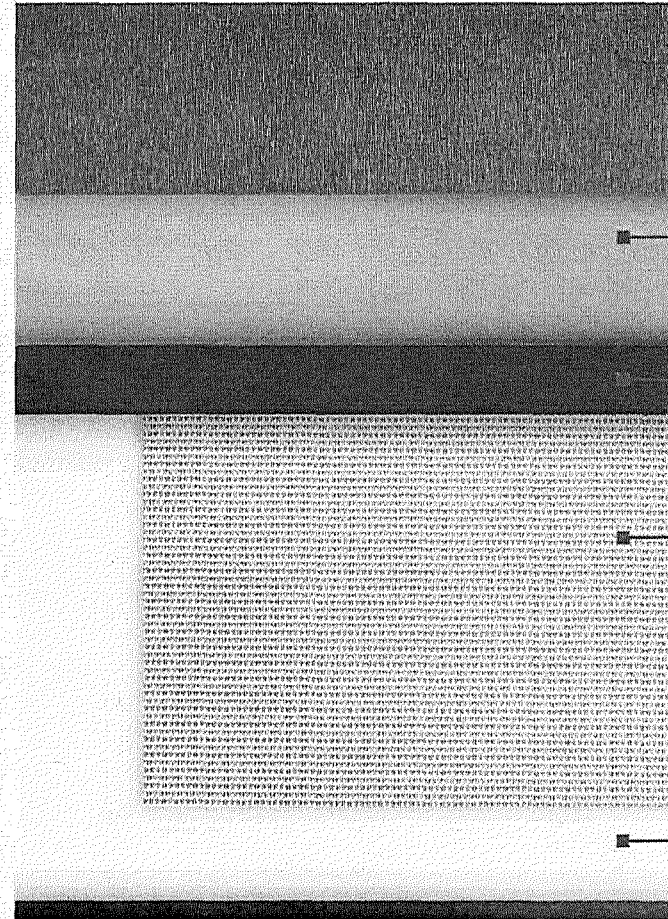
Matte-finish metal
panels at mechanical
enclosures

Back painted/fritted
spandrel glass panel at
mechanical screen and
selected storefront locations

Dark anthracite color
metal mullion sash

Privacy shade

Non-reflective
clear glass



Exterior Materials

THEATRO ZINZANNI

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KENWOOD INVESTMENTS

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EXHIBIT 2: MITIGATION MONITORING AND REPORTING PROGRAM

Adopted Mitigation Measures	Responsibility for Implementation	Mitigation Schedule	Monitoring/Reporting Responsibility	Monitoring Schedule
MITIGATION MEASURES AGREED TO BY PROJECT SPONSOR				
CULTURAL RESOURCES				
<p>Mitigation Measure M-CR-2: Archeological Testing</p> <p>Based on a reasonable presumption that archeological resources may be present on the project site, the following measures shall be undertaken to avoid any potentially significant adverse effect from the proposed project on buried or submerged historical resources.</p> <p>The project sponsor shall retain the services of an archeological consultant from the rotational Department Qualified Archaeological Consultants List maintained by the San Francisco Planning Department's archeologist. The project sponsor shall contact the department's archeologist to obtain the names and contact information for the next three archeological consultants on the list. The archeological consultant shall undertake an archeological testing program as specified herein. In addition, the consultant shall be available to conduct an archeological monitoring and/or data recovery program if required pursuant to this measure. The archeological consultant's work shall be conducted in accordance with this measure at the direction of the environmental review officer (ERO). All plans and reports prepared by the consultant as specified herein shall be submitted first and directly to the ERO for review and comment, and shall be considered draft reports subject to revision until final approval by the ERO. Archeological monitoring and/or data recovery programs required by this measure could suspend construction of the project for up to 4 weeks. At the direction of the ERO, the suspension of construction can be extended beyond 4 weeks only if such a suspension is the only feasible means to reduce to a less-than-significant level potential effects on a significant archeological resource as defined in CEQA Guidelines sections 15064.5(a) and 15064.5(c).</p> <p>Consultation with Descendant Communities: On discovery of an archeological site¹⁹¹ associated with descendant Native Americans, the Overseas Chinese, or other potentially interested descendant group, an appropriate representative¹⁹² of the descendant group and the ERO shall be contacted. The representative of the descendant group shall be given the opportunity to monitor archeological field investigations of the site and to offer recommendations to the ERO regarding appropriate archeological treatment of the site, of recovered data from the site, and if applicable, any interpretative treatment of the associated archeological site. A copy of the final archeological</p>	Project sponsor/ construction contractor (in the event of the discovery of human remains and associated burial-related cultural materials)/ archeological consultant, at the direction of the ERO.	<p>Prior to the issuance of site permits and initiation of construction, during construction, and after the conclusion of all construction activities.</p> <p>During construction in the event of the discovery, or anticipated discovery, of human remains and associated burial-related cultural materials.</p>	<p>The ERO to review and approve an archeological testing plan and a final archeological resources report.</p> <p>In the event of the discovery of human remains and associated burial-related cultural materials, the Planning Department to monitor sponsor and contractor compliance.</p>	<p>The ERO to review and approve an archeological testing plan for the applicable project site before the start of construction. Depending on the findings of the archeological testing program, intermittent reports may be submitted by the qualified archeological consultant for each phase of construction within the applicable project site.</p> <p>The final archeological resources report will be submitted after the conclusion of all construction activities.</p>

Adopted Mitigation Measures	Responsibility for Implementation	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule
<p>resources report shall be provided to the representative of the descendant group.</p> <p>Archeological Testing Program. The archeological consultant shall prepare and submit to the ERO for review and approval an archeological testing plan. The archeological testing program shall be conducted in accordance with the approved testing plan. The archeological testing plan shall identify the property types of the expected archeological resource(s) that potentially could be adversely affected by the proposed project, the testing method to be used, and the locations recommended for testing. The purpose of the archeological testing program will be to determine to the extent possible the presence or absence of archeological resources and to identify and evaluate whether any archeological resource encountered on the site constitutes a historical resource under CEQA.</p> <p>At the completion of the archeological testing program, the archeological consultant shall submit a written report of the findings to the ERO. If based on the archeological testing program the archeological consultant finds that significant archeological resources may be present, the ERO in consultation with the archeological consultant shall determine whether additional measures are warranted. Additional measures that may be undertaken include additional archeological testing, archeological monitoring, and/or an archeological data recovery program. No archeological data recovery shall be undertaken without the prior approval of the ERO or the San Francisco Planning Department's archeologist. If the ERO determines that a significant archeological resource is present and that the resource could be adversely affected by the proposed project, at the discretion of the project sponsor either:</p> <p>(A) The proposed project shall be redesigned to avoid any adverse effect on the significant archeological resource. OR</p> <p>(B) A data recovery program shall be implemented, unless the ERO determines that the archeological resource is of greater interpretive than research significance and that interpretive use of the resource is feasible.</p> <p>Archeological Monitoring Program. If the ERO in consultation with the archeological consultant determines that an archeological monitoring program shall be implemented, the archeological monitoring program shall minimally include the following provisions:</p> <ul style="list-style-type: none"> • The archeological consultant, project sponsor, and ERO shall meet and consult on the scope of the archeological monitoring program a reasonably prior to any project-related soil-disturbing activities commencing. The ERO in consultation with the archeological consultant shall determine what project activities shall be archeologically monitored. In most cases, any soil-disturbing activities, such as demolition, foundation removal, excavation, grading, utilities installation, 				<p>In the event of the discovery of human remains and associated burial-related cultural materials, considered complete after reburial or permanent disposition of any discovered human remains and burial-related cultural materials and approval of the final archeological resources report.</p>

Adopted Mitigation Measures	Responsibility for Implementation	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule
<p>foundation work, driving of piles (e.g., foundation, shoring), and site remediation, shall require archeological monitoring because of the risk these activities pose to potential archeological resources and to their depositional context.</p> <ul style="list-style-type: none"> • The archeological consultant shall advise all project contractors to be on the alert for evidence of the presence of the expected resource(s), how to identify the evidence of the expected resource(s) and the appropriate protocol in the event of apparent discovery of an archeological resource. • The archeological monitor(s) shall be present on the project site according to a schedule agreed upon by the archeological consultant and the ERO until the ERO has, in consultation with the project's archeological consultant, determined that project construction activities could have no effects on significant archeological deposits. • The archeological monitor shall record and be authorized to collect soil samples and artifactual/ecofactual material as warranted for analysis. • If an intact archeological deposit is encountered, all soil-disturbing activities in the vicinity of the deposit shall cease. The archeological monitor shall be empowered to temporarily redirect demolition/excavation/pile driving/construction activities and equipment until the deposit is evaluated. If in the case of pile driving or deep foundation activities (e.g., foundation, shoring), the archeological monitor has cause to believe that the pile driving or deep foundation activities may affect an archeological resource, the pile driving or deep foundation activities shall be terminated until an appropriate evaluation of the resource has been made in consultation with the ERO. The archeological consultant shall immediately notify the ERO of the encountered archeological deposit. The archeological consultant shall make a reasonable effort to assess the identity, integrity, and significance of the encountered archeological deposit, and present the findings of this assessment to the ERO. <p>Whether or not significant archeological resources are encountered, the archeological consultant shall submit a written report of the findings of the monitoring program to the ERO.</p> <p>Archeological Data Recovery Program. The archeological data recovery program shall be conducted in accordance with an archeological data recovery plan (ADRP). The archeological consultant, project sponsor, and ERO shall meet and consult on the plan's scope of the ADRP prior to preparation of a draft ADRP. The archeological consultant shall submit a draft ADRP to the ERO. The ADRP shall identify how the proposed data recovery program will preserve the significant information the archeological resource is expected to contain. That is,</p>				

Adopted Mitigation Measures	Responsibility for Implementation	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule
<p>the ADRP will identify what scientific/historical research questions are applicable to the expected resource, what data classes the resource is expected to possess, and how the expected data classes would address the applicable research questions. Data recovery, in general, should be limited to the portions of the historical property that could be adversely affected by the proposed project. Destructive data recovery methods shall not be applied to portions of the archeological resources if nondestructive methods are practical.</p> <p>The scope of the ADRP shall include the following elements:</p> <ul style="list-style-type: none"> • <i>Field Methods and Procedures.</i> Descriptions of proposed field strategies, procedures, and operations. • <i>Cataloguing and Laboratory Analysis.</i> Description of the selected cataloguing system and artifact analysis procedures. • <i>Discard and Deaccession Policy.</i> Description of and rationale for field and post-field discard and deaccession policies. • <i>Interpretive Program.</i> Consideration of an onsite/offsite public interpretive program during the course of the archeological data recovery program. • <i>Security Measures.</i> Recommended security measures to protect the archeological resource from vandalism, looting, and unintentionally damaging activities. • <i>Final Report.</i> Description of proposed report format and distribution of results. • <i>Curation.</i> Description of the procedures and recommendations for the curation of any recovered data having potential research value, identification of appropriate curation facilities, and a summary of the accession policies of the curation facilities. <p>Human Remains, Associated or Unassociated Funerary Objects. The treatment of human remains and of associated or unassociated funerary objects discovered during any soil-disturbing activity shall comply with applicable state and federal laws, including immediate notification of the Office of the Chief Medical Examiner of the City and County of San Francisco and, in the event of the medical examiner's determination that the human remains are Native American, notification of the Native American Heritage Commission, which shall appoint a Most Likely Descendant (MLD) (PRC section 5097.98). The ERO shall also be immediately notified upon discovery of human remains. The archeological consultant, project sponsor, ERO, and MLD shall have up to but not beyond 6 days after the discovery to make all reasonable efforts to develop an agreement for the treatment of human remains and associated or unassociated</p>				

Adopted Mitigation Measures	Responsibility for Implementation	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule
<p>funerary objects with appropriate dignity (CEQA Guidelines, section 15064.5[d]). The agreement should take into consideration the appropriate excavation, removal, recordation, analysis, curation, possession, and final disposition of the human remains and associated or unassociated funerary objects. Nothing in existing state regulations or in this mitigation measure compels the project sponsor and the ERO to accept the recommendations of an MLD. The archeological consultant shall retain possession of any Native American human remains and associated or unassociated burial objects until completion of any scientific analyses of the human remains or objects as specified in the treatment agreement, if such as agreement has been made, or otherwise, as determined by the archeological consultant and the ERO. If no agreement is reached, state regulations shall be followed, including the reburial of the human remains and associated burial objects with appropriate dignity on the property in a location not subject to further subsurface disturbance (PRC section 5097.98).</p> <p>Final Archeological Resources Report. The archeological consultant shall submit a draft final archeological resources report to the ERO that evaluates the historical significance of any discovered archeological resource and describes the archeological and historical research methods employed in the archeological testing/monitoring/data recovery program(s) undertaken. Information that may put at risk any archeological resource shall be provided in a separate removable insert within the final report.</p> <p>Once approved by the ERO, copies of the draft final archeological resources report shall be distributed as follows: The California Archaeological Site Survey Northwest Information Center shall receive one copy and the ERO shall receive a copy of the transmittal of the report to the Northwest Information Center. The Environmental Planning Division of the San Francisco Planning Department shall receive one bound, one unbound, and one unlocked, searchable PDF copy on CD of the report, along with copies of any formal site recordation forms (CA DPR 523 series) and/or documentation for nomination to the NRHP/CRHR. In instances of high public interest in or the high interpretive value of the resource, the ERO may require a different final report content, format, and distribution than that presented above.</p>				
<p>Mitigation Measure M-CR-4: Tribal Cultural Resources Interpretive Program</p> <p>If the ERO determines that a significant archeological resource is present, and if in consultation with the affiliated Native American tribal representatives, the</p>	Project Sponsor and qualified archeological consultant.	During construction.	Planning Department.	Considered complete after the archeological resource preservation plan

Adopted Mitigation Measures	Responsibility for Implementation	Mitigation Schedule	Monitoring/Reporting Responsibility	Monitoring Schedule
<p>ERO determines that the resource constitutes a tribal cultural resource and that the resource could be adversely affected by the proposed project, the proposed project shall be redesigned to avoid any adverse effect on the significant tribal cultural resource, if feasible.</p> <p>If the ERO, in consultation with the affiliated Native American tribal representatives and the project sponsor, determines that preservation in place of the tribal cultural resources is not a sufficient or feasible option, the project sponsor shall implement an interpretive program of the tribal cultural resource in consultation with affiliated tribal representatives. An interpretive plan produced in consultation with the ERO and affiliated tribal representatives, at a minimum, and approved by the ERO would be required to guide the interpretive program. The plan shall identify, as appropriate, proposed locations for installations or displays, the proposed content and materials of those displays or installation, the producers or artists of the displays or installation, and a long-term maintenance program. The interpretive program may include artist installations, preferably by local Native American artists, oral histories with local Native Americans, artifact displays and interpretation, and educational panels or other informational displays.</p>				<p>or interpretive plan of the tribal cultural resource in consultation with affiliated Native American tribal representatives have been approved by the ERO and implementation of preservation or interpretive program.</p>

AIR QUALITY

Mitigation Measure M-AQ-2: Construction Air Quality

The project sponsor or the project sponsor's contractor shall comply with the following:

A. Engine Requirements.

Where access to alternative sources of power is available, portable diesel engines shall be prohibited. Diesel engines, whether for off-road or on-road equipment, shall not be left idling for more than 2 minutes, at any location, except as provided in exceptions to the applicable state regulations regarding idling for offroad and on-road equipment (e.g., traffic conditions, safe operating conditions).

The contractor shall post legible and visible signs in English, Spanish, and Chinese, in designated queuing areas, and at the construction site to remind operators of the 2-minute idling limit. The contractor shall instruct construction workers and equipment operators on the maintenance and tuning of construction equipment, and require that such workers and operators properly maintain and tune equipment in accordance with manufacturer specifications.

Project sponsor and ERO or ERO's designated representative and construction contractors.

The construction emissions minimization plan shall be submitted and approved before a construction permit is issued for each project phase or property and ongoing during construction.

The Planning Department, ERO, or the ERO's designated representative for review and approval.

Considered complete after review and approval of Construction Emissions Minimization Plan, ongoing review and approval of quarterly reports, review and approval of a final report.

Adopted Mitigation Measures	Responsibility for Implementation	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule
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B. Waivers.

1. The Planning Department's environmental review officer or designee may waive the alternative source of power requirement of subsection (A)(2) if an alternative source of power is limited or infeasible at the project site. If the ERO grants the waiver, the contractor must submit documentation that the equipment used for onsite power generation meets the requirements of subsection (A)(1).

2. The ERO may waive the equipment requirements of subsection (A)(1) if: a particular piece of off-road equipment with an ARB Level 3 VDECS is technically not feasible; the equipment would not produce desired emissions reduction due to expected operating modes; installation of the equipment would create a safety hazard or impaired visibility for the operator; or there is a compelling emergency need to use off-road equipment that is not retrofitted with an ARB level 3 VDECS. If the ERO grants the waiver, the contractor must use the next cleanest piece of off-road equipment, according to Table M-AQ-2.

**TABLE M-AQ-2 OFF-ROAD EQUIPMENT
COMPLIANCE STEP-DOWN SCHEDULE**

<i>Compliance Alternative</i>	<i>Engine Emissions Standard</i>	<i>Emissions Control</i>
<i>1</i>	<i>Tier 2</i>	<i>ARB Level 2 VDECS</i>
<i>2</i>	<i>Tier 2</i>	<i>ARB Level 1 VDECS</i>
<i>3</i>	<i>Tier 2</i>	<i>Alternative Fuel*</i>

How to use the table: If the ERO determines that the equipment requirements cannot be met, then the project sponsor would need to meet Compliance Alternative 1. If the ERO determines that the contractor cannot supply off-road equipment meeting Compliance Alternative 1, then the contractor must meet Compliance Alternative 2. If the ERO determines that the contractor cannot supply off-road equipment meeting Compliance Alternative 2, then the contractor must meet Compliance Alternative 3. Alternative fuels are not a VDECS.

Adopted Mitigation Measures	Responsibility for Implementation	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule
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C. Construction Emissions Minimization Plan.

Before starting onsite construction activities, the contractor shall submit a construction emissions minimization plan to the ERO for review and approval. The plan shall state, in reasonable detail, how the contractor will meet the requirements of Section A.

1. The plan shall include estimates of the construction timeline by phase, with a description of each piece of offroad equipment required for every construction phase. The description may include, but is not limited to: equipment type, equipment manufacturer, equipment identification number, engine model year, engine certification (tier rating), horsepower, engine serial number, and expected fuel usage and hours of operation. For VDECS installed, the description may include: technology type, serial number, make, model, manufacturer, ARB verification number level, and installation date and hour meter reading on installation date. For off-road equipment using alternative fuels, the description shall also specify the type of alternative fuel being used.
2. The project sponsor shall ensure that all applicable requirements of the plan have been incorporated into the contract specifications. The plan shall include a certification statement that the contractor agrees to comply fully with the plan.
3. The contractor shall make the plan available to the public for review onsite during working hours. The contractor shall post at the construction site a legible and visible sign summarizing the plan. The sign shall also state that the public may ask to inspect the plan for the project at any time during working hours and shall explain how to request to inspect the plan. The contractor shall post at least one copy of the sign in a visible location on each side of the construction site facing a public right-of-way.

D. Monitoring. After start of construction activities, the contractor shall submit quarterly reports to the ERO documenting compliance with the plan. After completion of construction activities and prior to receiving a final certificate of occupancy, the project sponsor shall submit to the ERO a final report summarizing construction activities, including the start and end dates and duration of each construction phase, and the specific information required in the plan.

Adopted Mitigation Measures	Responsibility for Implementation	Mitigation Schedule	Monitoring/ Reporting Responsibility	Monitoring Schedule
<p>Mitigation Measure M-AQ-4: Best Available Control Technology for Diesel Generators</p> <p>The project sponsor shall ensure that the backup diesel generator meets or exceeds one of the following emission standards for particulate matter: (1) tier 4 certified engine, or (2) tier 2 or tier 3 certified engine that is equipped with an ARB level 3 verified diesel emissions control strategy (VDECS). A nonverified diesel emission control strategy may be used if the filter has the same particulate matter reduction as the identical ARB-verified model and if BAAQMD approves of its use. The project sponsor shall submit documentation of compliance with the BAAQMD New Source Review permitting process (regulation 2, rule 2, and regulation 2, rule 5) and the emission standard requirement of this mitigation measure to the Planning Department for review and approval prior to issuance of a permit for a backup diesel generator from any City agency.</p>	Project sponsor and construction contractor.	Prior to issuance of a permit for each backup diesel generator.	Project sponsor shall submit documentation of compliance to the Planning Department for review and approval within 3 months of a request for such information.	Considered complete upon review and approval of documentation by Planning Department staff.

