



# Community Plan Evaluation Appeal

## 2300 Harrison Street

**DATE:** August 17, 2020  
**TO:** Angela Calvillo, Clerk of the Board of Supervisors  
**FROM:** Lisa Gibson, Environmental Review Officer – (628) 652-7571  
Ryan Shum, Environmental Planner – (628) 652-7542  
**RE:** Board File Number 200054, Planning Case Nos. 2016-010589ENV and  
2016-010589APL  
Appeal of Community Plan Evaluation for 2300 Harrison Street Project  
**HEARING DATE:** August 18, 2020  
**ATTACHMENT:** A – San Francisco Planning Department, *2300 Harrison St\_CPE\_Current Planning Referral*, February 12, 2018

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**PROJECT SPONSOR:** Tuija Catalano, Reuben, Junius, & Rose, LLP, (415) 567-9000  
**APPELLANT(S):** Carlos Bocanegra, (760) 822-9677

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**DEPARTMENT’S RECOMMENDATION:** Uphold the community plan evaluation determination and reject the appeal.

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### INTRODUCTION

This memorandum provides the Planning Department’s (the department’s) supplemental responses to the appellant’s August 7, 2020 supplemental letter of appeal to the board of supervisors (the board) regarding the department’s issuance of a community plan evaluation (CPE) for the proposed 2300 Harrison Street project under the Eastern Neighborhoods Rezoning and Area Plans Programmatic Final Environmental Impact Report (PEIR) in compliance with the California Environmental Quality Act.

### PLANNING DEPARTMENT SUPPLEMENTAL RESPONSES

The department’s August 10, 2020 appeal response sets forth the reasons in support of the determination that the proposed project at 2300 Harrison Street qualifies for issuance of a CPE under the Eastern Neighborhoods Rezoning and Area Plans Programmatic Final Environmental Impact Report and pursuant to CEQA section 21083.3 and CEQA Guidelines section 15183. However, there are several points in appellant’s August 7, 2020 supplemental appeal letter for which the department herein provides supplemental responses and clarification.

**SUPPLEMENTAL RESPONSE 4: CEQA Section 21083.3(e) and CEQA Guidelines Section 15183(i) define the terms ‘community plan’ and ‘consistent’ for the purpose of CEQA Guidelines Section 15183. The**

**department properly determined that the project is consistent with the development density established by the zoning implementing the Mission Area Plan at the site.**

The Mission Area Plan is a community plan that meets the definitions provided in CEQA Section 21083.3(e) and CEQA Guidelines Section 15183(i)(1). The department's determination that the project is consistent with the community plan is based on the definition of 'consistent' in CEQA Guidelines Section 15183(i)(2). Section 15183(i)(2) specifies that for the purpose of this section, 'consistent' means that the density of the proposed project is the same or less than the standard expressed for the involved parcel in the general plan, community plan, or zoning action for which an EIR has been certified, and that the project *complies with the density-related standards contained in the plan or zoning*. In particular, CEQA Section 21083.3(e)(3) further clarifies that the community plan "(3) contains specific development policies adopted for the area included in the community plan and identifies measures to implement those policies, so that the policies which apply to each parcel can be determined."

An area plan, such as the Mission Area Plan, provides a guide for the long-term development of a geographic area, responding to its unique characteristics by addressing issues around housing, jobs, transportation, parks and other neighborhood elements that contribute to creating complete neighborhoods. An area plan's vision for the built environment is reflected in the zoning regulations that are adopted to implement the area plan. Zoning regulations govern how land can be used, and include the height and bulk districts, legislated setbacks, and special use districts that apply to each parcel.

Through the Eastern Neighborhoods Plan rezoning process, the project site was rezoned from industrial use to Urban Mixed-Use district (UMU) and a 68-X height and bulk district. The UMU district is intended to buffer industrial and mixed uses and promote a vibrant mix of uses while maintaining the characteristics of formerly industrially zoned areas. It also allows for residential use. The proposed project is consistent with the development density for the site as adopted by the Eastern Neighborhoods Plan rezoning process in that it is consistent with the UMU zoning district as well as the 68-X height and bulk district.<sup>1</sup> As cited in the CPE on page 9, the department's Current Planning Division completed a CPE Eligibility Determination for the proposed project which included a preliminary Planning Code analysis of project height, bulk, use permissibility, use sizes, floor area ratio, and dwelling unit density. The Current Planning CPE Referral is Attachment A to this supplemental appeal response.

In the supplemental appeal letter, the appellant alleges that the project is inconsistent with certain objectives and goals of the General Plan and Mission Area Plan and concludes that the department erred in issuing a CPE because of said inconsistencies. However, the department's determination that a CPE is the proper process must be upheld if supported by substantial evidence. The project is consistent with the height, use, and density for the site described in the programmatic Eastern Neighborhood's plan EIR as noted above. In addition, the department's procedures for issuing CPEs have been upheld in the First District of the California Court of Appeals in the unpublished case *Save the Hill and Grow Potrero Responsibly v. City and County of San Francisco*. Please see Supplemental Response 5 regarding inconsistencies with plans and policies in the environmental review process.