MEMORANDUM

September 6, 2019

TO: MEMBERS, PORT COMMISSION
Hon. Kimberly Brandon, President
Hon. Willie Adams, Vice President
Hon. Gail Gilman
Hon. Victor Makras
Hon. Doreen Woo Ho

FROM: Elaine Forbes
Executive Director

SUBJECT: Request **(1)** Adoption of the Final Mitigated Negative Declaration and the Mitigation Monitoring and Reporting Program and adoption of findings pursuant to the California Environmental Quality Act, Public Resources Code Sec. 21000 et seq., for the mixed-use development proposed for Seawall Lots 323/324 and portions of unimproved Vallejo and Davis Street right-of-ways located on the west side of The Embarcadero at Vallejo Street (the "Site") (2015-016326ENV); **(2)** Adoption of Findings that the Development proposed by TZK Broadway LLC, a California limited liability company (the "Developer" or "TZK"), for the Site provides numerous benefits to the Public Trust; **(3)** Approval of (A) a Lease Disposition and Development Agreement with TZK, (B) form of Lease No. L-16585 with TZK for a term of 50 years with one 16-year extension option for the mixed-use development that includes a 192-room hotel, a dinner-theater space, and 14,000-square-foot public open space on the Site (the "Development" or "Project"); and (C) Schematic Drawings for the Development (Resolution No. 19-36)

DIRECTOR'S RECOMMENDATION: Approve the Attached Resolution

EXECUTIVE SUMMARY

This Memorandum describes the two key transaction documents negotiated by Port staff and TZK for the Development at the Site as shown in the attached **Exhibit "A," Site Map**. Staff is seeking:

1. Approval of a Lease Disposition and Development Agreement (the "LDDA") between the Port and TZK;

THIS PRINT COVERS CALENDAR ITEM NO. 12B

2. Approval of a form of lease No. L-16585 ("Lease") between the Port and TZK with a term of 50 years and one 16-year extension option for a mixed-use development that includes a 192-room hotel, a dinner-theater space, and 14,000-square-foot public open space and ancillary uses on the Site;
3. Authorization for the Executive Director to grant an extension of the Exclusive Negotiation Agreement until no later than February 3, 2020, without payment of any extension fee, only if the Board of Supervisors' has not yet taken action on the Lease by November 4, 2019.

Port staff recommends that the Port Commission adopt the resolution attached to this Memorandum approving the LDDA, Lease and other documents related to the Project (collectively, the "Transaction Documents"), approve the Schematic Drawings for the Development and direct staff to seek all other necessary approvals to implement the Development.

An informational presentation on the Development was provided to the Port Commission at its August 13, 2019 public meeting¹. Material updates to the August 13, 2019 staff report are presented here in underlined text.

The Development is anticipated to provide a number of benefits to the Port, the City and the State including : (a) an estimated \$49 million net present value ("NPV") of projected lease revenues for the Port over the initial term of the Lease, excluding the value of the land and improvements that will return to the Port at the end of the Lease term; (b) activation of the Site for its highest and best use with approximately \$142 million in estimated private capital investment including development of a new hotel, theater, and public open space that will draw visitors to the waterfront; (c) a significant contribution to the integrity of Northeast Waterfront Historic District; (d) retention of Teatro ZinZanni, a cultural asset that will draw people to the Waterfront; (e) addition of a new source of revenues for the Harbor Fund; (f) generation of new jobs along the Waterfront; (g) new tax revenues for the City, and (h) promoting public access to and along the waterfront and enhancing pedestrian, bicycle and transit access to the waterfront. As proposed, the Development is expected to provide more benefits in comparison to the Port's current use of the Site for surface parking, including higher rent payments to the Port.

¹

<https://sfport.com/sites/default/files/Commission/Documents/Commission%20Meeting%20Staff%20Reports/Item%2011A%20-%20%28revised%29%20SWL%20324%20TZK%20Info%20Memo%20.pdf>

The Port Commission provided the impetus for this Development when on September 8, 2015, it adopted Resolution No. 15-31² authorizing Port staff to enter into an Exclusive Negotiation Agreement (“ENA”) with TZK for a one-year term with four six-month extension options, among other terms, to complete certain tasks and negotiate terms and conditions for leasing the Site for the Development. On April 26, 2016, the Port Commission adopted Resolution No. 16-18,³ endorsing a non-binding term sheet (“Term Sheet”) on the terms and conditions for the LDDA and the Lease. On July 12, 2016, the Board of Supervisors adopted Resolution No. 277-16⁴ and endorsed the Term Sheet. On September 25, 2018, the Port Commission adopted Resolution No. 18-53⁵ and authorized the First Amendment to the ENA to provide for two additional six-month extension options if needed by TZK to complete entitlements and lease negotiations for the Development.

Because of the positive feedback Port staff received from the Port Commission during the August 13, 2019 presentation, Port staff is not proposing any material changes to the transaction business terms reported and presented on August 13.

DEVELOPMENT SUMMARY

The Development is summarized in the table below.

Table 1 - Development Summary

<u>Site Area</u>	59,750 Square Feet
<u>Proposed Building</u>	
<u>Building Height</u>	40 Feet (4 stories) - 55 feet with elevator penthouse
<u>Teatro ZinZanni - Entertainment Venue including Back of House, Circulation and the Spiegeltent:</u>	29,570 Gross Square Feet
<u>Hotel,</u>	192 Rooms on three levels, Floors 2, 3, and 4

² See: <https://sfport.com/sites/default/files/FileCenter/Documents/10429-Item%2014B-Teatro%20ZinZanni%20ENA%20FINAL%2009-2.pdf>

³ See: <https://sfport.com/sites/default/files/Commission/Documents/Commission%20Meeting%20Staff%20Reports/2016%20Commission%20Meeting%20Items/APR26/Item%2012A%20SWL%20324%20Action%20Memo%20for%20042616%20PC%20Meeting.pdf>

⁴ See: <https://www.sfbos.org/ftp/uploadedfiles/bdsupvrs/resolutions16/r0277-16.pdf>

⁵ See: <https://sfport.com/sites/default/files/Commission/Documents/Item%2011A%20SWL%20324%20ENA%20First%20Amendment.05.09142018.pdf>

including Back of House and Circulation:	118,130 Gross Square Feet
<u>Restaurant Food and Beverage:</u>	4,420 Gross Square Feet
<u>Overall Building Gross Floor Area:</u>	147,880 Gross Square Feet
<u>Open Space:</u>	Public Park – 14,000 Square Feet Common – Open Roof Terrace – 3,970 Square Feet
<u>Bicycle Parking Spaces:</u>	20 Class I; 43 Class II
<u>Loading Spaces:</u>	2
<u>Projected Total Development Cost:</u>	\$142,000,000
	Debt: \$ 82,000,000 Equity: \$ 60,000,000
<u>Funding Sources:</u>	Total: \$142,000,000

TZK has completed most of the key feasibility tasks it is required to complete under the ENA prior to seeking approval of the LDDA and Lease. It obtained endorsement of Term Sheet by Port and the Board, reviewed the Site's suitability for the proposed Development, conducted community outreach to stakeholders to gather input and keep community members informed, completed environmental review required under CEQA and Chapter 31; and completed architectural and urban design review by the Planning Department, the Waterfront Design Advisory Committee, and the City Historic Preservation Commission which has found the Development's urban and architectural design compatible with the design requirements for the Northeast Historic District. TZK has received the required Conditional Use authorization from the City Planning Commission. TZK remains in full compliance with the ENA.

Port staff and TZK have completed negotiations of the LDDA and Lease and are now requesting Port Commission's consideration and approval of these two **key transaction documents** to implement the Development.

The proposed Transaction Documents include:

LDDA (Lease Disposition and Development Agreement) between the Port and TZK. The LDDA's primary purpose is to: (1) set the list of conditions TZK must satisfy before the Port will allow escrow to close and Site possession to transfer to TZK and (2) govern the signatories' rights and obligations through construction of the Development. Conditions to close escrow include: achievement of all regulatory approvals to begin construction; demonstration of sufficient financial resources to commence and complete construction; and posting of construction bonds, among other conditions. Other key terms of the LDDA include: **(a)** a 12-month period to close escrow on the lease (with four three-month extension options with fees, for a total of up to two years), **(b)** requirement that TZK complete construction within 24 months after lease commencement, subject to four, three-month extension options with a \$25,000 fee per each three-month extension, **(c)** description of LDDA fees payable to the Port, **(d)**

requirement for payment of Port transaction costs, **(e)** Port's standard transaction provisions, including liquidated damages for failure to complete construction on time, insurance, and indemnification, and **(f)** Port's consent for transfers and assignments, among other terms. The LDDA, which terminates around when construction is completed, is subject to Port Commission approval only.

Lease (Ground Lease), between the Port and TZK. The Lease's purpose is to convey property rights subject to the negotiated terms and conditions under which the Site is being leased to TZK. Proposed key terms include: **(a)** a 50-year initial term with a 16-year extension option; **(b)** rent to include **(i) Minimum Base Rent** per year for both construction and operation periods; **(ii) Percentage Rent** during the operation period; **(iii) Participation Rent** during operation phase and refinancing and sale events; **(c)** Port's standard lease provisions, including insurance, indemnity, sea level rise and flooding provisions; and **(d)** prior consent for transfers and assignments, among others. The lease is subject to approval by the Port Commission and the Board of Supervisors.

BACKGROUND, STRATEGIC OBJECTIVES AND DISCUSSION

The remainder of this Memorandum lists the strategic objectives to be attained, provides background information, and discusses the key terms proposed for the Transaction Documents.

STRATEGIC OBJECTIVE

The Development, if approved and implemented, is expected to contribute in a substantial way to meeting the *Equity, Sustainability, and Stability objectives* of the updated Port's Strategic Plan.

- *Equity Objective:* The Development will provide business opportunities for local businesses and develop a new live theater space for Teatro ZinZanni's operation. Under the City's music and culture sustainability policy, as articulated in Chapter 90A of the Administrative Code, the City "is committed to supporting and encouraging the use of City and County property, including Port property, for indoor and outdoor music and other cultural events" and is committed to preserving and enhancing San Francisco's music and performance venues from displacement due to development. The Development is expected to contribute to the growth of capital funding for the Port through increased leasing revenues and addition of a subarea to the Port's infrastructure financing district to leverage the available tax increment.
- *Sustainability Objectives:* The Development is expected to incorporate a variety of sustainable practices including environmentally sensitive demolition techniques, recycling of demolition and construction waste, use of recycled construction materials, installation of high-efficiency building systems and appliances, storm water management, zero waste operations, and green building standards.
- *Stability Objectives:* Adding revenues from a hotel and dinner-theater operations

diversifies the Port's asset portfolio and supports the durability of the Port's lease revenue. Changing the Site from its current use as a surface parking lot to its highest and best use⁶ will maximize asset value and increase the income stream to the Port from the Site. The Development is expected to increase Port revenues and increase Port's capital budget through the formation of a sub-project area within the Port Infrastructure Financing District.

BACKGROUND

Site Description and Permitted Uses: Seawall Lots ("SWLs") 323 and 324 are two nearly triangular land parcels with a combined surface area of approximately 42,719 square feet with frontages on The Embarcadero, Broadway, Davis, and Vallejo Streets. They are proposed to be developed along with portions of Vallejo and Davis Streets that are also held by the Port and abut the SWLs ("Paper Streets"). SWLs 323 and 324 and the two Paper Streets have a combined land area of approximately 59,750 square feet and form the Site. The Site is currently paved with asphalt, striped for 227 self-parked stalls, and leased on an interim basis to a parking operator, SP Plus-Hide Parking Joint Venture (the "SP+Hide"). The Site generated approximately, \$739,309 in fiscal year (FY) 2015-2016, \$667,172 in FY 2016-2017 and \$968,760 in FY 2017-2018 in net revenues to the Port. Current fiscal year revenues are expected to generate slightly less than the prior year's subject to end of year revenue adjustments.

Hotel, entertainment, theater, retail, and public open space, among others, are listed as acceptable uses for SWLs 323 and 324 in the Port's Waterfront Land Use Plan, the City Planning Department's Northeastern Waterfront Subarea Plan, and the Planning Department's Northeast Embarcadero Study. The Site is located in the Northeast Waterfront Historic District and within a C-2 (Community Business) zoning district and a 40-X Height and Bulk district.

Teatro ZinZanni and Relocation Plan: Teatro ZinZanni is a popular dinner theater performed in a historic Spiegel tent and was a fixture on the San Francisco waterfront for over a decade. The tent provides a big top setting for live music, comedy, and acrobatic entertainment. It is a unique hybrid of comedy, theater, music, and dining that is part circus and part cabaret. It combines improvisational comedy, vaudeville revue, music, dance, and cirque into an engaging performance. It operates venues in Seattle and Chicago and operated a venue in San Francisco until 2011.

Teatro and the Port entered into a lease in 1999 for Teatro to use a portion of Piers 27 and 29 for its dinner theater and cabaret operations (the "Theater Lease"). The Theater Lease was amended a few times; it expired in 2005 and continued on a holdover month-to-month basis until 2011. To accommodate the 34th America's Cup and the construction of the new James R. Herman Cruise Terminal at Pier 27, the Port and Teatro mutually agreed to terminate the Theater Lease and identified a portion of SWL

⁶ Highest and best use is defined as the use allowed under current zoning which returns the highest land value.

324 as a potential relocation site. If Teatro satisfied certain pre-conditions (such as project design compatible with the Northeast Waterfront Historic District and completion of environmental review, among others), the parties would enter into a new lease for a portion of SWL 324.

Sole Source and ENA: On May 5, 2015, the Board of Supervisors adopted Resolution No. 170-15⁷ and found that the TZK's proposal is exempt from competitive bidding requirements of Administrative Code Section 2.6-1. Thereafter, on September 8, 2015, the Port Commission adopted Resolution No. 15-31 authorizing Port staff to enter into an ENA with TZK to pursue the Development.

Project Sponsor: Teatro and Kenwood Investments formed TZK to undertake the Development. At approval of the ENA in 2015, TZK was comprised of two-member companies: Kenwood Investments No. 6, LLC, a California limited liability company ("KWI #6") established by Kenwood Investments, and TZZ, LLC, a Washington limited liability company ("TZZ") established by Teatro ZinZanni. In 2018, one of the founding members of TZK informed Port staff that PresidioCo Holdings, LLC ("Presidio") was admitted into TZK's membership. This admission does not constitute a "Transfer" under the ENA that required Port's prior consent. TZK shared with Port staff that it sought to admit Presidio to increase TZK's hotel development capacity and ability to raise additional capital. In particular, the partnership is focused on successfully raising capital for the somewhat unusual combination hotel and dinner theater operating model, securing affiliation with one of the major hospitality brands, reservation systems, and setting minimum management standards to meet capital requirements.

TZK provided Port staff information on Presidio's financial wherewithal and experience, particularly with hotel development capitalization, management, and operation. Presidio is reported to have owned and operated, and continues to own and operate, independent boutique properties, full-service conference center hotels, full-service resort hotels as well as select- and limited-service hospitality properties in different locations across the United States. Presidio has demonstrated that it has both the experience and financial standing to assist TZK in achieving the ultimate goal of a new home for Teatro ZinZanni in San Francisco and a successful hotel on the Site. With Presidio on board, TZK improved the hotel's interior layout to increase efficiency and save costs, identified possible capital sources to invest in the development, and advanced discussions with a franchisor that is expected to be a good fit for this hotel with its unique attributes.

⁷ <https://sfbos.org/ftp/uploadedfiles/bdsupvrs/resolutions15/r0170-15.pdf>

DISCUSSION

Project Components

The Proposed Development: A summary of the Development is provided in Table 1 in the early part of this Memorandum. The three key elements of the development are described below.

1. The Entertainment Venue

The entertainment venue is proposed to include approximately 29,570 gross square feet to house the historic Spiegeltent and seating for the venue, kitchen, bar, bathrooms, welcoming areas, ticket booth, merchandise area, shared indoor public space, and back-of-house activities. This venue would be located inside a clear gazebo-like structure, constructed of glass and metal with steel or metal supports, at the northern end of the site adjacent to the public park. The glass gazebo-like structure would be clear to allow pedestrians walking past the structure to view the historic Spiegeltent and see through the backstage area during daylight hours. The structure's roofline would be glass with metal. This venue is expected to accommodate a maximum of 285 patrons and to be in use daily, with live shows performed several times each week from approximately 6:30 pm to midnight, and would have operational staff on site from 8:00 am, for pre-show cleaning, set-up, and other necessary back-of-the house activities, through 2:00 am when the final clean up would be completed.

This entertainment venue is planned to include a small outdoor raised stage area located at the south end of the public park, attached to the back-of-house portion of the entertainment venue. Operable doors on the northern side of the entertainment venue structure would open onto the outdoor stage area. The operable doors would remain closed during regularly scheduled performances. The outdoor raised stage that would be in the public park could be programmed and used for small-scale community and neighborhood events; small-scale theater performances by local schools and community groups; and other neighborhood events, such as weekly exercise classes or a children's dance or singing performance. The public park is only 14,000 square feet and has limited capacity because of its size, which would restrict the size of events that could take place. Activities that would occur in the public park would allow for passage of pedestrian traffic through the site.

2. The Hotel

The hotel component is proposed to include a total of approximately 118,000 gross square feet, of which 14,560 gross square feet would be at ground level for entry and drop-off areas for guests, the front desk, a concierge, gathering space, retail, restaurant or café uses, back-of-house uses, and elevator and stairwell access. The hotel would also include a restaurant and bar. Operating hours for the restaurant or cafe would be approximately 6 a.m. to midnight, 7 days a week. The bar portion of the hotel would be permitted to remain open until 2 a.m., although it is anticipated to close earlier on weekdays. The restaurant and bar are proposed to include an outdoor patio along the eastern side of the building, along The Embarcadero. Above the ground-level floor, the

proposed project would include approximately three floors of hotel uses totaling 95,560 gross square feet and 192 hotel guest rooms. The hotel would also include an approximately 3,970 gross square foot rooftop deck, serving food and beverages from the hotel's bar and restaurant or cafe services, for use by hotel guests only. The roof would include screens for screening rooftop mechanical devices from the street and surrounding areas, as well as low-impact-design stormwater facilities and wind-protected outdoor spaces for hotel guests.

3. The Public Park

The proposed Development includes an approximately 14,000-gsf public park in the northern portion of the Site parallel to The Embarcadero, as depicted in **Exhibit "B,"** Proposed Project schematic Drawings. The park would consist of both landscaping and hardscape, with benches and lighting in and around the park. The park would include pathways for pedestrian access from The Embarcadero through to Vallejo and Davis streets. The public park would provide space for a variety of informal activities, such as family and community picnics, and gatherings, neighborhood yoga and tai chi classes, programming for toddlers and young children, educational events for elementary school students, and pedestrian strolling, and sitting. The park would also include view mounds to allow visitors to "get up to see the bay," as well as moveable and permanent seating and tables, wayfaring, lighting, historic signage, and public art features. Additionally, the park would include iconic statuary art at the intersection of Davis and Vallejo streets, marking the park as an important destination along the waterfront.

The public park would be used for informal passive activities on weekdays and weekends during normal business hours, subject to lease provision on compliance with the Port's Good Neighbor Standards. The park may also include temporary events, approximately one time per week, under the supervision of the Developer, in accordance with Lease terms⁸ and the City's event policies. Activities could involve hosting a food truck gathering, lunchtime music or lecture session, or activities related to local festivals or events in the vicinity or other parts of San Francisco, such as Sunday Streets. The public park may also be used for private events related to the theater or hotel. For example, if a wedding were held at the hotel, guests could enjoy drinks outside before going inside for the celebration. Sound would be amplified only with the appropriate approvals, obtained in advance from the applicable City department(s).

TZK is responsible for maintenance of the park, including trash removal and recycling systems, and security to keep the park clean and safe. A portion of the park area will provide the San Francisco Fire Department with a new emergency-vehicle access point between The Embarcadero and Vallejo Street, which area will be closed to other vehicles with new movable bollards where none exist today.

⁸ The Guidelines & Application for Special Events, <https://sfport.com/special-events-port>, set forth the applicable regulations governing special events at Port property.

Vehicle Parking/Loading/Bicycle Parking

The Development is proposed to provide zero off-street vehicle parking onsite. Instead, parking is proposed to be provided through offsite parking and valet services. The proposed valet service would park hotel guests' vehicles at nearby off-street parking facilities. Several existing parking lots and parking structures are located near the Site. TZK is planning to send early and regular communication to patrons to encourage taking public transit, cabs, or ridesharing services to the hotel and entertainment venue and would inform them of the many off-site, self-parking locations close to the theater, such as parking at 847 Front Street, Pier 19, 1000 Front Street, and One Maritime Plaza.

A new 80-foot-long curbside passenger loading space ("white curb") along the northern side of Broadway is being proposed to provide ingress and egress into the site for hotel guests, theater guests, and other patrons. The passenger loading space would be located adjacent to the hotel lobby entrance into the building and would be used in a curbside valet operation for hotel guests, theater guests, and other patrons and ride sharing drop-off.

A loading zone for deliveries and services is proposed along the project frontage on the eastern side of Davis Street. The loading dock and service area would be used exclusively for deliveries, service providers including waste collection, and recycling and will include an audible and visual signal to alert pedestrians to truck movement at the dock.

Approximately 63 bicycle parking spaces, consisting of 20 *class I* bicycle parking spaces and 43 *class II* bicycle parking spaces are proposed for the Development. Access to the class I bicycle parking spaces would be via a secured door into the building along Davis Street and are reserved for use by hotel and other employees only.

The estimated Uses and Sources of Funds for the development are provided in Table 2.

Table 2 – Estimated Total Uses and Sources of Funds

<u>Total Uses of Funds</u>	<u>Amounts</u>
<u>Land Cost – (With a Ground Lease, there is no upfront land cost)</u>	\$0
<u>Total Hard Cost:</u>	\$89,000,000
<u>Total Soft Cost:</u>	\$53,000,000
<u>Total Development Cost:</u>	<u>\$142,000,000</u>
<u>Total Sources of Funds:</u>	

<u>Senior Loan + PACE Debt:</u>	\$85,500,000
Preferred Equity	\$30,000,000
Marriott & Interstate Key Money	\$2,500,000
Third Party/Sponsor Equity	\$25,000,000
Total Sources of Funds	<u>\$142,000,000</u>

Updated Development Schematics are attached as **Exhibit “B,” Proposed Project Drawings.**

Land Use and Regulatory Approvals

Environmental Review under California Environmental Quality Act

On December 30, 2015, the Developer filed Environmental Review Application for the Development with the City Planning Department. The Planning Department prepared a Draft Initial Study/Preliminary Mitigated Negative Declaration (“IS/PMND”) for the Development and published it for public review on October 17, 2018. The IS/PMND was available for public comment until November 19, 2018. No appeal of the IS/PMND was filed and the Mitigated Negative Declaration became final on December 21, 2018.

On December 21, 2018, the Planning Department approved the issuance of the Final Mitigated Negative Declaration (“FMND”) as prepared by the Planning Department in compliance with the California Environmental Quality Act (“CEQA”, CEQA Guidelines (Title 14 California Code of Regulations Sections 15000 et seq.), and San Francisco Administrative Code Chapter 31 (“Chapter 31”). The FMND included mitigation measures to reduce any potentially significant environmental effects to a less-than-significant level.

In Resolution No. 20443, the Planning Commission, having reviewed the FMND, concurred with the Planning Department’s determination that, pursuant to the FMND, including its mitigation measures, the Project could not have a significant impact on the environment. Furthermore, in Motion No. 20444, the Planning Commission made the same findings, and more specifically found that, based on review and consideration of the FMND and the record as a whole, there is no substantial evidence that the Project will have a significant effect on the environment with the adoption of the mitigation measures contained in the Mitigation Monitoring and Reporting Program (“MMRP”). A copy of the MMRP is attached as **Exhibit “C” Mitigation Monitoring and Reporting Program.** The Planning Commission adopted the FMND and the MMRP and included all required mitigation measures identified in the FMND and contained in the MMRP as conditions of approval.

The proposed Port Commission consideration and approval of the LDDA and Lease in this Memorandum were anticipated as part of the FMND and there have been no substantial changes to the Development that will require major revisions of the FMND due to the involvement of new significant environmental effects or a substantial increase

in the severity of previously identified significant effects. Port Commission consideration and approval being requested involves no substantial changes with respect to the circumstances under which the Development was approved by the Planning Commission that will require major revisions of the FMND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects. There is no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the FMND was adopted, has become available which indicates that: (A) the Development will have significant effects not discussed in the FMND, (B) significant environmental effects will be substantially more severe than shown in the FMND, (C) mitigation measures or alternatives found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the Development, or (D) mitigation measures or alternatives which are considerably different from those in the FMND would substantially reduce one or more significant effects on the environment.

Architectural and Urban Design Review for Compliance with Historic District

The Project's architecture and urban design have been reviewed by the Architectural Review Committee ("ARC") of the Historic Preservation Commission ("HPC") and the Waterfront Design Advisory Committee ("WDAC") for compatibility with the Historic District and both ARC and WDAC found the overall design acceptable and provided a few comments. On March 6, 2019, HPC adopted Motion No. 0370 finding that the proposed Development is consistent with Article 10 of the Planning Code and the Secretary of the Interior's Standards for Rehabilitation in conformance with the architectural plans filed with the Planning Department subject to the conditions and findings listed in its Motion No. 0370.

Conditional Use Authorization and Street Vacation

On May 2, 2019, the Planning Commission conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Authorization Application and General Plan Referral Nos. 2015-016326 CUA and 2016- 011011GPR. At that hearing, pursuant to Resolution No. 20443, the Planning Commission made Findings of Consistency with the General Plan and with the Priority Policies of Planning Code Section 101.1 for the street vacations for the Project, pursuant to Section 4.105 of the City Charter and Section 2A.53 of the Administrative Code. In addition, pursuant to Motion No. 20444, the Planning Commission granted a Conditional Use Authorization for the Development pursuant to Planning Code Sections 210.1, 240.3 and 303 to allow a hotel use within the C-2 Zoning District, the Waterfront Special Use District No. 3, and a 40-X Height and Bulk District, subject to the conditions and findings listed in the Motion No. 20444.

Current Status of the ENA

ENA Key Requirements and Performance Schedule:

TZK has completed the key tasks it is required to complete under the ENA before seeking approval of the Transaction Documents: it obtained endorsement of Term Sheet by Port and the Board, reviewed the Site's suitability for the proposed Development, conducted community outreach to stakeholders to gather input and keep community members informed, completed environmental review required under CEQA and Chapter 31; and completed architectural and urban design review by the Planning Department, the Waterfront Design Advisory Committee, and the City Historic Preservation Commission which has found the Development's urban and architectural design compatible with the design requirements for the Northeast Historic District. TZK has received the required Conditional Use authorization from the City Planning Commission. TZK is in full compliance with the ENA and the ENA will expire on November 4, 2019.

Consideration and approval of the Lease and other matters related to the Development is the only remaining key task TZK must complete under the ENA before it expires on November 4, 2019. Port staff and TZK want to be prepared for the additional time that may be needed in case it takes longer than the 30 to 60 days anticipated to seek Board of Supervisors' approval of the lease. As noted above, Port staff proposes that the Port Commission authorize the Executive Director to extend the ENA up to February 3, 2020 without payment of additional extension fees, solely in the event the Board of Supervisors does not take action on the matter before November 4, 2019.

Proposed Transaction Documents

The transaction documents and its key terms are summarized below. Attached as **Exhibit "D,"** is a Summary of the Key Business Terms from the Term Sheet annotated to indicate changes to the terms since endorsement by the Port Commission and the Board of Supervisors.

Summary of Proposed Terms for the LDDA

The LDDA will provide TZK with a binding agreement confirming the Port's intention to lease the Site to TZK subject to the conditions it must satisfy before the Port will allow escrow to close and Site possession to transfer to TZK. The key terms of the LDDA include:

1. **The Premises or Site to be Leased:** The site to be leased consists of four parcels, SWLs 323 and 324 and the two abutting unimproved portions of right-of-way parcels ("Paper Streets"), with a combined land area of approximately 59,750 square feet and located on the west side of The Embarcadero at Vallejo Street. It will be leased in "As Is" conditions.

2. **Development Program:** This is described earlier in this Memorandum. *TZK has further vetted and updated the Development as of July 2018. Please refer to **Table 1, Development Summary**, for more detail.*
3. **Estimated Total Development Cost and Sources of Funding:** TZK is responsible for funding the Development estimated to cost approximately \$142 million. TZK is required to provide performance and payment bonds for the Development as part of Port's risk mitigation measures. Funding sources are identified in **Table 2, Total Uses and Sources of Funds** in the earlier part of this Memorandum.
4. **Term:** a 12-month term (with four three-month extensions options with fees) to close escrow and have Site possession transferred to TZK.
5. **Time to Complete Construction:** Complete construction within 24 months after lease commencement subject to four three-month extension options with \$25,000 fee per extension
6. **Port Transaction Cost:** Pay Port Transaction Cost during the LDDA Period, is capped at \$300,000. The foregoing cap is removed if there is litigation.
7. **Liquidated Damages:** Pay Liquidated Damages for delay in completing construction on schedule.
8. **Force Majeure:** Force Majeure or time credit for a delay that is beyond TZK's control; the time credit is subject to Port's prior consent. Examples of such delays include an occurrence of earthquake, terrorist act, nonparty litigation, etc. that prevents TZK from performing on time.
9. **Conditions to Close Escrow and Enter into the Lease Include, Among Others:**
 - a. TZK must have completed all required predevelopment tasks and is ready to close escrow.
 - b. TZK must execute all applicable CMD and OEWD requirements, including Local Hiring Program and LBEs percentage participation target.
 - c. Port staff must have reviewed and approved the Developer's financing plan, including lenders' commitment letters, and balanced sources and uses of funds, and simultaneous closing of the construction loan(s).
 - d. Port must have reviewed and approved the Developer's updated scope of development and construction documents.
 - e. TZK must have received all required approvals required to start construction.
 - f. TZK must not be in default under the LDDA.
10. **City and Other Standard Requirements:** The LDDA will include all applicable Port and City requirements (e.g. insurance requirements, non-discrimination requirements, etc.).

11. Key Exhibits to the LDDA:

- a. Scope of Development. The Scope of Development sets forth the improvements that are to be constructed on the Site by the Developer.
- b. Schedule of Performance. The Schedule of Performance sets forth the deadlines by which the parties are required to submit or approve required documents prior to close of escrow. All deadlines are subject to force majeure.
- c. Schematic Drawings. Schematic Drawings consisting of site plans and elevations approved by the Port Commission.
- d. Development Budget. The Development Budget for the Project, showing a total development cost of approximately \$142,000,000.
- e. Form of ground lease. The form of the Lease includes the terms described in the next section.

Summary of Proposed Lease Terms

The purpose of the Lease is to set forth all of the terms and conditions on which the Port agrees to lease the Site to TZK and TZK agrees to lease the Site from the Port, including the respective duties and obligations of the Port, as landlord, and TZK, as tenant. The Lease was negotiated based on the Term Sheet endorsed in 2016 by the Port Commission and the Board of Supervisors. Some of the terms of the Term Sheet incorporated into the Lease have been updated by Port staff and TZK representatives to address the current project circumstances and the current market conditions.

Attached as **Exhibit "C,"** is a **Summary of the Key Business Terms from the Term Sheet** annotated to indicate updates to the terms.

1. **The Premises or Site:** Comprised of four parcels, SWLs 323 and 324, and the two Paper Streets, for a combined land area of approximately 59,750 square feet. It will be leased in "As Is" condition.
2. **Development Program:** This is described earlier in the Staff Report. TZK has further vetted and updated the Development as of July 2018. *Please refer to Table 1, Development Summary, for more detail.*
3. **Total Development Cost and Sources of Funding:** TZK is responsible for funding the Development estimated to cost approximately \$142 million. TZK is responsible for paying all the Port's transaction costs and for providing performance and payment bonds for the Development. A Development Budget with projected Total Uses and Sources of the Funds will be attached to the Lease to document the estimated budget, debt and equity amounts.
4. **Complete Construction:** TZK must complete construction within 24 months after lease commencement, subject to four three-month extension options with a \$25,000 fee for each extension.

5. **Liquidated Damages for Failure to Timely Complete Construction:** If TZK fails to complete construction within the 36-month period (24-month construction period plus the four three-month extension periods), it must pay the Port \$1,350 for each day it has yet to complete construction. This \$1,350 per day is based on the average rent per day the Port will lose for the development failing to start operations on schedule.
6. **Lease Term:** 50 years initial term, plus one 16-year extension option. The 16-year extension is subject to TZK remaining as a "tenant in good standing" and having exercised the extension option within two years prior to the end of the initial term. This term is based on the Developer's need to attract required capital investments, amortize the capital investment, and the Port's need to review the lease and development 48 years from lease commencement date based on the then-existing conditions including sea level rise.
7. **Construction Period Rent:** The Minimum Base Rent of **\$1,000,000** (escalated from the \$890,000 set in the Term Sheet) is set for Lease Years 1 and 2, when the development's improvements are being constructed. This minimum base rent is based on maintaining the current stream of income the Port is receiving from the Site while also recognizing that the Developer is not earning any revenue from the development during this period.
8. **Operation Period Rent: Minimum Base Rent plus Percentage Rent** as defined below. The Developer will pay the Port the greater of the Minimum Base Rent or the Percentage Rent. The exact amount of percentage rent due to the Port will be confirmed at the end of the hotel operation's fiscal year when the required supporting financial reports are prepared. The Operation Period Minimum Base Rent has been escalated to account for the passage of time since the Term Sheet was endorsed.
9. **Minimum Base Rent for the first two years of the Operation Period:** The Minimum Base Rent for Lease years 3 and 4 is set at **\$1,007,000 per year** (escalated from the \$915,000 set in the Term Sheet) to allow the operation to address (a) unexpected or greater than expected start-up costs, (b) greater than expected operational expenses, and (c) lower-than-projected revenues because the new hotel has yet to establish a robust customer base or achieve the requisite market share. If the hotel operations do well by attaining 80% occupancy in either of these two years, TZK will pay the Port the applicable Percentage Rent, currently estimated at between \$1.363 million and \$1.534 million.
10. **Minimum Base Rent from third through fifth years of Operation Period:** For Lease Years 5 through 7 (*Operation Period Years 3 through 5*), the Minimum Base Rent starts at **\$1,471,000** (escalated from the \$1,366,000 set in the Term Sheet) and escalates annually by the annual increase in the Consumer Price Index for the Bay Area ("CPI"), with a minimum increase of 2.5% and a maximum increase of 3.5% annually until reset in the 11th year of the Operation Period. This

arrangement sets a floor to protect the minimum base rent the Port will earn from the Site regardless of how the development is performing financially. It also provides protection for the Developer from larger than budgeted rental spikes.

11. **Minimum Base Rent Reset:** At the end of every 10-year interval of the Lease Term Operation Period, (beginning in the 13th Lease Year, Hotel Operation Period Year 11), the Minimum Base Rent will be reset to **the greater** of (a) then existing CPI-adjusted Minimum Base Rent and (b) 65% of the average of the five prior years percentage rents actually paid to the Port. This market reset recognizes the cyclical rental amounts the development can support while ensuring that the minimum base rent stays above the prior year minimum base rent to protect the Port against inflation.

12. **Percentage Rent:**

During Lease Years 3 to 7: (Operation Period Years 1 to 5)

The amount by which 3.5% of the Annual Gross Revenue from all of the Hotel operations plus 3.5% of the Annual Gross Revenue from all of the Dinner-Theater Operations (Teatro ZinZanni's Operations on the Site) exceeds Minimum Base Rent.

During Lease Years 8 to 12 (Operation Period Years 6 to 10)

The amount by which 4.5% of the Annual Gross Revenue from all of the Hotel operations plus 3.5% of the Annual Gross Revenue from all of the Dinner-Theater Operations exceeds Minimum Base Rent.

During Lease Years 13 to 22: (Operation Period Years 11 through 20)

The amount by which 5.5% of the Annual Gross Revenue from all of the Hotel operations plus 3.5% of the Annual Gross Revenue from all of the Dinner-Theater Operations exceeds Minimum Base Rent.

During Lease Years 23 to 50: (Operation Period Years 21 through 48 and Extension Period Years 49 to 64)

The amount by which 6.5% of the Annual Gross Revenue from all of the Hotel operations plus 3.5% of the Annual Gross Revenue from all of the Dinner-Theater Operations exceeds Minimum Base Rent.

13. **Participation Rent:**

- a. During TZK's Tenancy- the Original Tenant's Tenancy
- i. **During Period of No Refinance or Sale:** After TZK has earned 20% IRR on actual equity invested in the project (up to a cap, described below), surplus cash flow shall be shared at (i) 80/20% (TZK/Port) until TZK receives a 25% IRR and then (ii) 50/50% (TZK/Port).
- ii. **During Period of Refinance, Assignment, or Sale:** After TZK has earned 20% IRR on actual equity invested in the project (up to

a cap, described below), net refinancing or sale proceeds shall be shared at (i) 80/20% (TZK/Port) until TZK receives a 25% IRR and then (ii) 50/50% (TZK/Port).

- b. During Subsequent Tenant's Tenancy
 - i. **During Period of No Refinance or Sale:** After the Subsequent Tenant has earned 16% IRR on actual equity invested in project, surplus cash flow shall be shared at (i) 80/20% (Subsequent Tenant/Port) until Subsequent Tenant receives an 18% IRR and then (ii) 50/50% (Subsequent Tenant/Port).
 - ii. **During Period of Refinance, Assignment, or Sale:** After Subsequent Tenant has earned 16% IRR on actual equity invested in project, net refinancing or sale proceeds shall be shared at (i) 80%/20% (Subsequent Tenant/Port) until Subsequent Tenant receives an 18% IRR and then (ii) 50/50% (Subsequent Tenant/Port).

14. Limits on TZK, Original Tenant, Equity Return and Repayment:

TZK Predevelopment and Construction Equity – Equity Invested Prior to Construction Completion:

TZK is limited to earning 20% IRR on the actual amount of equity invested but not to exceed \$60 million.

15. Limits on TZK, Original Tenant, and Subsequent Tenants, Equity Return and Repayment Once Hotel is Operational:

- a. **Tenant Operations Equity - Equity Invested During Operations Period:**
To provide for funds that may be needed to sustain the hotel operations when there is insufficient operation revenue to cover needed hotel capital or operational costs, Tenant is allowed to invest additional equity for capital improvements and operations (under certain conditions) as follows:
 - *Capital Improvements:* Equity invested for defined capital improvements earns 11% IRR; and
 - *Operations:* Equity invested for operations to avoid loan default (i.e., debt paydown, debt service shortfall, etc.) or for existing or potential operating shortfalls (i.e., when revenues are insufficient to cover operating expenses due to a demonstrated market-wide downturn) is allowed to earn interest calculated on a simple return basis equal to the lesser of (i) the then interest rate on the then outstanding senior loan on the project, or (ii) 10%. Operations Equity is subject to Port's reasonable consent and approval based on TZK's written notice referencing a market-wide downturn with evidence showing a decrease of 5% or more in San Francisco hotel market Hotel Revenue per Available Rooms ("RevPAR") over the

preceding 12-month period. RevPAR is one of the key leading indicators, or metrics, of the hospitality industry's economic health.

- d. Cap on Amount of Equity. The equity invested prior to construction completion is limited to \$60 million and the equity invested during the operation phase is limited to up to \$20 million (inflated at 10-year intervals over the 50-year initial lease term).
16. **Competent Hotel Management Required:** TZK's final selection of a hotel management company or operator is subject to prior review and approval by the Port. The hotel manager must have a minimum number of years of hotel management experience and will be subject to operation standards to maintain.
17. **Sublease:** All subleases are subject to Port's prior consent.
18. **Leasehold Financing:** TZK will have the right to obtain project financing from bona fide institutional lenders secured by its leasehold interest.
19. **No Subordination of Port's Lease Interest:** TZK is not allowed to place any lien on Port's ownership of the Site.
20. **Public Open Space:** TZK is responsible for funding the construction, operation, and maintenance of the public open space during the lease term.
21. **Sea Level Rise:** The Lease will include provisions addressing sea level rise. TZK is required to work with the Port in anticipation of this issue, including implementing flood protection measures determined to be necessary by the Chief Harbor Engineer to protect the building and public health and safety.
22. **City and Other Standard Lease Requirements:** The applicable City and Port requirements are incorporated into the LDDA and Lease, including Non-Discrimination in Contracts and Benefits, First Source Hiring Program, and Local Business Enterprises participation as provided under the applicable City Ordinances. Port staff has coordinated with TZK, the City Contract Monitoring Division (CMD), and the City Office of Economic and Workforce Development (OEWD) to ensure that local business enterprises ("LBEs") and local residents participate in this development.

CMD, OEWD and TZK have agreed conceptually on the following for this Development: (A) LBE Goals - 17% San Francisco Small and Micro LBE subcontractor goal for non-construction, construction, and operations; and (B) Local Hire Policy - Mandatory Local Hire policy for construction – 30% by trade and First Source Hiring Program for end use jobs
23. **Other Requirements.** The LDDA and the Lease also include all of the applicable Port and City requirements. They cover such topics as insurance requirements,

indemnity and release, insurance, hazardous materials, casualty, mortgages, maintenance and repair.

24. **Reversion Interest:** Tenant will own the improvements during Lease term and at the end of the term, at Port's discretion, the Site and its improvements revert to Port's sole ownership or the Port may require that improvements be removed at TZK's sole expense.

Analysis of Proposed Development and Business Terms

The following updated analysis is based on the analyses provided in the prior staff reports on this Development, progress made to date on entitlements, and Port-TZK lease negotiations. Economic expectations and market conditions in 2016, when the Term Sheet was endorsed, have changed and continue to change. As such, in late 2018, TZK representatives reported that both the debt and equity markets are requiring higher yields because of changes in the capital market; including higher interest rates, tighter underwriting, higher construction costs, and the project profile involving a ground lease, a dinner-theater element, and maintenance of a public park. Therefore, TZK requested that their 18% IRR on the equity invested in the Development be increased to 20% IRR.

Port staff reviewed the request against reports on market trends and requested HVS, the Port's hospitality consultant on this Development, to research and survey hotel investors about the trend on returns on capital and equity invested in similar hotels. (HVS stands for Hospitality Valuation and Services and it is a division of TS Worldwide.) HVS confirmed that hotel investors are demanding higher yields and that TZK's request is within the reasonable range of investors' yield expectations.

As anticipated in the April 26, 2016 staff report requesting endorsement of the Term Sheet, TZK submitted to Port staff updated proforma reflecting changes to the terms listed in the Term Sheet. Port staff and HVS have reviewed and analyzed the updated proforma, including projected total development costs, revenue and expenses, and estimated returns, and the underlying assumptions supporting the financial projections. Port staff and HVS have also compared the proposed lease terms to terms in comparable leases and other market metrics. The below analysis section of this Memorandum assesses the impact of proposed changes to the terms and conditions listed in the Term Sheet.

Summary Conclusion of the Feasibility of the Proposed Development.

This mixed-use Development that includes a boutique hotel (defined as such due to its scale and style); dinner-theater component that will be operated by Teatro ZinZanni; and a waterfront public open space that will be adjacent to The Embarcadero, remains a creative proposal that leverages the Site's attributes. It represents the highest and best use of the Site, based on the City's appraisal of the Site. The underlying fundamentals of San Francisco's hotel marketplace - e.g., strong demand driven by the city's status as one of the world's most favored travel destinations, high-hotel occupancy (currently

averaging 80% which exceeds the national average of 66.5%, and constrained supply of hotel rooms – combined with the recent completion of the Moscone Center Expansion drawing more conventions to the City, the Chase Center Arena drawing NBA fans to the City, and Site's waterfront location, all clearly provide support for the proposal.

The Development continues to be deemed financially feasible with the recent revisions made to the development's floor layout concept and the related development assumptions. While the estimated total development cost has increased from \$124 million to \$142 million, an increase of about 15%; this increase has been offset with increase in projected occupancy, while the project hotel room rates have been decreased to reflect the reduction of the hotel's average room size. This reduction has been offset with the increased in the hotel's total room count. The continuing feasibility of the Development remains based on several key assumptions. These assumptions include that the current estimated construction costs will remain within or near to the projected total development cost plus estimated contingency; that there will not be significant building permit delays; that the real estate capital market will remain stable with no spikes in interest rates or dramatic change in commercial loan underwriting, and that the economy in general will remain stable.

The proposed lease payment terms are set to ensure that the minimum base rent to the Port exceeds the current revenues generated by the surface parking lot. **Figures 1 and 2** illustrate a 20-year projection of lease revenues to the Port from:

- **Existing use.** Surface parking operations (based on the last four years of operations and five-year revenue projections from Port staff);
- **Proposed hotel development, base rent.** TZK minimum base rent as escalated to date (assuming no market resets, as described in (11), above).
- **Proposed hotel development, projected rent.** TZK projected rent to the Port (based on hotel revenue projections).

As shown, the existing use is projected to generate \$13.95 million over next 20 years (in net present terms) compared to the guaranteed minimum base rent expected to be included in the proposed lease to generate \$17.7 million and the projected rent to the Port of \$26.5 million from percentage and participation rents expected to be included in the proposed lease. Note that a longer projection (e.g., through years 50 or 66) would show an even greater divide between the financial outcomes to the Port from the continued use of the land as a surface parking lot compared to the proposed hotel development.

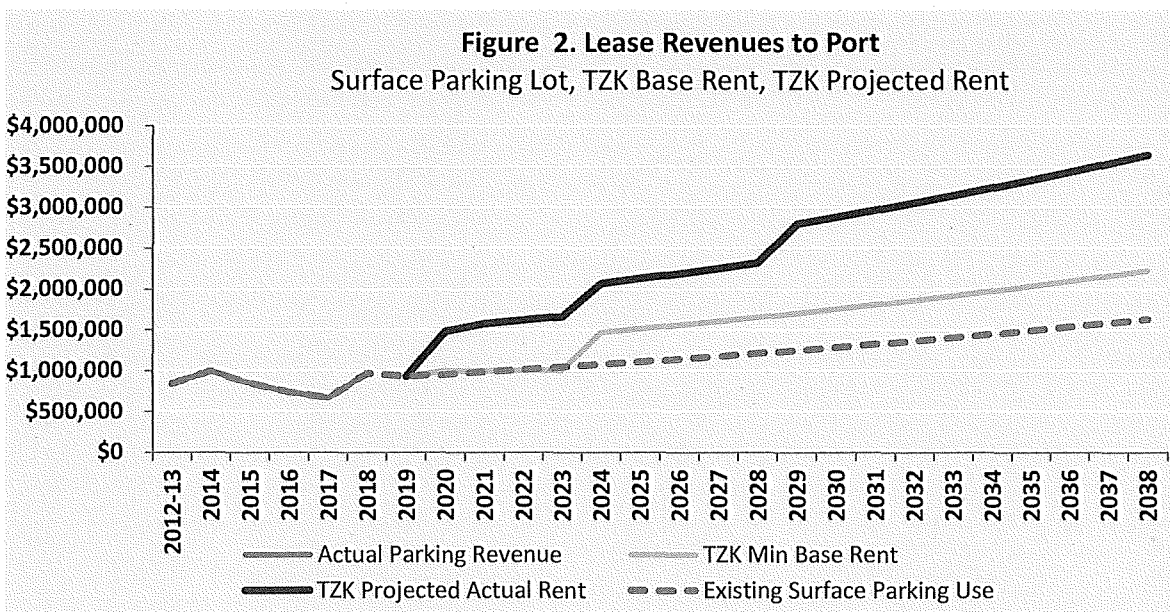
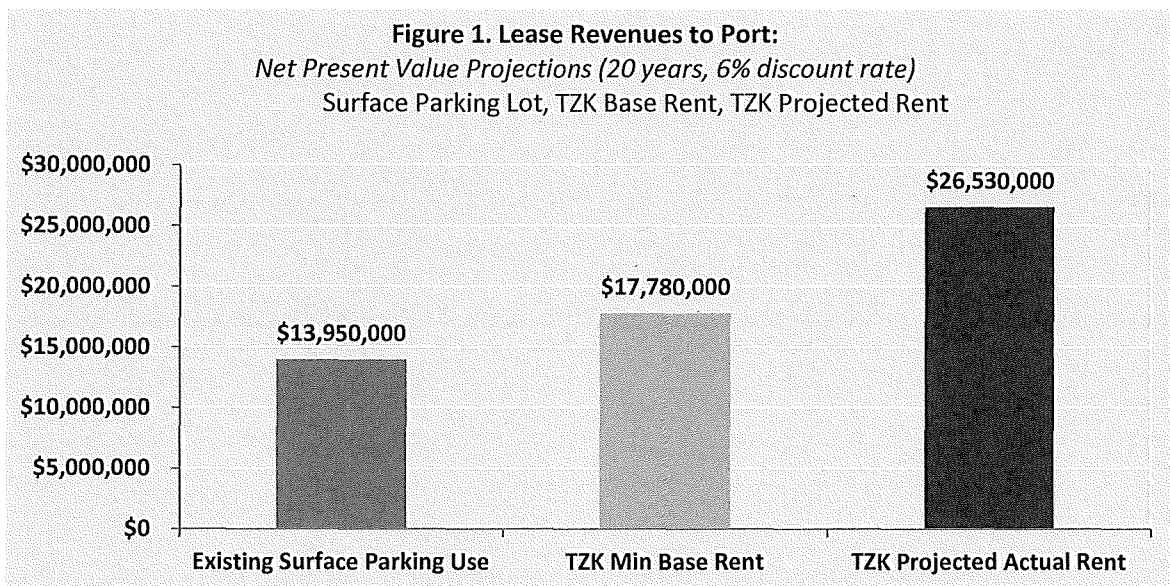


Table 3 presents projected gross revenues for the hotel operations (from lodging, food and beverages and miscellaneous operations), projected gross revenues for Teatro's dinner-theater operations (from ticket sales, food and beverages and miscellaneous operations), minimum base rents to the Port with annual escalations, percentage rent, and the expected high and low annual net rent to the Port under the lease based on the negotiated terms. Rows 16 and 30 in **Table 3** presents net projected annual rent to the Port starting from construction period at \$1 million per year and gradually increasing to \$2.31 million in Operational Year 10 and \$3.64 million in Operational Year 20.

Focusing only on negotiated minimum base rents, projected (minimum base) rent starts from \$1 million (Row 4) and increases through annual escalations and market resets to approximately \$2.431 million per year in the 20th year of the development operation phase (Row 20). Percentage rent is projected to generate \$1.577 million per year from Operational Year 3 (Row 13) and rises through a series of preset percentage rate increase, from 3.5% against all gross revenues to 4.5% and 5.5% against hotel gross revenue plus 3.5% against the dinner-theater gross revenue to approximately \$3.64 million per year in the 20th year of the development operation (Row 30). Percentage rent increases once more during the lease term, to 6.5% against hotel gross revenue plus the 3.5% against the diner-theater gross revenue, in the 21st year of the development operation phase.

Projected gross revenue for the hotel and dinner-theater is forecasted at \$38.968 million for the first year of operations, increasing to \$54.827 million by the 10th year of operations, and continued increases to approximately \$73.462 million by the 20th year of operations. These projections have been re-verified and reconfirmed as feasible by HVS and Port staff due diligence. Assuming the current capital market assumptions continue to hold, the current forecasted revenues support the estimated \$60 million of equity and \$82 million of debt proposed to fund the \$142 million of estimated total development cost.

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Table 3 - Projected Revenues based on Negotiations for the Lease Years 1 to 22
Projected Lease revenues for the Port (\$000s)

		Entitlement Period								Construction Period		Operation Period									
												Stabilization Period					Full Operation Period				
												Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Base Year	Factor	2015	2016	2017	2018	2019	2020	2021				2022	2023	2024	2025	2026	2027	2028	2029	2030	2031
1 Base Rent		\$1,100	\$1,133	\$1,167	\$1,202	\$1,238	\$1,275	\$1,313				\$1,353	\$1,393	\$1,471	\$1,515	\$1,561	\$1,607	\$1,656	\$1,705	\$1,756	\$1,809
2 Base Rent Annual Escalation	3.00%																				
3 Applicable Minimum Base Rent		\$1,100	\$1,133	\$1,167	\$1,202	\$1,238	\$1,275	\$1,313				\$1,353	\$1,393	\$1,471	\$1,515	\$1,561	\$1,607	\$1,656	\$1,705	\$1,756	\$1,809
4 Negotiated Minimum Base Rent							\$1,000	\$1,000				\$1,007	\$1,007	\$1,471	\$1,515	\$1,561	\$1,607	\$1,656	\$1,705	\$1,756	\$1,809
5 Compare: Baseline Row 2 to TZK Negotiated Minimum Base Row 4							78%	76%				74%	72%	100%	100%	100%	100%	100%	100%	100%	100%
6 Gross Hotel Revenue	3.00%											\$27,506	\$30,673	\$32,882	\$33,794	\$34,525	\$35,542	\$36,689	\$37,667	\$38,778	\$39,922
7 Gross Theater Revenue	3.00%											\$11,462	\$11,820	\$12,185	\$12,568	\$12,941	\$13,311	\$13,692	\$14,085	\$14,489	\$14,905
8 Combined Revenues												\$38,968	\$42,494	\$45,068	\$46,361	\$47,466	\$48,852	\$50,381	\$51,752	\$53,267	\$54,827
9 Negotiated Percentage Rent																					
10 From Hotel Operations Years 1 through 5	3.50%											\$963	\$1,074	\$1,151	\$1,183	\$1,208					
11 From Hotel Operations Years 6 through 10	4.50%																\$1,599	\$1,651	\$1,695	\$1,745	\$1,796
12 From Theater Operations	3.50%											\$401	\$414	\$426	\$440	\$453	\$466	\$479	\$493	\$507	\$522
13 Total Percentage Rent												\$1,364	\$1,487	\$1,577	\$1,623	\$1,661	\$2,065	\$2,130	\$2,188	\$2,252	\$2,318
14 Minimum Base Rent Adjustment at end of Year 10																					
15 65% of the average of the 5 prior years	65%																				\$1,424
16 Expected Lease Payment to Port							\$1,000	\$1,000				\$1,364	\$1,487	\$1,577	\$1,623	\$1,661	\$2,065	\$2,130	\$2,188	\$2,252	\$2,318
												Operation Period									
												Full Operation Period									
												Years									
												11	12	13	14	15	16	17	18	19	20
												2032	2033	2034	2035	2036	2037	2038	2039	2040	2041
17 Base Rent												\$1,863	\$1,919	\$1,977	\$2,036	\$2,097	\$2,160	\$2,225	\$2,292	\$2,361	\$2,431
18 Base Rent Annual Escalation	3.00%																				
19 Applicable Minimum Base Rent												\$1,863	\$1,919	\$1,977	\$2,036	\$2,097	\$2,160	\$2,225	\$2,292	\$2,361	\$2,431
20 Negotiated Minimum Base Rent												\$1,863	\$1,919	\$1,977	\$2,036	\$2,097	\$2,160	\$2,225	\$2,292	\$2,361	\$2,431
21 Compare: Baseline Row 2 to TZK Negotiated Minimum Base Row 4												100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
22 Gross Hotel Revenue												\$41,100	\$42,314	\$43,564	\$44,852	\$46,179	\$47,545	\$48,952	\$50,401	\$51,894	\$53,431
23 Gross Theater Revenue												\$15,352	\$15,813	\$16,287	\$16,776	\$17,279	\$17,797	\$18,331	\$18,881	\$19,448	\$20,031
24 Combined Revenues												\$56,453	\$58,127	\$59,852	\$61,628	\$63,458	\$65,342	\$67,283	\$69,282	\$71,342	\$73,462
24 Negotiated Percentage Rent																					
25 From Hotel Operations Years 11 through 20	5.50%											\$2,261	\$2,327	\$2,396	\$2,467	\$2,540	\$2,615	\$2,692	\$2,772	\$2,854	\$2,939
26 From Theater Operations	3.50%											\$537	\$553	\$570	\$587	\$605	\$623	\$642	\$661	\$681	\$701
27 Total Percentage Rent												\$2,798	\$2,881	\$2,966	\$3,054	\$3,145	\$3,238	\$3,334	\$3,433	\$3,535	\$3,640
28 Minimum Base Rent Adjustment at end of Year 20																					
29 60% of the average of the 5 prior years	65%																				\$2,233
30 Expected Lease Payment to Port												\$2,798	\$2,881	\$2,966	\$3,054	\$3,145	\$3,238	\$3,334	\$3,433	\$3,535	\$3,640

Analysis of The Proposed Terms and Conditions

Development Benefits

Based on real estate consultant reports and market comparables, Port staff analysis of the lease terms being proposed resulted in the following conclusions:

1. Adequate Rent Structure and Financeable Project: The rent structure is on par or higher than comparable recent leases in the San Francisco Bay Area, particularly for small or boutique hotels. Port staff ordered a hotel ground rent survey and reviewed the pertinent comparables and their related rental rates. The comparables indicated that the base rent and percentage rent to include in the proposed lease are competitive and at market rate given the economic profile for the Site and the Development.

Most hotel ground leases do not provide for the landlord to participate in the development upside other than through percentage rent against gross revenue. The proposed deal provides for the Port to participate in all development upsides, including profits from refinancing, assignments and sales. In return, the Port is allowing TZK to earn a hurdle rate on equity limited to 20% internal rate of return, or IRR, prior to additional revenue sharing with the Port. Once the developer earns a 20% IRR, surplus cash flow is required to be shared with the Port at 80/20% to TZK/Port until TZK attains a 25% IRR at which time the share of further surplus cash flow is 50/50% to TZK/Port.

As indicated earlier in this Memorandum, the change to 20% IRR with 80%/20% (TZK/Port) split of excess cash flow is supported by Port staff and HVS analyses, updated market research, and feasibility modeling, and the goal of this change is to make the proposed development financeable while limiting Port downside.

HVS has conducted further market research and confirmed that 80%/20% split between the TZK and Port, over a 20% IRR is within a supportable position based on changes in the capital market conditions since Term Sheet was endorsed about 36 months ago. HVS's analysis indicates 80%/20% split over 20% IRR would achieve the goal of making the Development financeable and is consistent with current market expectations. Based on HVS's input, Port staff concluded that accepting a term similar to what TZK has proposed, in exchange for additional protections for the Port's financial share of the participation. The protection measures were discussed earlier in this Memorandum and include: limiting the amount of equity which would receive the 20% IRR ("equity cap"); segmenting equity invested into tiers ("tiering") and requiring Port's consent to additional equity investment during the operation phase.

2. Proposed Deal Structure Improves the Development Competitiveness: The proposed terms will allow TZK to induce the necessary capital investment for the development. While the minimum base rent and percentage rent increase as the term left on the lease decreases, the lease terms/conditions provided in the

proposed deal structure combined with the potential high upside in San Francisco's hotel market provides sufficient incentives to induce fresh investment capital to maintain the competitiveness of this facility.

3. Maximum Port Leverage: There is no Port funding for any part of the Development and all costs incurred by the Port in the transaction connected to the development are to be paid by the TZK. These costs include Port staff costs, Port consultant costs, and Port attorney costs.
4. Economic Benefits: Expected benefits of the proposed development include, among other things, an architecturally-fitting, urban edge to the eastern boundary of the Northeast Waterfront Historic District and a welcoming and an activating gateway to North Beach and Chinatown. Other significant benefits include property, hotel, sales, and gross receipts taxes and other direct and indirect revenues for the City. The Development is anticipated to generate approximately 550 construction jobs, and over 350 permanent and part-time jobs.
5. Tax Increment Financing Opportunity: Another benefit of the proposed development is the opportunity, under the Port's Infrastructure Financing District policy, to generate new funds for the Port Capital Plan or Port's Seawall Rehabilitation project. Both programs need additional funding mechanisms.

Port staff, therefore, are taking steps to support activation of the Site as a new subarea within the Port's Infrastructure Financing District consistent with IFD law (Gov't Code §§ 53395-53397.11) and the City's *Guidelines for the Establishment and Use of an Infrastructure Financing District with Project Areas on Land Under the Jurisdiction of the San Francisco Port Commission*,⁹. Staff will request that the Port Commission direct Port staff to seek approval of the Board of Supervisors to add the Site to the existing Portwide IFD to capture future growth in property taxes that will occur as a result of this theater-hotel development.

The new IFD subarea will capture the City's share of tax increment (about 65 percent) from the Site for 45 years. Tax increment from the new IFD subarea could be used to fund historic rehabilitation and sea level rise protection improvements, as alternatives to the Seawall Rehabilitation project.

6. Retention of Cultural Venue: The proposed Development will help sustain culture and arts in the City. Specifically, it will reinforce the City's commitment pursuant to City Administrative Code Chapter 90A, encouraging support for accommodating cultural venues on available City properties to prevent displacement of such venues.

⁹ For a copy of Board of Supervisors Resolution 123-13 related to the policy, see: <https://sfgov.legistar.com/LegislationDetail.aspx?ID=1323177&GUID=19D641A0-A64B-4F34-B428-D7C7FCD037A4&Options=ID|Text|&Search=130264>

7. The final terms negotiated include provisions addressing or limiting potential exposure of Port to risks including development, cost, and market risks, among others (described further below).
8. The applicable City and Port requirements are incorporated into the LDDA and Lease, including Non-Discrimination in Contracts and Benefits, First Source Hiring Program, and Local Business Enterprises participation as provided under the applicable City Ordinances. Port staff will be working with TZK, the City Contract Monitoring Division (CMD), and the City Office of Economic and Workforce Development (OEWD) to ensure that "LBEs" and local residents participate in this development.

CMD, OEWD and TZK have agreed conceptually on the following for this Development:

LBE Goals

- 17% SF Small and Micro LBE sub goal across non-construction and construction subcontractors
- 17% SF Small and Micro LBE participation for operations
- Standard Good Faith Outreach Efforts including advance notice, outreach, and record keeping provisions
- TZK will seek, whenever practicable, to engage contracting teams to reflect the diversity of the City and include participation of both businesses and residents from the City's most disadvantaged communities including, but not limited to the Bayview/Hunters Point, Chinatown, Mission, South of Market, Tenderloin, Visitacion Valley and Western Addition neighborhoods.

Local Hire Program

- Chapter 82, Mandatory Local Hire policy for construction – 30% by trade
- Chapter 83, First Source Hiring Program for end use jobs – good faith effort working with OEWD for the operations of the hotel and any entry-level position associated.

Because this Development is in the predevelopment stage, the above LBE and Local Hire Program will be described at an appropriate level of detail in the LDDA and Lease when more information is available but prior to document execution. The information expected to be available prior to document execution includes: construction budget breakdown by cost and trade, selected general contractor or prime contractor, hotel franchise and manager, and expected operation phase jobs, among others.

Benefits to the Public Trust

The proposed lease furthers and supports the public trust and the Burton Act because it provides numerous public benefits to the public trust, including;

- a. new hotel, dinner-theater and other visitor-serving uses that will enhance public use and enjoyment of the waterfront
- b. creation of new public open space
- c. elimination of barriers to the waterfront and uniting the landside with the waterfront
- d. enhanced pedestrian, bicycle and transit access along the Waterfront, and
- e. increased rent revenues to the Harbor Fund that will exceed the current and projected revenues from existing parking operations on the Site.

The attached **Exhibit "E"** includes more details on the benefits the proposed Development is expected to provide the public trust, and how it furthers the purposes of the public trust for commerce, navigation and fisheries.

Development Risks

The Port owns the Site unencumbered and the Site is currently generating about \$969,000 per year as of June 2018 in net revenue to the Port. The current parking operation is an interim use not representing the Site's highest and best use. The proposed Development does pose some risks to the Port most of which can be mitigated through the LDDA and the Lease requirements, including construction and minimum rent provisions. The Development represents the Site's highest and best use with greater economic benefit for the Port and the City (relative to its current use) and includes a major investment of private capital into Port property which will revert to the Port at the end of the lease.

1. Hotel Development Risk

Considered high-risk/high-reward investments, hotels usually pose challenges in exposure to seasonality (swings in demands) and in asset valuation. As with all hotel developments, the proposed hotel will combine real estate with an operating business, and it will have high operating leverage and some economic sensitivity, in seasonality from hotel room demand. It also will be management, marketing, energy and capital intensive. Despite all these challenges, this hotel is expected to generate favorable long-term yields as a quality real estate investment given its many favorable attributes. It is in San Francisco at a premium location on the waterfront and it is of a scale that will sustain desirable occupancy over the long term. To mitigate the operating risk, the Port will insist on the hotel manager meeting certain prerequisites and that the manager-selection be subject to Port's prior consent. Port's exposure to this risk is limited

to not receiving percentage rent at the levels currently anticipated, which can be mitigated by including performance standards in the Lease and in the hotel management agreement.

2. Entitlement Risk

The developer has received all entitlements except for Building Permit which it on track to obtain once it has full site-control through approval of the proposed Transaction Documents. Port's exposure to this risk is considered minimal both under its proprietary role as a landowner and as a regulator.

3. Financing Risk

Given the current low-interest rate environment, and the desirable quality of this hotel located in a high-tourist and business travelers area that has a limited supply of hotels, the availability, and cost of, funds are expected to be supportive of the proposed Development. The Port's exposure to this risk is minimal since the Port is not providing any capital funding for the Project and the Site will not be transferred to the Developer until all required financing is in place and escrow is closed.

4. Cost Risk

The Project is subject to the expected increases of construction costs until TZK has entered into a binding construction contract with a fixed price, if the remaining project approvals take longer than the Developer had planned. Measures to mitigate this risk include cost projections that provide ample construction contingency, using guaranteed maximum pricing for the construction contract, providing for performance and payment bonds, and using competent project managers. Port's exposure to this risk is considered minimal since the Port is not providing any capital funding for the Project. If there are cost overruns and the Developer has to invest more money into the project, it may take longer for the Port to share in the Development's surplus cash flow through percentage and participation rents, although the cap on initial equity will lessen this impact.

5. Market Risk

Market, competition, and business cycle risks for the proposed development are considered minimal given the supply and demand conditions of the hotel market. Competition with larger hotels, online travel agencies, and Airbnb¹⁰, however, has been given adequate attention. This competition can be addressed given the advantages the Site bestows on the Development, amongst which is its proximity to many San Francisco attractions. Through competent hotel management with proactive stance on marketing and competition, these risks can be mitigated. Another risk that has been addressed is a systemic or externality risk from market-wide downturn, like economic recession. This risk is being addressed through a provision allowing TZK to invest additional or

¹⁰ **Airbnb** is an online service that facilitates the listing, finding, and renting of lodging. It has listings in San Francisco and other cities.

operations equity discussed earlier in this Memorandum to fund operation shortfalls or pay down debt to avoid potential loan default. Port's exposure to this category of risks is considered minimal and it is limited to the percentage rent and further mitigated through guaranteed minimum base rent.

6. Counterparty Risk

This risk usually arises from poor project oversight brought on by lack of requisite development expertise and financial capacity. TZK members have the qualifications and financial capacity to perform as a developer and project managers. In June 2015, Kenwood Investments provided the Port a description of its qualifications and financial capacity. BAE Urban Economics, a Port-hired, third-party real estate consultant ("BAE"), and Port staff reviewed the qualifications and financial capacity information. BAE issued a report confirming that Kenwood Investments is qualified to develop the Project. Port staff filed the report with the Clerk of the Board of Supervisors on August 18, 2015.

In 2018, TZK provided Port staff information on Presidio's financial wherewithal and experience, particularly with hotel development capitalization, management, and operation. Presidio is reported to have owned and operated, and continues to own and operate, independent boutique properties, full-service conference center hotels, full-service resort hotels as well as select- and limited-service hospitality properties at different locations across the United States. Presidio has demonstrated that it has both the experience and financial standing to assist TZK in achieving the ultimate goal of a new home for Teatro ZinZanni in San Francisco and a successful hotel on the Site. With Presidio on board, TZK improved the hotel's interior layout to increase efficiency and save costs, identified possible capital sources to invest in the development, and bringing on board franchisor that is expected to be a good fit for this hotel with its unique attributes.

Port's exposure to this risk is considered minimal and it is mitigated by requiring the developer to reimburse all Port costs related to this transaction and further mitigated by not closing escrow until all preconditions to escrow closing are met, including lenders' requirements for proof of the required equity in the amount needed to close escrow on construction loan.

7. Operating Risk

This risk usually arises from inadequate budgeting, planning and project management. This risk is being mitigated by requiring competent project manager and hotel operator who can maintain high occupancy with high revenue per room and meet pro-forma expectations. The Port's percentage rent income is dependent on the hotel management. Port's exposure to this risk, however, is considered minimal and mitigated through guaranteed minimum base rent and including performance standards in the Lease and in the proposed hotel management agreement.

This risk is being further mitigated by allowing the TZK to invest equity, "Operations Equity," during the operation phase to fund operation shortfalls or head-off a loan default brought on by a market-wide economic downturn. This Operation Equity is subject to the limitations discussed earlier in this Memorandum under Item #15 under the **Summary of Proposed Lease Terms**. Port staff has negotiated an appropriate metric to measure hotel market-wide downturn or area-wide downturn that the Port will ascertain before letting TZK invest these Operations Equity. The Port will review the decrease in revenue per available rooms or "RevPAR" over a 12-month period with a minimum 5% cumulative decrease for the geographical area encompassing the competitive set of hotels for this proposed hotel. The geographical area currently is the entire San Francisco hotel market. TZK will be required to provide a notice to the Port about the downturn supported with evidence of the downturn. HVS has recommended STR's report tracking changes in RevPAR as an acceptable source for this evidence.

Community Outreach

Representatives of TZK and Teatro ZinZanni remain committed to thorough public involvement in the review of the proposed development. They have continued to conduct engaging outreach to stakeholders, including meeting with the Barbary Coast Neighborhood Association, Golden Gateway Tenants Association and Gateway Commons Board of Directors. With assistance from Port staff, they have presented updates on the proposed development to the Northeast Waterfront Advisory Group ("NEWAG"). Members of NEWAG continue to express support for the proposals. Both Port staff and the TZK and Teatro representatives will continue to apprise NEWAG of key project developments.

Next Steps

If the Port Commission takes the actions requested in this Memorandum, Port staff will proceed to seek the approvals described below for the LDDA and Lease by the following target dates.

1. **September or October:** Capital Planning Committee consideration of formation of the IFD Subarea.
2. **September or October:** Introduction to full Board of Supervisors and Committee consideration of:
 - a. the Development, including review of Lease and Resolutions of Intention to form IFD Subarea; and
 - b. a Street vacation ordinance.
3. **October:** Board of Supervisors review and approval of the Lease and establishment of IFD Subarea J.

4. October or November: Adoption of street vacation ordinance.

Conclusion

Port staff recommends that the Port Commission adopt the attached Resolution approving the Transaction Documents and the Schematic Drawings for the proposed Development and authorize the Executive Director and Port staff to seek approval of the Lease.

Prepared by: Ricky Tijani
Development Project Manager

Through: Rebecca Benassini, Assistant Deputy Director
Waterfront Development

For: Michael Martin, Deputy Director
Real Estate & Development

Exhibits: "A" Site Map
"B" Proposed Project Schematic Drawings
"C" Mitigation Monitoring and Reporting Program
"D" A Summary of the Key Business Terms from the Term Sheet
"E" Benefits of the Development to the Public Trust

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 19-36

- WHEREAS, Charter Section B3.581 empowers the Port Commission with the authority and duty to use, conduct, operate, maintain, manage, regulate and control the lands within Port jurisdiction; and
- WHEREAS, TZK Broadway, LLC, a California limited liability company (the "Developer" or "TZK") is proposing to develop a mixed-use development that includes a 192-room hotel, a dinner-theater venue for Teatro ZinZanni, and a public park (the "Development" or "Project") at a site with frontages along The Embarcadero, Broadway and Davis Street that includes Seawall Lot 323 ("SWL 323") and Seawall Lot 324 ("SWL 324") and portions of Vallejo and Davis Streets (the "Site"); and
- WHEREAS, On May 5, 2015, the Board of Supervisors adopted Resolution No. 170-15 and found that the Development is exempt from competitive bidding requirements of Administrative Code Section 2.6-1; and
- WHEREAS, On September 8, 2015, the Port Commission adopted Resolution No. 15-31 authorizing the Port to enter into an Exclusive Negotiation Agreement (as amended, the "ENA") with Developer for the Development at the Site, as such agreement was extended pursuant to Resolution No. 18-53; and
- WHEREAS, On April 26, 2016, the Port Commission adopted Resolution No. 16-18 and endorsed a non-binding term sheet describing the fundamental deal terms for the Project ("Term Sheet") and authorized and directed the Executive Director, or her designee, to forward the Term Sheet to the Board of Supervisors for its consideration; and on July 12, 2016, the Board of Supervisors adopted Resolution No. 277—16 and endorsed the Term Sheet; and
- WHEREAS, Obtaining consideration and approval of the Lease and other matters related to the Development is the only remaining key task TZK must complete under the ENA before it expires on November 4, 2019; and
- WHEREAS, Port staff and Developer wish to extend the ENA up to February 3, 2020 without payment of additional extension fees, solely in the event the Board of Supervisors' does not take action on the matter before November 4, 2019; and
- WHEREAS, In accordance with the ENA, the parties have negotiated a lease disposition and development agreement ("LDDA"), Lease No. L-16585

(the "Lease") and other related agreements and documents (collectively, the "Transaction Documents") for the Development; and

WHEREAS, The schematic drawings for the Project are on file with the Port Commission Secretary and the representative Schematic Drawings of the building(s) within the Site are shown in the attachment to the Memorandum accompanying this Resolution; and

WHEREAS, Port staff and TZK have collectively conducted extensive community outreach and presented updates on the proposed Development to community stakeholders and received express support for the proposed development; and

WHEREAS, Pursuant to Section 23.33 of the Administrative Code, it is City policy that any and all leases awarded without following the City's competitive bid procedures shall be in an amount not less than the fair market value of the leased property;

WHEREAS, The Director of the City's Real Estate Division, in consultation with Port staff, conducted an appraisal of the Site, and such appraisal, along with hotel consultant reports, shows that the financial terms of the Lease are not less than the fair market value of the Site; and

WHEREAS, The Development provides numerous benefits to the Public Trust, including (a) new hotel, dinner-theater, and other visitor-serving uses that will enhance public use and enjoyment of the Waterfront, (b) creation of a new public open space, (c) elimination of barriers to the waterfront and uniting the landside with the waterfront, (d) enhanced pedestrian, bicycle and transit access along the Waterfront, and (e) increased rental revenues to the Harbor Fund that will exceed the current and projected revenues from existing parking operations on the Site, as further described in the Memorandum accompanying this Resolution; and

WHEREAS, Port and TZK have negotiated the LDDA, with a 12-month term and four 3-month extension options, which LDDA includes among other things, additional Developer financial obligations including a LDDA fee, extension option fee, payment of any outstanding ENA fees, a LDDA termination fee, reimbursement of Port's transaction costs during the LDDA term, liquidated damages for delay of construction completion beyond the completion date, and setting the conditions the parties must satisfy or waive before the Lease is executed by the parties, all as described in the Memorandum accompanying this Resolution, and a copy of the LDDA and Lease are on file with the Commission Secretary; and

WHEREAS, The Lease is for a term of 50 years with one 16-year extension option and includes, among other terms, the following financial terms: (1) an annual

minimum base rent equal to no less than \$1 million, as increased over time, (2) percentage rent above the minimum rent equal to 3.5%-6.5% of annual gross revenues as further described in the Memorandum accompanying this Resolution, (3) participation rent on net cash flow, net transfer proceeds and net refinancing proceeds from the Project after the tenant has earned a minimum return on tenant equity, as further described in the Memorandum accompanying this Resolution, (4) a cap of \$60 million on the initial tenant's equity that is eligible to earn a return, and (5) tenant obligation to maintain the public park and open space within the Site without any reimbursement or payment by Port or the City; and

WHEREAS, The Lease also limits the type of post-construction tenant equity eligible for return as follows: (1) a reduced return (11% IRR) on tenant equity for capital improvements only, (2) a reduced return equal to the lesser of the interest rate on the then outstanding senior loan on the Project or 10%, both at simple interest, on tenant equity (capped at \$20 million over the Lease term, subject to increases set forth in the Lease) used to offset operational shortfalls due a downturn lasting at least 12 consecutive months in the San Francisco hotel market, as further described in the Memorandum accompanying this Resolution; and

WHEREAS, The Transaction Documents conform to all local laws and regulations and are not prohibited by the City's Charter; and

WHEREAS, City and Port staff and consultants have conducted substantial economic analysis of the Project impacts and benefits on the Port and City; and

WHEREAS, The San Francisco Planning Department ("Planning Department") prepared an Initial Study/Preliminary Mitigated Negative Declaration ("IS/PMND") for the Project and published it for public review on October 17, 2018. No appeal of the IS/PMND was filed and the Mitigated Negative Declaration became final on December 21, 2018; and

WHEREAS, On December 21, 2018, the Planning Department approved the issuance of the Final Mitigated Negative Declaration ("FMND") as prepared by the Planning Department in compliance with the California Environmental Quality Act ("CEQA", CEQA Guidelines (Title 14 California Code of Regulations Sections 15000 et seq.), and San Francisco Administrative Code Chapter 31 ("Chapter 31"); and

WHEREAS, On March 6, 2019, the Historic Preservation Commission adopted Motion No. 0370 finding that the proposed Development is consistent with Article 10 of the Planning Code and the Secretary of the Interior's Standards for Rehabilitation in conformance with the architectural plans filed with the Planning Department subject to the conditions and findings listed in its Motion No. 0370; and

WHEREAS, On May 2, 2019, the Planning Commission conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Authorization Application and General Plan Referral Nos. 2015-016326 CUA and 2016- 011011GPR. At that hearing, pursuant to Resolution No. 20443, the Planning Commission made Findings of Consistency with the General Plan and with the Priority Policies of Planning Code Section 101.1 for the street vacations for the Project, pursuant to Section 4.105 of the City Charter and Section 2A.53 of the Administrative Code. In addition, pursuant to Motion No. 20444, the Planning Commission granted a Conditional Use Authorization for the Development pursuant to Planning Code Sections 210.1, 240.3 and 303 to allow a hotel use within the C-2 Zoning District, the Waterfront Special Use District No. 3, and a 40-X Height and Bulk District, subject to the conditions and findings listed in the Motion No. 20444; and

WHEREAS, In Resolution No. 20443, the Planning Commission, having reviewed the FMND, concurred with the Planning Department's determination that, pursuant to the FMND, including its mitigation measures, the Project could not have a significant impact on the environment; and.

WHEREAS, In Motion No. 20444, the Planning Commission made the same findings as in Resolution No. 20443, and more specifically found that, based on review and consideration of the FMND and the record as a whole, there is no substantial evidence that the Project will have a significant effect on the environment with the adoption of the mitigation measures contained in the Mitigation Monitoring and Reporting Program ("MMRP"). A copy of the MMRP is attached to the Memorandum accompanying this Resolution. The Planning Commission adopted the FMND and the MMRP and included all required mitigation measures identified in the FMND and contained in the MMRP as conditions of approval; and

WHEREAS, The Planning Department Commission Secretary is the custodian of record for the file for File Nos. 2015-016326ENV, 2015-016326 CUA and 2016- 011011GPR at 1650 Mission Street, Suite 400, San Francisco, California; and

WHEREAS, The FMND and the MMRP have been made available to the public and the Port Commission for its review and action and are incorporated herein by this reference; and

WHEREAS, (1) The actions proposed for approval in this Resolution were contemplated as part of the FMND and present no substantial changes to the Project that will require major revisions of the FMND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; (2) the

actions proposed for approval in this Resolution present no substantial changes with respect to the circumstances under which the Project was approved that will require major revisions of the FMND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; (3) no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the FMND was adopted, has become available which indicates that: (A) the Project will have significant effects not discussed in the FMND, (B) significant environmental effects will be substantially more severe than shown in the FMND, (C) mitigation measures or alternatives found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the Project, or (D) mitigation measures or alternatives which are considerably different from those in the FMND would substantially reduce one or more significant effects on the environment; NOW, THEREFORE, BE IT

RESOLVED, That the Port Commission has reviewed and considered the FMND and the record as a whole, and finds that the FMND is adequate, that there is no substantial evidence that the Project will have a significant effect on the environment with the adoption of the mitigation measures contained in the MMRP, and hereby adopts the FMND; and be it further

RESOLVED, That the Port Commission hereby adopts the FMND and the MMRP as part of this Resolution and directs Port staff to include in the applicable Transaction Documents, an obligation by the Developer to comply with all required mitigation measures identified in the FMND and contained in the MMRP; and be it further

RESOLVED, That the Port Commission finds that the rent due Port under the Lease is at fair market and the Lease includes terms that are consistent with prudent land management practices; and, be it further

RESOLVED, That the Port Commission finds that the Development provides numerous benefits to the Public Trust, including (a) new hotel, dinner-theater, and other visitor-serving uses that will enhance public use and enjoyment of the Waterfront, (b) creation of a new public open space, (c) elimination of barriers to the waterfront and uniting the landside with the waterfront, (d) enhanced pedestrian, bicycle and transit access along the Waterfront, and (e) increased rental revenues to the Harbor Fund that will exceed the current and projected revenues from existing parking operations on the Site; and, be it further

RESOLVED, That the Port Commission approves the form and the substance of the Transaction Documents, including all attachments and exhibits thereto, and the transactions which such Transaction Documents contemplate,

incorporating the material business terms set forth in the Memorandum accompanying this Resolution; and be it further

RESOLVED, That the Port Commission hereby approves the Schematic Drawings of the Project on file with the Port Commission Secretary and the representative Schematic Drawings of the building(s) within the Site, as shown in the attachment to the Memorandum accompanying this Resolution, and authorizes the Executive Director to approve non-material changes in the Schematic Drawings; and be it further

RESOLVED, That the Port Commission authorizes and directs the Executive Director of the Port ("Executive Director") to forward Lease No. L-16585 to the Board of Supervisors for approval pursuant to its authority under Charter Section 9.118, and upon the effectiveness of such approval, to execute the LDDA, and subject to the terms of the LDDA, as applicable, execute the Lease in substantially the form of such agreements on file with the Port Commission Secretary, and in such final form as is approved by the Executive Director in consultation with the City Attorney; and be it further

RESOLVED, That the Port Commission authorizes the Executive Director to extend the ENA up to February 3, 2020 without payment of additional extension fees, solely in the event the Board of Supervisors' does not take action on the matter before November 4, 2019; and be it further

RESOLVED, That the Port Commission authorizes the Executive Director to enter into other agreements, encroachment permits, easement agreements, and other related covenants and property documents necessary to implement the transactions contemplated by the Transaction Documents, and to enter into any additions, amendments or other modifications to the Transaction Documents including preparation and attachment of, or changes to, any or all of the attachments and exhibits that the Executive Director, in consultation with the City Attorney, determines are in the best interests of the City, do not materially decrease the benefits or otherwise materially increase the obligations or liabilities of the City or Port, and are necessary or advisable to complete the transactions that the Transaction Documents contemplate and effectuate the purpose and intent of this Resolution, such determination to be conclusively evidenced by the execution and delivery by the Executive Director of such other agreements, easement agreements and other related covenants and property documents, and/or additions, amendments or other modifications to the Transaction Documents; and be it further

RESOLVED, That the Port Commission authorizes the Executive Director and any other appropriate officers, agents or employees of the City to take any and all steps (including if necessary, obtaining Board of Supervisors approval and the execution and delivery of any and all applications, recordings, maps,

certificates, agreements, notices, consents, and other instruments or documents) as they or any of them deems necessary or appropriate, in consultation with the City Attorney, in order to consummate (i) the vacation of a portion of Davis and Vallejo Streets, (ii) any sidewalk widening legislation specific to the Project, or (iii) other real property matters necessary to effectuate the purpose and intent of this Resolution; and be it further

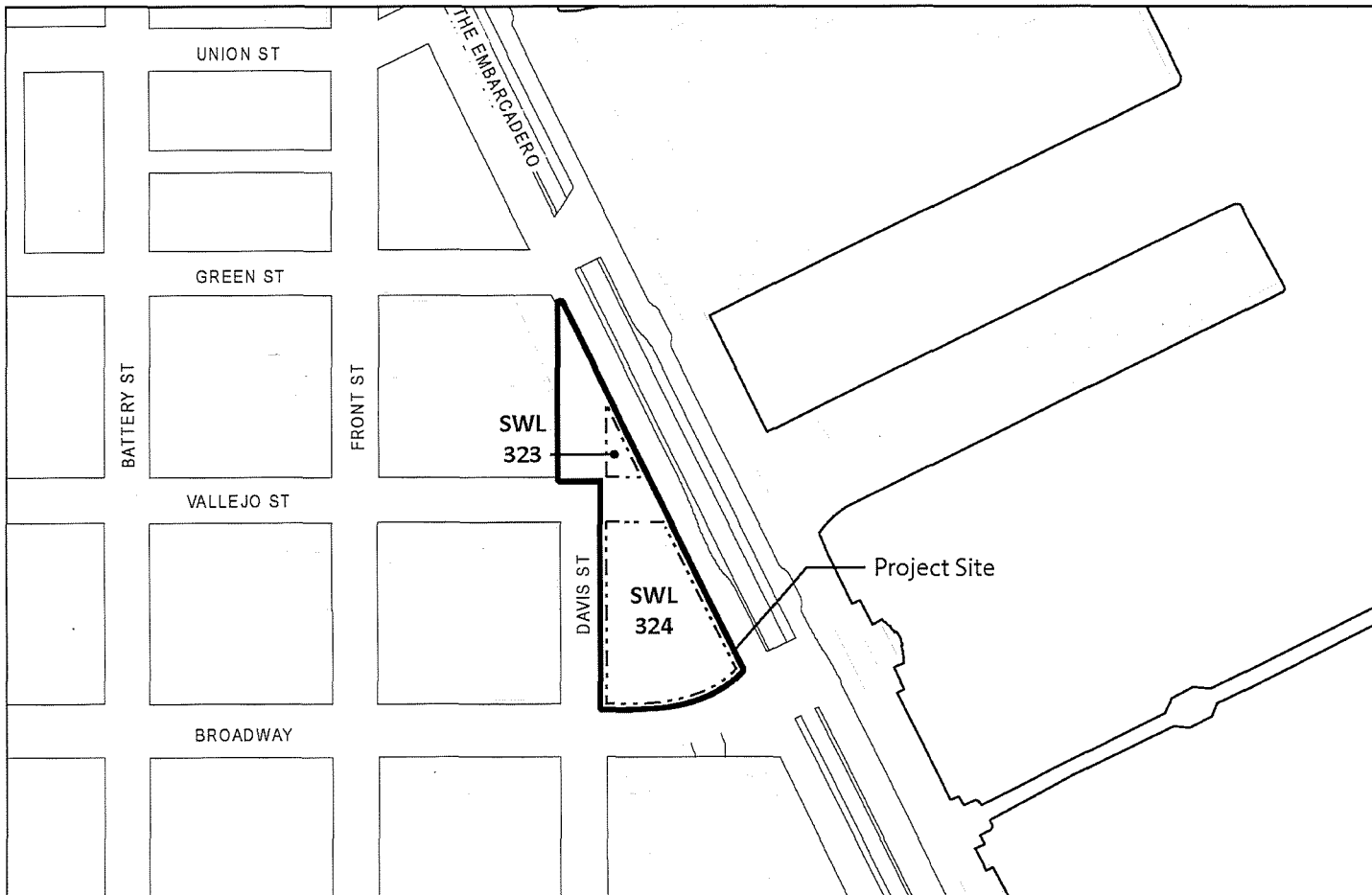
RESOLVED, That the Port Commission authorizes the Executive Director and any other appropriate officers, agents or employees of the City to take any and all steps (including the execution and delivery of any and all certificates, agreements, notices, consents, escrow instructions, closing documents and other instruments or documents) as they or any of them deems necessary or appropriate, in consultation with the City Attorney, in order to consummate the transactions contemplated under the Transaction Documents, in accordance with this Resolution, or to otherwise effectuate the purpose and intent of this Resolution, such determination to be conclusively evidenced by the execution and delivery by any such person or persons of any such documents; and be it further

RESOLVED, That the Port Commission approves, confirms and ratifies all prior actions taken by the officials, employees and agents of the Port Commission or the City with respect to the Transaction Documents.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of September 10, 2019.

Secretary

Exhibit "A" Site Map



0 100 200 400
Feet

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TEATRO ZINZANNI & TZK BROADWAY, LLC
PROPOSED PROJECT SITE
PORT OF SAN FRANCISCO

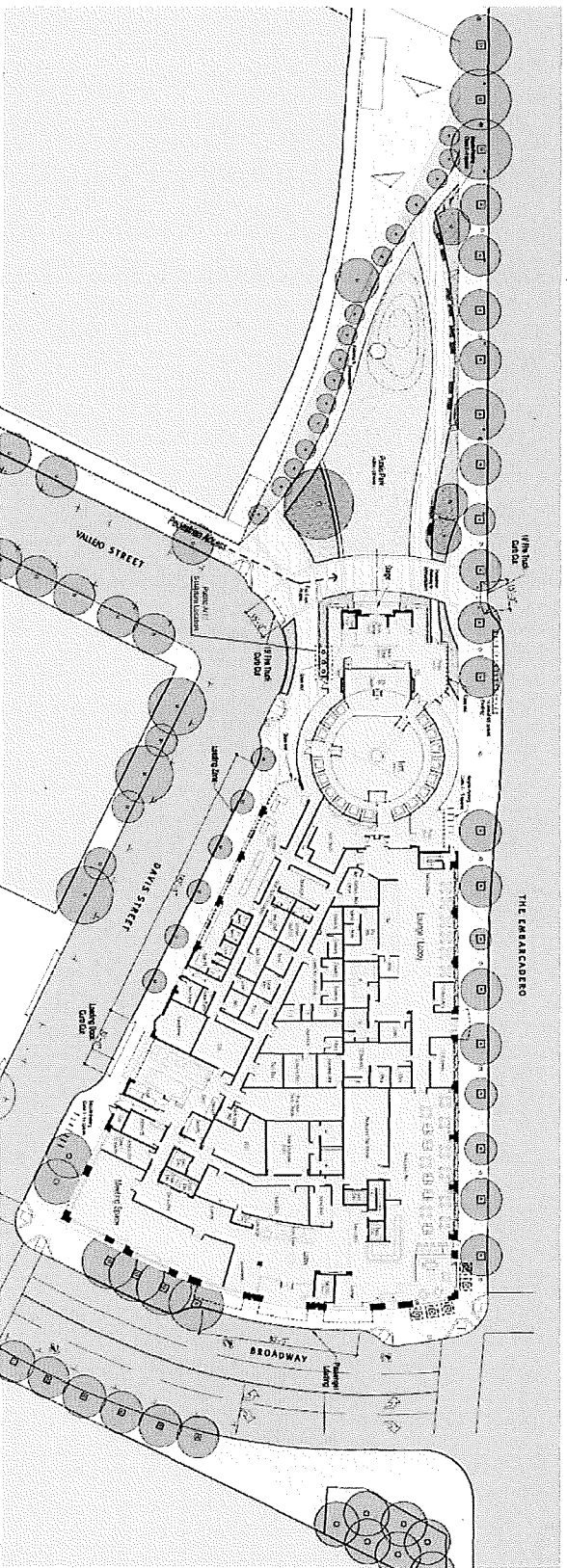


Exhibit "B"
Proposed Project Schematic Drawings



Project Location at Embarcadero & Broadway

  KENWOOD INVESTMENTS	The Theater & Hotel @ Broadway Seawall Lots 323/324, San Francisco, CA A Teatro ZinZanni & Kenwood Investments Project	 <small>Hornberger + Wurstell Architects Architects 1000 California Street, Suite 1000 San Francisco, CA 94109 (415) 774-1000 www.hornbergerwurstell.com</small>  <small>May 2, 2019</small>
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Site Plan / Park and Public Realm

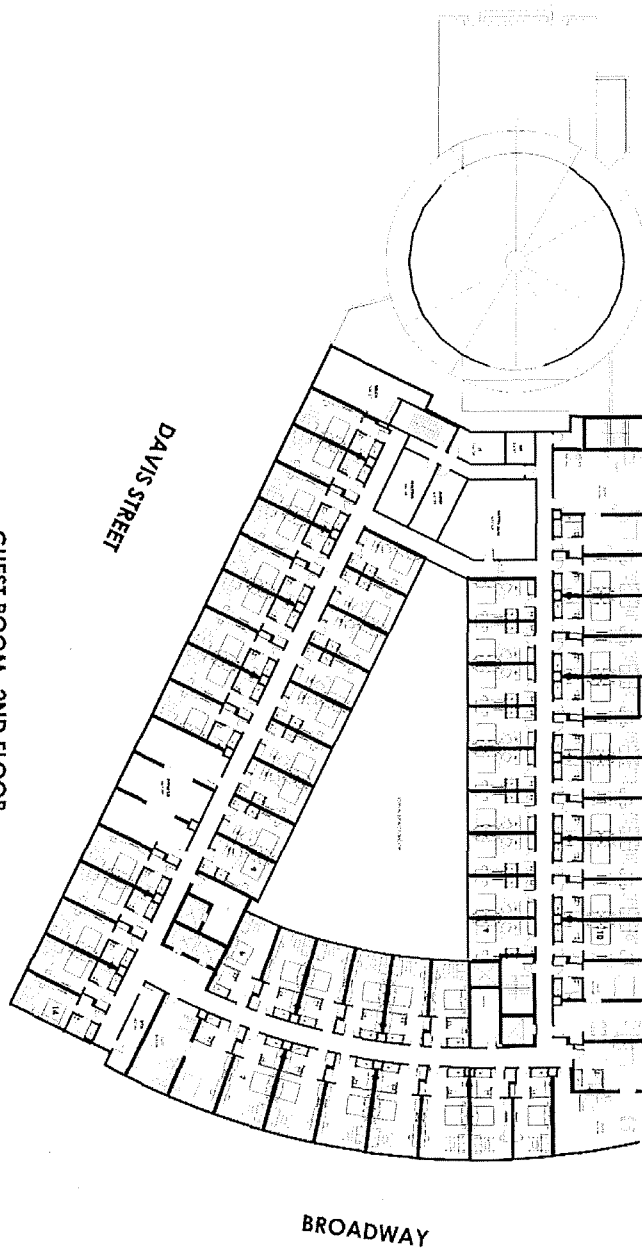
Tellus 25000
presidio companies
 KENWOOD INVESTMENTS

The Theater & Hotel @ Broadway | Seawall Lots 323/324, San Francisco, CA
 A Theatre Zoned and a Kenwood Investments Project

Hornberger + Worstell Architects
 Architectural and Landscape Architecture
 1000 Market Street, Suite 1000
 San Francisco, CA 94102
 Tel: 415.398.1111
 Fax: 415.398.1112
 www.hornbergerworstell.com

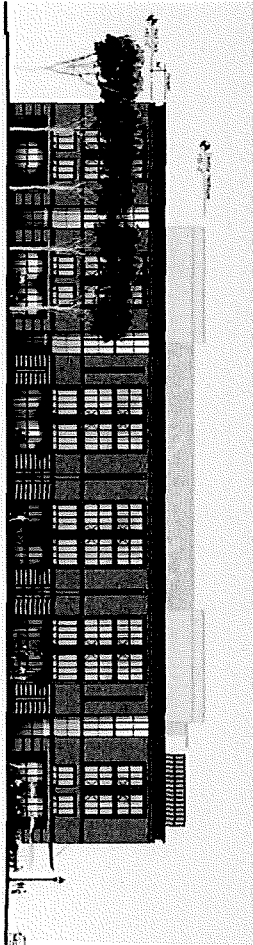
May 2, 2018 1.3
Hornberger
Worstell

THE EMBARCADERO

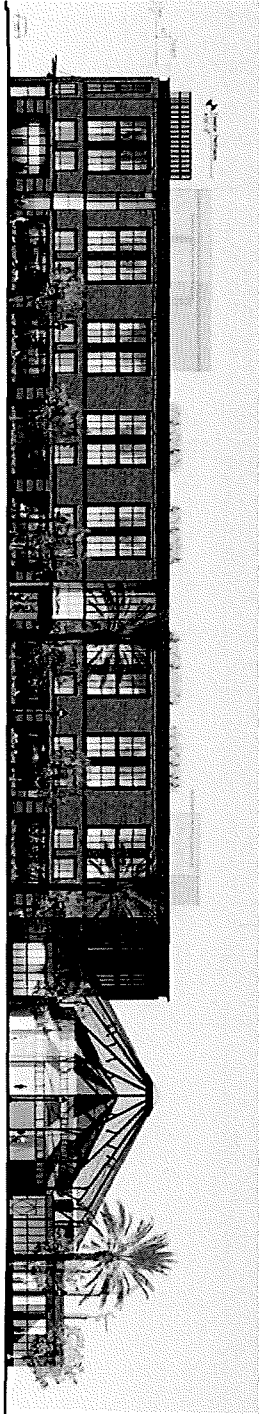


GUEST ROOM - 2ND FLOOR

FLOOR 2



Broadway



The Embarcadero

Teatro ZinZanni
KENWOOD INVESTMENTS

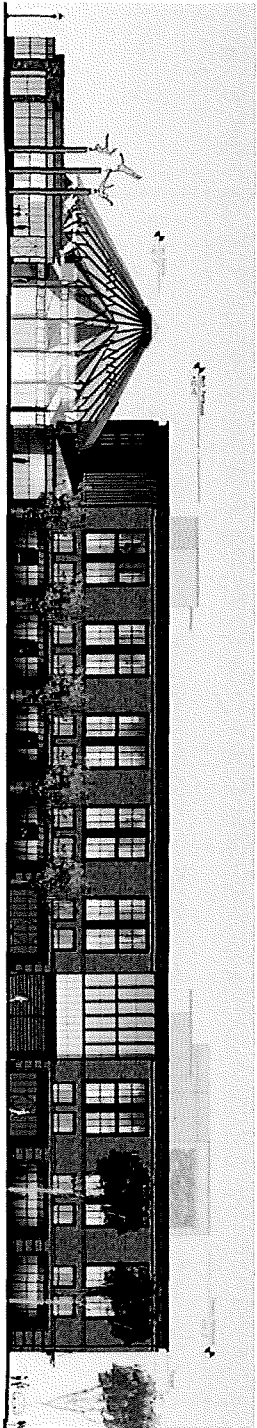
Building Elevations
ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California
A Teatro ZinZanni & Kenwood Investments Project

presidio.com/galleries

HR



Park



Davis Street

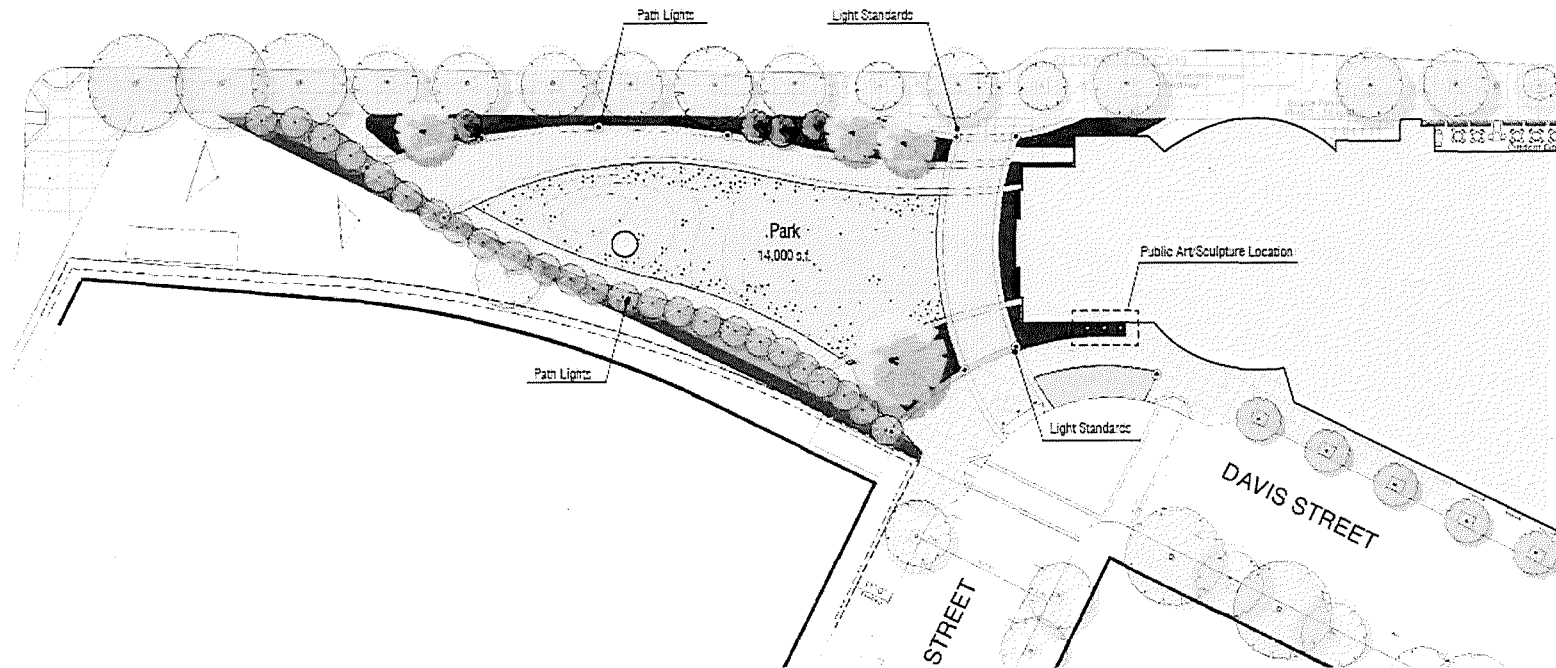
Building Elevations

Teatro Zinzanni
KENWOOD INVESTMENTS

Zinzanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California
A Teatro Zinzanni & Kenwood Investments Project

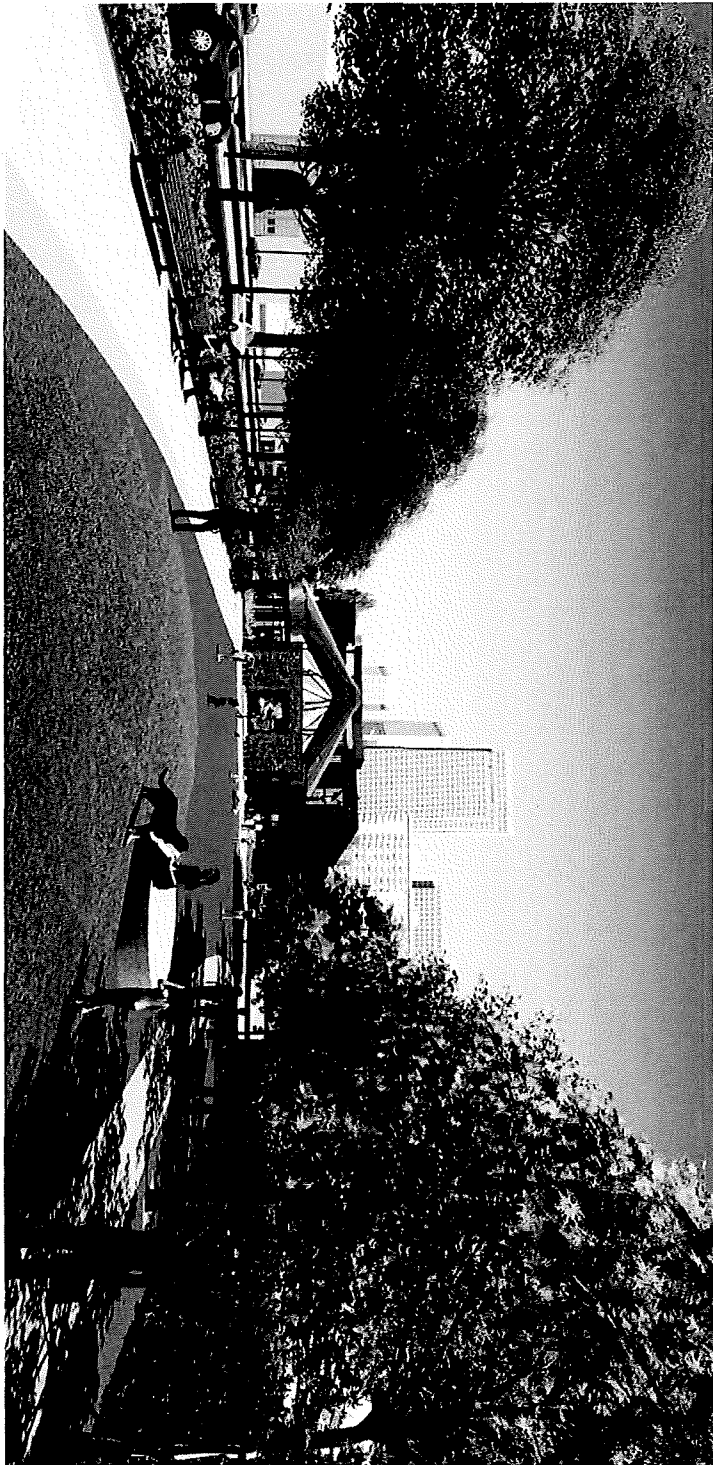
presidio**companies** IHR

THE EMBARCADERO



Public Park As Neighborhood Amenity

<p>Teatro ZinZanni presidio companies KENWOOD INVESTMENTS</p>	<p>The Theater & Hotel @ Broadway Seawall Lots 323/324, San Francisco, CA A Teatro ZinZanni & Kenwood Investments Project</p>	<p>Hornberger + Wurstle Architects Hornberger Wurstle May 2, 2019</p>
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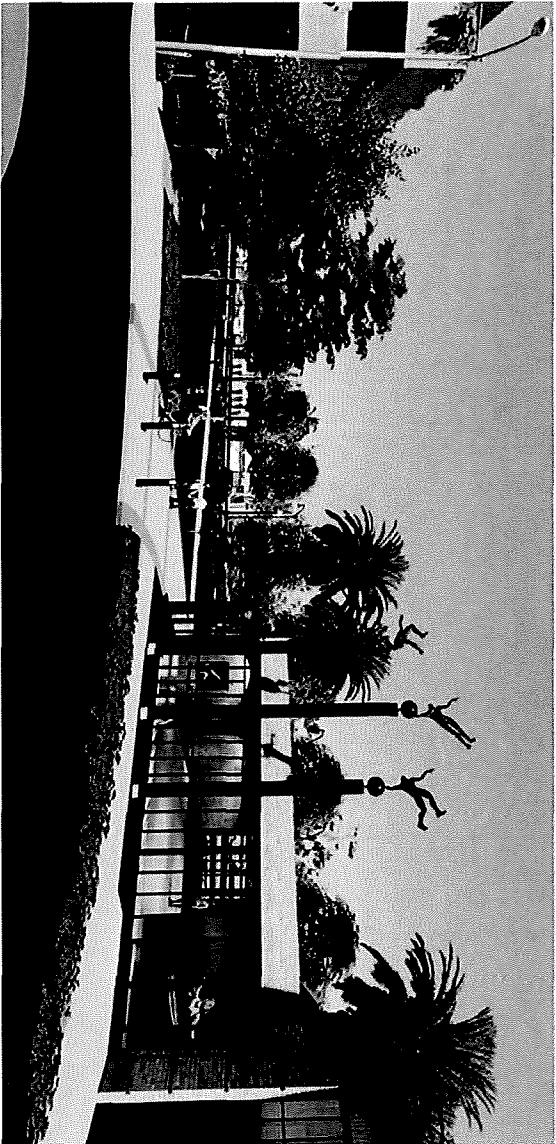
Public Park and Zinzanni Pavilion

Taylor Zinzanni
presidio companies
KENWOOD INVESTMENTS

The Theater & Hotel @ Broadway | Seawall Lots 323/324, San Francisco, CA
A Taylor Zinzanni & Kenwood Investments Project

Wardner + Burdick Architects
Architects and Interior Designers
San Francisco, CA
www.wardnerburdick.com

May 2, 2015 1:10
Wardner + Burdick Architects
KENWOOD

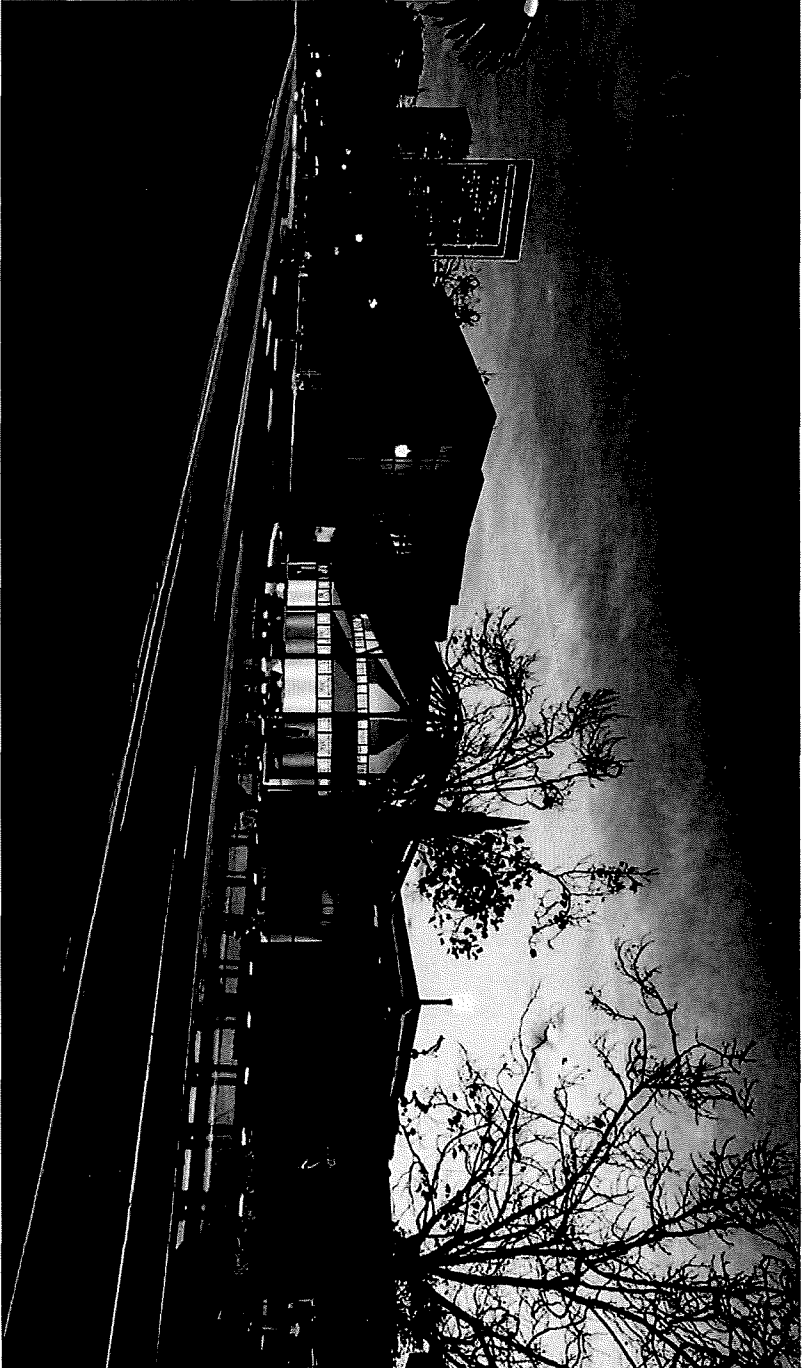


Visual Analysis | Park View from Davis Street

Teatro ZinZanni
KENWOOD INVESTMENTS

ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California
A Teatro ZinZanni & Kenwood Investments Project

presidio companies
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View South Along The Embarcadero

Teatro ZinZanni
KENWOOD INVESTMENTS

ZinZanni / Kenwood - The Theater & Hotel @ Broadway | San Francisco, California
A Teatro ZinZanni & Kenwood Investments Project

presidiocompanies
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Exhibit "D"
Summary of the Key-business terms from the Term Sheet
(Annotated to indicate which terms have changed and what the changes are)

	Term	Deal Terms as of April 26, 2016	TZK's Proposed changes as of May 22, 2019
1.	Site	SWLs 323/324 + two street stubs	No Change
2.	Lease Effective Date	At Close of Escrow under the LDDA	No Change
3.	Lease Term	<ul style="list-style-type: none"> • Initial Term: 50 years • One 16-year extension option subject to conditions. 	No Change
4.	Development Program	<ul style="list-style-type: none"> • 192 Hotel rooms, approximately • 10 Extended Stay rooms for artists • Ground level retail/commercial space • Teatro's dinner-theater program • Privately funded 7,500 sf open space/park. 	Changes: <ul style="list-style-type: none"> • Eliminated extended stay rooms for artists • Privately funded open space/park size confirmed at 14,000 sf
5.	Total Development Cost and Funding	<ul style="list-style-type: none"> • \$134,000,000 • \$74,000,000 – Debt • \$60,000,000 – Initial Equity 	Changes: <ul style="list-style-type: none"> • \$140,530,000 • \$83,000,000 – Debt • \$30,000,000 - EB-5 Equity • \$2,500,000 – Marriot & Interstate Key Money • \$25,026,034 – Third Party/Sponsor Equity
6.	LDDA, Fee and Extension	<ul style="list-style-type: none"> • Term: 24 months • \$37,500/year in LDDA Fee • 12 months to COE from Effective Date • First 6-month extension to close Escrow is subject to \$50,000 fee • Second 6-month extension is subject to \$50,000 fee • Transaction Cost Recovery provided • Liquidated Damage for delay in Construction Completion: TZK to pay Port \$1,150 for each day 	Essentially No Change <ul style="list-style-type: none"> • Four 3-month extensions to close Escrow is subject to \$25,000 fee per each extension (still 12 months at cost of \$100,000) • Liquidated damage amount remains the same. Four 3-month extension periods (still a total of 12 months of extension beyond the 24-month construction period). Each 3-month

	Term	Deal Terms as of April 26, 2016	TZK's Proposed changes as of May 22, 2019
		after the total of 36 months to complete construction (the initial 24-month period plus the two 6-month extension periods).	extension requires a \$25,000 fee. \$1,115 starts at the end of the 36-month period.
7.	LDDA Termination Fee	A \$50,000 fee for terminating the LDDA plus assignment of work-products. A third-party actual use of the work-product is subject to negotiations at that time in the future. Termination is stayed during a Force Majeure Event.	No Change
	Appraised FMV Appraised FM Rent	Appraisal completed on April 15, 2015 Appraised FMV: \$16.65 million Appraised Fair Market Rent: \$1.1 million per year Appraisal Recommended Escalation: CPI every 5-year	Negotiated Minimum Based Rent set in 2016 escalated to account for the current approximately 2-year lapse.
8.	Construction Period Rent	<ul style="list-style-type: none"> • \$890,000 per year based on the recent highest revenues from parking operation. • Anticipated Construction Period as of April 26, 2016: 2017 to 2018 	<ul style="list-style-type: none"> • \$890,000 per year based on the recent highest revenues from parking operation. • Anticipated Construction Period as of April 2019: 2020 to 2021
9.	Lease Full Operation Period Rent	<p><u>First Period: Years 1 through 5:</u> <u>Stabilization Period, Year 1 (2019) and 2 (2020) of operations:</u> Minimum Base Rent: The Greater of: (a) <u>\$915,000 per year</u> Or (b) 3.15% (90% of 3.50%) of Hotel Gross Revenues if Occupancy reached 80%.</p> <p><u>Full Operation Period, Years 3-5 of operations:</u> Greater of: (a) <u>\$1,366,000</u> escalated between 2.5% to 3.5% annually based on CPI Or</p>	<p><u>First Period: Years 1 through 5:</u> Change Minimum Base Rent: The Greater of: (c) <u>\$1,007,000 per year</u></p> <p><u>Full Operation Period, Years 3 (2024) Year 4 (2025) and Year 5 (2026) of operations:</u> Change (a) <u>\$1,471,000</u> escalated between 2.5% to 3.5% annually based on CPI</p>

	Term	Deal Terms as of April 26, 2016	TZK's Proposed changes as of May 22, 2019
		(b) 3.5% of Hotel Gross Revenues plus 3.5% of Theater-Dinner operations	
		Second Period: Years 6 through 10: The Greater of:	Second Period: Years 6 through 10:
		(c) \$1,471,000 escalated 3% 2.5% to 3.5% annually based on CPI Or for the next five years:	Change (a) \$1,623,000 escalated 3% 2.5% to 3.5% annually based on CPI
		(d) 4.5% of Hotel Gross Revenues plus 3.5% of Theater-Dinner operations	
		Third Period: Years 11 through 20:	Third Period: Years 11 through 20:
		(e) Minimum base rent Reset at the greater of: 65% of the average of the prior 5 year percentage rent escalated 3% 2.5% to 3.5% annually based on CPI or Prior year's minimum base rent plus 2.5-3.5% based on CPI Or	No Change
		(f) 5.5% of Hotel Gross Revenues plus 3.5% of Theater-Dinner operations	
		Fourth Period: Years 21 through 50: The Greater of:	Fourth Period: Years 21 through 50:
		(g) Minimum base rent escalated by between 2.5% and 3.5% based on CPI annually and Reset every 10 years to the greater of 65% of the average of the prior 5 year percentage rent or Prior year's minimum base rent plus 2.5-3.5% based on CPI Or :	No Change
		(h) 6.5% of Hotel Gross Revenues plus 3.5% of Theater-Dinner operations	
		Minimum rent to adjust to fair market rent every 10 years.	

	Term	Deal Terms as of April 26, 2016	TZK's Proposed changes as of May 22, 2019
		Minimum rent to escalate annually between 3% 2.5% to 3.5% annually based on CPI.	
10.	Rent Credit	<u>No Rent Credits</u>	No Change
11.	Public Park	Public Park total development, operation and maintenance costs are TZK's sole responsibility during the Lease term.	No Change
TZK, the Original Tenant, Actual Equity invested <u>Prior</u> to Construction Completion			
12.	TZK Equity Repayment and Return of Equity	TZK is limited to earn 18% IRR and after earning the 18% IRR, surplus cash flow shall be shared at (i) 70/30 (TZK/Port) until TZK receives a 25% IRR and then (ii) 60/40 (TZK/Port).	TZK is limited to earn 18% 20% IRR and after earning the 18% 20% IRR, surplus cash flow shall be shared at (i) 70/30% 80%/20% (TZK/Port) until TZK receives a 25% IRR and then (ii) 60/40% 50/50% (TZK/Port).
13.	Participation Rent: (Port's Share of Project Revenues)	<u>During Period of No Refinance or Sale:</u> After TZK has earned 18% IRR, TZK and surplus cash flow shall be shared at (i) 70/30 (TZK/Port) until TZK receives a 25% IRR and then (ii) 60/40 (TZK/Port).	<u>During Period of No Refinance or Sale:</u> After TZK has earned 18% 20% IRR, surplus cash flow shall be shared at (i) 70/30% 80%/20% (TZK/Port) until TZK receives a 25% IRR and then (ii) 60/40% 50/50% (TZK/Port).
14.	Participation Rent: (Port's Share of Project Revenues)	<u>During Period of Refinance, Assignment, or Sale:</u> After TZK has earned 18% IRR, surplus cash flow shall be shared at (i) 70/30 (TZK/Port) until TZK receives a 25% IRR and then (ii) 60/40 (TZK/Port).	<u>During Period of Refinance, Assignment, or Sale:</u> After TZK has earned 18% 20% IRR, surplus cash flow shall be shared at (i) 70/30% 80%/20% (TZK/Port) until TZK receives a 25% IRR and then (ii) 60/40% 50/50% (TZK/Port).
Subsequent Tenant Actual Equity invested in Purchase of the Leasehold Interest			

	Term	Deal Terms as of April 26, 2016	TZK's Proposed changes as of May 22, 2019
15.	Subsequent Tenant Equity Repayment and Return of Equity	These returns were not explicitly addressed in the Term Sheet	The Subsequent Tenant is limited to earn 16% IRR with a 20% share to Port afterwards and after earning the 18% IRR, surplus cash flow shall be shared at (i) 50/50% (ST/Port) thereafter.
16.	Participation Rent: (Port's Share of Project Revenues)	These returns were not explicitly addressed in the Term Sheet	The Subsequent Tenant is limited to earn 16% IRR with a 20% share to Port afterwards and after earning the 18% IRR, surplus cash flow shall be shared at (i) 50/50% (ST/Port) thereafter.
17.	Participation Rent: (Port's Share of Project Revenues)	These returns were not explicitly addressed in the Term Sheet	The Subsequent Tenant is limited to earn 16% IRR with a 20% share to Port afterwards and after earning the 18% IRR, surplus cash flow shall be shared at (i) 50/50% (ST/Port) thereafter.
TZK, the Original Tenant, Actual Equity invested <u>After</u> Construction completion			
18.	TZK Equity Repayment and Return of Equity invested during Operation Period	These returns were not explicitly addressed in the Term Sheet	<p>a. All Capital Improvements Equity invested during operations phase gets an 11% IRR, for both Original Tenant and Subsequent Tenant.</p> <p>b. "Operations Equity" will be recognized, subject to the following:</p> <p>i. Reasonable consent. Subject to Port approval, in its reasonable discretion; "Reasonable" standard will include need for equity infusion is market-wide downturn</p> <p>ii. Simple and subject to capped interest rate. Operations Equity will earn interest calculated on a simple return basis equal to the lesser of (i) the then interest rate on the then outstanding senior loan on the project, or (ii) 10%.</p> <p>ii. Defined events. "Operations Equity" will only include equity contributed during the operations phase to cure loan defaults</p>

	Term	Deal Terms as of April 26, 2016	TZK's Proposed changes as of May 22, 2019
			<p>or avoid potential loan defaults (i.e., debt pay downs, debt service shortfalls, etc.) or for existing or potential operating shortfalls (i.e., when revenues are insufficient to cover operating expenses), in either event, arising out of market-wide downturns.</p> <p>iv. Cap on amount. Up to \$20M in additional equity may be invested in the project, on a cumulative basis over the life of the lease. \$20M cap will be subject to the following schedule showing increases at 10-year intervals over the 50-year initial lease term.</p>
19.	Reimbursement of Port Transaction Costs	During LDDA term, TZK to pay transaction cost similar to the ENA transaction cost provisions subject to no cap per year and Quarterly advance deposit is required.	Port Transaction Cost recovery during the normal LDDA Period is capped at \$300,000. If the LDDA period is extended because of litigation, the cap will be lifted to cover the more than expected Port cost.
20.	Competent Hotel Management Required	TZK's final selection of a hotel management company is subject to prior review and acceptance by Port Staff and which review shall be conducted by an independent third party, which shall not be unreasonably	No Change
21	Assignment	<p><u>Prior to completion of the Project and during the first seven (7) years of the Lease</u></p> <p>Tenant may not assign its interest in the LDDA or Lease, as applicable, without the prior written consent of the Port Commission subject to the following: Developer acknowledges that Port is entering into the LDDA and/or Lease based on Developer's special skills, capabilities, and experience. This LDDA and the Lease are personal to Developer and neither may not be Transferred without the Port Commission's prior consent, which consent may not be unreasonably withheld, conditioned or delayed; provided, however, it will be reasonable for Port to withhold its consent to</p>	No Change

	Term	Deal Terms as of April 26, 2016	TZK's Proposed changes as of May 22, 2019
		any assignment or transfer (i) that would result in a change in use of the dinner-theater operations and location and provided Port approves of the change in use, the percentage rent owed to Port from the gross revenues from such new use is less than the percentage rent received by Port for similar uses, or (ii) the initial and subsequent IRR thresholds are not reduced to account for the assignee's or transferee's reduced risk on its investment in the Project.	

Exhibit D

The Development Provides Numerous Benefits to the Public Trust

The proposed Development described in the LDDA and Lease provides numerous public benefits to the public trust, including (a) new hotel, dinner-theater and other visitor-serving uses that will enhance public use and enjoyment of the waterfront, (b) creation of new public open space, (c) elimination of barriers to the waterfront and uniting the landside with the waterfront, (d) enhanced pedestrian, bicycle and transit access along the Waterfront, and (e) increased rent revenues to the Harbor Fund that will exceed the current and projected revenues from existing parking operations on the Site.

A. *Hotel, Dinner-Theater, and Other Visitor-Serving Uses.*

The Development will add a new 192-room hotel that will provide new opportunities for visitors to come to San Francisco's historic northern waterfront. All the rooms will be made available for rent to the public -- no private ownership interest in any of the hotel rooms (fractional ownership or timeshares) will be permitted. The hotel will include a restaurant/café and bar that will be open to the general public, and the hotel lobby will also be open to the public.

The Development also includes a permanent home for Teatro ZinZanni, a unique dinner theater experience that will be a major waterfront attraction. ZinZanni's signature Speigeltent was long associated with the San Francisco waterfront at nearby Piers 27 and 29. The project will revive the Speigeltent and add to the diversity of experiences available on the northern waterfront. Together with the hotel, the dinner theater will attract many visitors to the water and enhance the use and enjoyment of the waterfront by the public.

B. *Creation of Public Open Space.*

The Development includes a new approximately 14,000 square foot public open space and public access walkways around the entire Development site, a walking path through the public open space and enhancements to The Embarcadero, Broadway and Davis Street streetscapes.

C. *Elimination of Barriers to the Waterfront, Uniting the Land Side Neighborhood with the Waterfront, and Promoting Public Access to and along the Waterfront.*

The Site is currently used as a surface parking lot along the Embarcadero. Both Vallejo Street and Davis Street terminate on the land side of the Site, inhibiting public access to The Embarcadero and creating a barrier between the waterfront and the rest of the City at this location. The Development includes a pedestrian path from the intersection of

Davis Street and Vallejo Street to The Embarcadero along the new public open space, eliminating the existing visual and public access barrier and creating a new, welcoming connection between the waterfront and the land side of the City.

This development is anticipated to create a landmark that highlights the intersection of Broadway and The Embarcadero as a gateway to Chinatown and North Beach and create an orientation point along the waterfront. It is also anticipated to activate and revitalize the waterfront edge in the Northeast Waterfront area, establishing a daytime and nighttime presence in the area, making the area inviting to local residents as well as visitors and respect and complement the historic and architectural character of the Northeast Waterfront Historic District. These features will further unite and integrate the land side neighborhoods with the waterfront.

D. The Project will promote and enhance pedestrian, bicycle and transit access along the Waterfront.

The Site currently contains no developed public access areas except along the under-utilized sidewalks. The Site, when improved with the Development, will be welcoming to the public through enhanced pedestrian, bicycle and transit access along the waterfront as described below.

The Development will include enhancements along The Embarcadero, Broadway and Davis Street that are consistent with The Embarcadero Streetscape Plan and the other relevant City plans and policies for the area. Bulb-outs and way-finding treatments, consistent with the WLUP, the City's plans and policies, will be constructed, installed and maintained. Class I and Class II bicycle amenities will be constructed and maintained as part of the Development. Moreover, as stated above, one of the many unique features of the Development is the ability of the public to "see behind the scenes of ZinZanni" as a result of the design of the glass gazebo for the historic Speigeltent, which itself has numerous pedestrian improvement to make the experience at the Development public and welcoming with views to the Bay and The Embarcadero.

E. Increased Revenues to Harbor Fund.

The financial terms of the proposed lease provide for a minimum base rent to the Port that exceeds existing and projected revenues from existing parking operations. In addition to the minimum rent, the proposed lease also includes payments to Port from a percentage of the Development's annual gross revenue (when such amount exceeds the minimum base rent), and upon satisfaction of certain conditions, additional payment to Port from a sale of the tenant's leasehold interest or refinancing. Port obtained an appraisal on the fair market value of the Site, which appraisal serves as the basis for the setting the minimum base rent.

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 19-36

WHEREAS, Charter Section B3.581 empowers the Port Commission with the authority and duty to use, conduct, operate, maintain, manage, regulate and control the lands within Port jurisdiction; and

WHEREAS, TZK Broadway, LLC, a California limited liability company (the "Developer" or "TZK") is proposing to develop a mixed-use development that includes a 192-room hotel, a dinner-theater venue for Teatro ZinZanni, and a public park (the "Development" or "Project") at a site with frontages along The Embarcadero, Broadway and Davis Street that includes Seawall Lot 323 ("SWL 323") and Seawall Lot 324 ("SWL 324") and portions of Vallejo and Davis Streets (the "Site"); and

WHEREAS, On May 5, 2015, the Board of Supervisors adopted Resolution No. 170-15 and found that the Development is exempt from competitive bidding requirements of Administrative Code Section 2.6-1; and

WHEREAS, On September 8, 2015, the Port Commission adopted Resolution No. 15-31 authorizing the Port to enter into an Exclusive Negotiation Agreement (as amended, the "ENA") with Developer for the Development at the Site, as such agreement was extended pursuant to Resolution No. 18-53; and

WHEREAS, On April 26, 2016, the Port Commission adopted Resolution No. 16-18 and endorsed a non-binding term sheet describing the fundamental deal terms for the Project ("Term Sheet") and authorized and directed the Executive Director, or her designee, to forward the Term Sheet to the Board of Supervisors for its consideration; and on July 12, 2016, the Board of Supervisors adopted Resolution No. 277—16 and endorsed the Term Sheet; and

WHEREAS, Obtaining consideration and approval of the Lease and other matters related to the Development is the only remaining key task TZK must complete under the ENA before it expires on November 4, 2019; and

WHEREAS, Port staff and Developer wish to extend the ENA up to February 3, 2020 without payment of additional extension fees, solely in the event the Board of Supervisors' does not take action on the matter before November 4, 2019; and

WHEREAS, In accordance with the ENA, the parties have negotiated a lease disposition and development agreement ("LDDA"), Lease No. L-16585 (the "Lease") and other related agreements and documents (collectively, the "Transaction Documents") for the Development; and

WHEREAS, The schematic drawings for the Project are on file with the Port Commission Secretary and the representative Schematic Drawings of the building(s) within the Site are shown in the attachment to the Memorandum accompanying this Resolution; and

WHEREAS, Port staff and TZK have collectively conducted extensive community outreach and presented updates on the proposed Development to community stakeholders and received express support for the proposed development; and

WHEREAS, Pursuant to Section 23.33 of the Administrative Code, it is City policy that any and all leases awarded without following the City's competitive bid procedures shall be in an amount not less than the fair market value of the leased property;

WHEREAS, The Director of the City's Real Estate Division, in consultation with Port staff, conducted an appraisal of the Site, and such appraisal, along with hotel consultant reports, shows that the financial terms of the Lease are not less than the fair market value of the Site; and

WHEREAS, The Development provides numerous benefits to the Public Trust, including (a) new hotel, dinner-theater, and other visitor-serving uses that will enhance public use and enjoyment of the Waterfront, (b) creation of a new public open space, (c) elimination of barriers to the waterfront and uniting the landside with the waterfront, (d) enhanced pedestrian, bicycle and transit access along the Waterfront, and (e) increased rental revenues to the Harbor Fund that will exceed the current and projected revenues from existing parking operations on the Site, as further described in the Memorandum accompanying this Resolution; and

WHEREAS, Port and TZK have negotiated the LDDA, with a 12-month term and four 3-month extension options, which LDDA includes among other things, additional Developer financial obligations including a LDDA fee, extension option fee, payment of any outstanding ENA fees, a LDDA termination fee, reimbursement of Port's transaction costs during the LDDA term, liquidated damages for delay of construction completion beyond the completion date, and setting the conditions the parties must satisfy or waive before the Lease is executed by the parties, all as described in the Memorandum accompanying this Resolution, and a copy of the LDDA and Lease are on file with the Commission Secretary; and

WHEREAS, The Lease is for a term of 50 years with one 16-year extension option and includes, among other terms, the following financial terms: (1) an annual minimum base rent equal to no less than \$1 million, as increased over time, (2) percentage rent above the minimum rent equal to 3.5%-6.5% of annual gross revenues as further described in the Memorandum accompanying this Resolution, (3) participation rent on net cash flow, net transfer proceeds and net refinancing proceeds from the Project after the

tenant has earned a minimum return on tenant equity, as further described in the Memorandum accompanying this Resolution, (4) a cap of \$60 million on the initial tenant's equity that is eligible to earn a return, and (5) tenant obligation to maintain the public park and open space within the Site without any reimbursement or payment by Port or the City; and

WHEREAS, The Lease also limits the type of post-construction tenant equity eligible for return as follows: (1) a reduced return (11% IRR) on tenant equity for capital improvements only, (2) a reduced return equal to the lesser of the interest rate on the then outstanding senior loan on the Project or 10%, both at simple interest, on tenant equity (capped at \$20 million over the Lease term, subject to increases set forth in the Lease) used to offset operational shortfalls due a downturn lasting at least 12 consecutive months in the San Francisco hotel market, as further described in the Memorandum accompanying this Resolution; and

WHEREAS, The Transaction Documents conform to all local laws and regulations and are not prohibited by the City's Charter; and

WHEREAS, City and Port staff and consultants have conducted substantial economic analysis of the Project impacts and benefits on the Port and City; and

WHEREAS, The San Francisco Planning Department ("Planning Department") prepared an Initial Study/Preliminary Mitigated Negative Declaration ("IS/PMND") for the Project and published it for public review on October 17, 2018. No appeal of the IS/PMND was filed and the Mitigated Negative Declaration became final on December 21, 2018; and

WHEREAS, On December 21, 2018, the Planning Department approved the issuance of the Final Mitigated Negative Declaration ("FMND") as prepared by the Planning Department in compliance with the California Environmental Quality Act ("CEQA", CEQA Guidelines (Title 14 California Code of Regulations Sections 15000 et seq.), and San Francisco Administrative Code Chapter 31 ("Chapter 31"); and

WHEREAS, On March 6, 2019, the Historic Preservation Commission adopted Motion No. 0370 finding that the proposed Development is consistent with Article 10 of the Planning Code and the Secretary of the Interior's Standards for Rehabilitation in conformance with the architectural plans filed with the Planning Department subject to the conditions and findings listed in its Motion No. 0370; and

WHEREAS, On May 2, 2019, the Planning Commission conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Authorization Application and General Plan Referral Nos. 2015-016326 CUA and 2016- 011011GPR. At that hearing, pursuant to Resolution No. 20443, the Planning Commission made Findings of Consistency with the General Plan and with the Priority Policies of Planning Code Section 101.1

for the street vacations for the Project, pursuant to Section 4.105 of the City Charter and Section 2A.53 of the Administrative Code. In addition, pursuant to Motion No. 20444, the Planning Commission granted a Conditional Use Authorization for the Development pursuant to Planning Code Sections 210.1, 240.3 and 303 to allow a hotel use within the C-2 Zoning District, the Waterfront Special Use District No. 3, and a 40-X Height and Bulk District, subject to the conditions and findings listed in the Motion No. 20444; and

WHEREAS, In Resolution No. 20443, the Planning Commission, having reviewed the FMND, concurred with the Planning Department's determination that, pursuant to the FMND, including its mitigation measures, the Project could not have a significant impact on the environment; and

WHEREAS, In Motion No. 20444, the Planning Commission made the same findings as in Resolution No. 20443, and more specifically found that, based on review and consideration of the FMND and the record as a whole, there is no substantial evidence that the Project will have a significant effect on the environment with the adoption of the mitigation measures contained in the Mitigation Monitoring and Reporting Program ("MMRP"). A copy of the MMRP is attached to the Memorandum accompanying this Resolution. The Planning Commission adopted the FMND and the MMRP and included all required mitigation measures identified in the FMND and contained in the MMRP as conditions of approval; and

WHEREAS, The Planning Department Commission Secretary is the custodian of record for the file for File Nos. 2015-016326ENV, 2015-016326 CUA and 2016- 011011GPR at 1650 Mission Street, Suite 400, San Francisco, California; and

WHEREAS, The FMND and the MMRP have been made available to the public and the Port Commission for its review and action and are incorporated herein by this reference; and

WHEREAS, (1) The actions proposed for approval in this Resolution were contemplated as part of the FMND and present no substantial changes to the Project that will require major revisions of the FMND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; (2) the actions proposed for approval in this Resolution present no substantial changes with respect to the circumstances under which the Project was approved that will require major revisions of the FMND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; (3) no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the FMND was adopted, has become available which indicates that: (A) the Project will have significant effects not discussed in the

FMND, (B) significant environmental effects will be substantially more severe than shown in the FMND, (C) mitigation measures or alternatives found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the Project, or (D) mitigation measures or alternatives which are considerably different from those in the FMND would substantially reduce one or more significant effects on the environment; NOW, THEREFORE, BE IT

RESOLVED, That the Port Commission has reviewed and considered the FMND and the record as a whole, and finds that the FMND is adequate, that there is no substantial evidence that the Project will have a significant effect on the environment with the adoption of the mitigation measures contained in the MMRP, and hereby adopts the FMND; and be it further

RESOLVED, That the Port Commission hereby adopts the FMND and the MMRP as part of this Resolution and directs Port staff to include in the applicable Transaction Documents, an obligation by the Developer to comply with all required mitigation measures identified in the FMND and contained in the MMRP; and be it further

RESOLVED, That the Port Commission finds that the rent due Port under the Lease is at fair market and the Lease includes terms that are consistent with prudent land management practices; and, be it further

RESOLVED, That the Port Commission finds that the Development provides numerous benefits to the Public Trust, including (a) new hotel, dinner-theater, and other visitor-serving uses that will enhance public use and enjoyment of the Waterfront, (b) creation of a new public open space, (c) elimination of barriers to the waterfront and uniting the landside with the waterfront, (d) enhanced pedestrian, bicycle and transit access along the Waterfront, and (e) increased rental revenues to the Harbor Fund that will exceed the current and projected revenues from existing parking operations on the Site; and, be it further

RESOLVED, That the Port Commission approves the form and the substance of the Transaction Documents, including all attachments and exhibits thereto, and the transactions which such Transaction Documents contemplate, incorporating the material business terms set forth in the Memorandum accompanying this Resolution; and be it further

RESOLVED, That the Port Commission hereby approves the Schematic Drawings of the Project on file with the Port Commission Secretary and the representative Schematic Drawings of the building(s) within the Site, as shown in the attachment to the Memorandum accompanying this Resolution, and authorizes the Executive Director to approve non-material changes in the Schematic Drawings; and be it further

RESOLVED, That the Port Commission authorizes and directs the Executive Director of the Port ("Executive Director") to forward Lease No. L-16585 to the Board of Supervisors for approval pursuant to its authority under Charter Section 9.118, and upon the effectiveness of such approval, to execute the LDDA, and subject to the terms of the LDDA, as applicable, execute the Lease in substantially the form of such agreements on file with the Port Commission Secretary, and in such final form as is approved by the Executive Director in consultation with the City Attorney; and be it further

RESOLVED, That the Port Commission authorizes the Executive Director to extend the ENA up to February 3, 2020 without payment of additional extension fees, solely in the event the Board of Supervisors' does not take action on the matter before November 4, 2019; and be it further

RESOLVED, That the Port Commission authorizes the Executive Director to enter into other agreements, encroachment permits, easement agreements, and other related covenants and property documents necessary to implement the transactions contemplated by the Transaction Documents, and to enter into any additions, amendments or other modifications to the Transaction Documents including preparation and attachment of, or changes to, any or all of the attachments and exhibits that the Executive Director, in consultation with the City Attorney, determines are in the best interests of the City, do not materially decrease the benefits or otherwise materially increase the obligations or liabilities of the City or Port, and are necessary or advisable to complete the transactions that the Transaction Documents contemplate and effectuate the purpose and intent of this Resolution, such determination to be conclusively evidenced by the execution and delivery by the Executive Director of such other agreements, easement agreements and other related covenants and property documents, and/or additions, amendments or other modifications to the Transaction Documents; and be it further

RESOLVED, That the Port Commission authorizes the Executive Director and any other appropriate officers, agents or employees of the City to take any and all steps (including if necessary, obtaining Board of Supervisors approval and the execution and delivery of any and all applications, recordings, maps, certificates, agreements, notices, consents, and other instruments or documents) as they or any of them deems necessary or appropriate, in consultation with the City Attorney, in order to consummate (i) the vacation of a portion of Davis and Vallejo Streets, (ii) any sidewalk widening legislation specific to the Project, or (iii) other real property matters necessary to effectuate the purpose and intent of this Resolution; and be it further

RESOLVED, That the Port Commission authorizes the Executive Director and any other appropriate officers, agents or employees of the City to take any and all steps (including the execution and delivery of any and all certificates, agreements, notices, consents, escrow instructions, closing documents

and other instruments or documents) as they or any of them deems necessary or appropriate, in consultation with the City Attorney, in order to consummate the transactions contemplated under the Transaction Documents, in accordance with this Resolution, or to otherwise effectuate the purpose and intent of this Resolution, such determination to be conclusively evidenced by the execution and delivery by any such person or persons of any such documents; and be it further

RESOLVED, That the Port Commission approves, confirms and ratifies all prior actions taken by the officials, employees and agents of the Port Commission or the City with respect to the Transaction Documents.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of September 10, 2019.



Secretary

City and County of San Francisco



London N. Breed, Mayor
Mohammed Nuru, Director

San Francisco Public Works

GENERAL - DIRECTOR'S OFFICE

City Hall, Room 348
1 Dr. Carlton B. Goodlett Place, S.F., CA 94102
(415) 554-6920 ■ www.SFPublicWorks.org



Public Works Order No: 202202

Determination to recommend conditionally vacating a portion of Vallejo St, between Davis Street and The Embarcadero; and a portion of Davis Street, between Vallejo Street and The Embarcadero.

WHEREAS, The City and County of San Francisco has fee title ownership of property underlying most public right-of-ways, which includes streets and sidewalks; and

WHEREAS, The area to be vacated consists of the following (collectively, the "Vacation Area") and are specifically shown on Public Works Map SUR 2019-005 dated November 6, 2019:

1. An undeveloped portion of Vallejo Street, between Davis Street and The Embarcadero.
2. An undeveloped portion of Davis Street, between Vallejo St. and The Embarcadero.

WHEREAS, In Resolution No. 20443, dated May 2, 2019, the City Planning Commission determined that the proposed vacation of the Vacation Area is consistent with the General Plan and priority policies of Planning Code Section 101.1; and

WHEREAS, The street vacation was evaluated as part of the Teatro ZinZanni Project evaluated in the final mitigated negative declaration issued on December 21, 2018, Case No.2015-016326ENV ("TZK MND") pursuant to the California Environmental Quality Act ("CEQA," California Public Resources Code sections 21000 et seq.), and the Planning Commission adopted the TZK MND on May 2, 2019, and a Mitigation Monitoring and Reporting Program ("MMRP"), in its Motion No. 20444; and

WHEREAS, The vacation of the Vacation Area is necessary to fulfill the objectives of the Teatro ZinZanni Development Project; and

WHEREAS, Pursuant to the California Streets and Highway Code Sections 8300 et seq. and Public Works Code Section 787(a), Public Works, Bureau of Street Use and Mapping (the "Department") has initiated the process to vacate the Vacation Area; and

WHEREAS, The Department sent notice of the proposed street vacation, draft SUR drawing, a copy of the petition letter, and a Public Works referral letter to the Department of Technology, San Francisco Municipal Transportation Agency, AT&T CenturyLink, Comcast, ExteNet, Point to Point communications, Verizon/MCI, XO-Communications, Sprint, San Francisco Fire Department, San Francisco Water Department, Pacific Gas and Electric ("PG&E"), Bureau of Engineering, Department of



San Francisco Public Works
Making San Francisco a beautiful, livable, vibrant, and sustainable city.

Parking and Traffic, Utility Engineering Bureau, and the San Francisco Public Utility Commission ("PUC"). No public or private utility company or agency objected to the proposed vacation; consequently, Public Works finds the Vacation Area is unnecessary for the City's present or prospective public street purposes; and

WHEREAS, The applicant is the owner of all of the property adjacent to the Vacation Area; and

WHEREAS, The vacation is being carried out pursuant to the California Streets and Highways Code sections 8300 *et seq*, and section 787 of the San Francisco Public Works Code; and

WHEREAS, The vacation of the Vacation Area does not deprive any private landowner of access to the built public street grid; and

WHEREAS, The public interest, convenience, and necessity require that no other easements or other rights should be reserved by City for any public or private utilities or facilities that may be in place in the Vacation Area and that any rights based upon any such public or private utilities or facilities are unnecessary and should be extinguished; and

WHEREAS, In accordance with Streets and Highways Code Section 892 and 8314, the Vacation Area is no longer useful as a nonmotorized transportation facility; and

WHEREAS, the Vacation Area is in Port jurisdiction and will become Port parcels.

NOW THEREFORE BE IT ORDERED THAT,

The Director approves all of the following documents either attached hereto or referenced herein:

1. Ordinance to vacate the Vacation Area as shown on Department of Public Works drawing SUR 2019-005.
2. Vacation Area SUR Map No. 2019-005, dated November 6, 2019.

The Director recommends that the Board of Supervisors move forward with the legislation to vacate said Vacation Area, subject to the reservations described above.

The Director further recommends the Board of Supervisors authorize the Mayor, Clerk of the Board, Director of Property, Port Director, County Surveyor, and Director of Public Works to take any and all actions which they or the City Attorney may deem necessary or advisable to effectuate the purpose and intent of this Ordinance.

X

DocuSigned by:

Bruce Storrs

Storrs, Bruce
City and County Surveyor

X

DocuSigned by:

Nuru, Mohammed

Nuru, Mohammed
Director



SCALE: 1" = 30'

GREEN
STREET
(68.75' WIDE)

THE EMBARCADERO
(WIDTH VARIES)

BLOCK
0139

DAVIS STREET
(69.79' WIDE)

VALLEJO
STREET
(68.75' WIDE)

BLOCK
0140

BLOCK 0137

APN 0138-003
AREA= 12,390± SQ. FT.
FIRE DEPARTMENT ACCESS AND
LIGHT AND AIR PURPOSES
B959 O.R. 872

APN 0138-002
AREA= 5,487± SQ. FT.

APN 0138-001

POINT OF
BEGINNING



APPROVED:

Bruce R. Storrs
BRUCE R. STORRS
CITY & COUNTY SURVEYOR

11/6/19
DATE

CITY AND COUNTY OF SAN FRANCISCO PUBLIC WORKS
SUBDIVISION AND MAPPING

STREET VACATION FOR DAVIS STREET BETWEEN VALLEJO AND THE EMBARCADERO
AND VALLEJO STREET BETWEEN DAVIS AND THE EMBARCADERO

FILE:
SUR 2019-005

SHEET 1 OF 1

SCALE: 1" : 30'

REVISION
10/01/2019

Member, Board of Supervisors
District 3



City and County of San Francisco

OB
Leg Dep
Leg Clerks
LC Clerk

AARON PESKIN

佩斯金 市參事

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2020 JAN -9 AM 9:56
AK

DATE: January 6, 2020

TO: Angela Calvillo
Clerk of the Board of Supervisors

FROM: Supervisor Aaron Peskin, Chair, Land Use and Transportation Committee

RE: Land Use and Transportation Committee
COMMITTEE REPORTS

Pursuant to Board Rule 4.20, as Chair of the Land Use and Transportation Committee, I have deemed the following matters are of an urgent nature and request they be considered by the full Board on Tuesday, January 14, 2020, as Committee Reports:

191260 Planning Code, Zoning Map - Establishing 12 Named Neighborhood Commercial Districts

Ordinance amending the Planning Code to establish 1) the Inner Balboa Street Neighborhood Commercial District (NCD) generally including the properties along Balboa Street between 2nd and 8th Avenues, 2) the Outer Balboa Street NCD generally including the properties along Balboa Street between 32nd and 39th Avenues, 3) the Bayview NCD generally including the properties along 3rd Street from Yosemite to Jerrold Avenues, 4) the Cortland Avenue NCD generally including the properties along Cortland Avenue between Bonview and Folsom Streets, 5) the Geary Boulevard NCD generally including the properties along Geary Boulevard between Masonic and 28th Avenues, 6) the Mission Bernal NCD generally including the properties along Mission Street between Cesar Chavez and Randall Streets, 7) the San Bruno Avenue NCD generally including the properties along San Bruno Avenue between Hale and Olmstead Streets, 8) the Cole Valley NCD generally including the properties along Cole Street from Frederick to Grattan Streets and some parcels north of Carl Street and south of Parnassus, 9) the Lakeside Village NCD generally including the properties along Ocean Avenue between Junipero Serra Boulevard to 19th Avenue, 10) the Lower Haight Street NCD generally including the properties along Haight Street between Webster and Steiner Streets, 11) the Lower Polk Street NCD generally including non-contiguous properties along Polk Street from Geary Boulevard to Golden Gate Avenue with frontage on Geary Boulevard, Golden Gate Avenue, and other side streets, and 12) the Inner Taraval NCD generally including the properties along Taraval Street from 19th to Forest Side Avenues; amending the Zoning Map to include the new Neighborhood Commercial Districts; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1; and adopting findings of public necessity, convenience, and welfare under Planning Code, Section 302.

COMMITTEE REPORT MEMORANDUM

Land Use and Transportation Committee

191179 Resolution of Intent to Vacate Streets - A Portion of Vallejo Street Right-of-Way and a Portion of Davis Street Right-of-Way - Teatro ZinZanni Project

Resolution declaring the intention of the Board of Supervisors to order the vacation of the Vallejo Street right-of-way generally bounded by Assessor's Parcel Block No. 0138, Lot No. 001, and Assessor's Parcel Block No. 0139, Lot No. 002, between Davis Street and The Embarcadero and a portion of the Davis Street right-of-way generally located between Broadway Street and The Embarcadero, as part of the improvements for the Teatro ZinZanni hotel, theater, and public park development project on Seawall Lots 323 and 324; and setting the hearing date for all persons interested in the proposed vacation of said public right-of-way.

These matters will be heard in the Land Use and Transportation Committee at a Regular Meeting on Monday, January 13, 2020, at 1:30 p.m.



TO: Angela Calvillo, Clerk of the Board of Supervisors SK
FROM: Sophia Kittler
RE: Vallejo Street and Davis Street – Resolution of Intent to Vacate a portion
of Vallejo Street Right-of-Way and a portion of Davis Street Right-of-Way
for Teatro Zinzanni Project
DATE: Tuesday, November 19, 2019

Resolution declaring the intention of the Board to order the vacation of the Vallejo Street Right-of-Way generally bounded by Assessor's Block 0138/001 and 0139/002 between Davis Street and The Embarcadero and a portion of the Davis Street Right-of-Way generally located between Broadway and The Embarcadero, as part of the improvements for the hotel, theater and public park Teatro Zinzanni development project on seawall lots 323 and 324; and setting the hearing date for all persons interested in the proposed vacation of said public right-of-way.

Should you have any questions, please contact Sophia Kittler at 415-554-6153.

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2019 NOV 19 PM 4:33
BY SK