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<sup>1</sup> Ordinance 200143 is pending legislation that is currently under consideration by the Board of Supervisors. If approved, the Ordinance would amend the Planning Code to prohibit office uses in the upper levels of certain developments within Urban Mixed Use (UMU) zoning districts.

**SUPPLEMENTAL RESPONSE 5: The project would not result in significant impacts on the physical environment due to conflicts with the General Plan or the Mission Area Plan that are peculiar to the project or the project site.**

The department found that the project was eligible for a CPE because the project is consistent with the height, use, and density for the site described in the programmatic Eastern Neighborhood's plan EIR as noted above. In addition, in approving the project, the Planning Commission found that the project was consistent with the General Plan. CEQA Guidelines Section 15125(d) requires potential inconsistencies with plans and policies be disclosed in an EIR. However, inconsistencies are not significant impacts in and of themselves. The purpose of identifying these inconsistencies is to disclose for consideration in further environmental analysis if the physical changes from the project would result in significant environmental impacts.

The Eastern Neighborhoods PEIR includes a Plans and Policies Section beginning on page 83 of the PEIR<sup>2</sup> which noted the following:

"As part of the review and approval process, the proposed rezoning options and each of the neighborhood area plans would be reviewed by the Planning Commission, and the Board of Supervisors would make findings of consistency with objectives, policies and principles of the General Plan at the program level and/or to amend the General Plan (particularly existing area plans) to reflect the final zoning, policies and to incorporate the neighborhood area plans."

The objectives and information provided by the appellant in the August 7 letter are goals and objectives for the Mission Area Plan *as a whole*. No one project could be consistent with every goal or objective in the plan. Individual projects are reviewed for area plan consistency based on the specific land use, height, and bulk designations for the site on which they are proposed.

The appellant has provided no evidence that the 2300 Harrison Street project, with its 24 dwelling units, addition of 27,017 square feet of office, 1,117 square feet of arts activity and retail uses, and 2,483 square feet of retail, would result in significant effects on the environment that are not disclosed in the PEIR. As stated in the department's response, project-specific and cumulative analyses for each environmental topic were conducted for the project and documented in the CPE. The project analysis results were compared to the impacts disclosed in the PEIR as required by section 21083. Through the CPE process, mitigation measures from the PEIR have been applied to the project to reduce significant environmental impacts to less than significant. The department's determination is supported by substantial evidence; the appellant has not demonstrated otherwise.

While not relevant to this appeal, for informational purposes, it should also be noted that the consistency of the proposed project with those General Plan and Mission Area Plan policies that do not relate to physical environmental effects as well as the merits of the project were considered by the Planning Commission as part of its determination of whether to approve, modify, or disapprove the project. The commission's decisions for the large project authorization and office allocation are on appeal at the Board of Appeals, scheduled to be heard on August 26, 2020.

**SUPPLEMENTAL RESPONSE 6: The standard of review for the department's CPE determination for this project is substantial evidence, which applies to subsequent projects consistent with the development**

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<sup>2</sup> San Francisco Planning Department. 2009. Eastern Neighborhoods Rezoning and Area Plans PEIR. Planning Department Case 2004.0160E. Available online at [https://sfplanning.org/environmental-review-documents?field\\_environmental\\_review\\_categ\\_target\\_id=214&items\\_per\\_page=All](https://sfplanning.org/environmental-review-documents?field_environmental_review_categ_target_id=214&items_per_page=All). Accessed August 16, 2020.

**density in a community plan where an EIR has been prepared and certified for the community plan, unless there are impacts peculiar to the project or site not previously disclosed.**

The department's determination that the project qualified for a streamlined environmental review process under CEQA section 21083.3 (a) and (c) and CEQA Guidelines section 15183 (a) and (b) is based on facts. The Current Planning division found the project to be consistent with the development density at the site as designated through the zoning adopted for the Mission Area Plan. In compliance with CEQA Guidelines section 15168(c)(4), the environmental planning division prepared a CPE initial study checklist to confirm the project would not result in significant environmental impacts that could not be mitigated through application of measures identified in the PEIR. There are no significant physical environmental impacts peculiar to the site. Since this is a question of facts regarding a subsequent project in a community plan for which an EIR has been prepared, the department's conclusion (as the CEQA lead agency for San Francisco) must be upheld if supported by substantial evidence.

The appellant cites to CEQA Guidelines Section 15064, Determining the Significance of Environmental Effects cause by the project and indicates that the fair argument standard is applicable for this project. The appellant is incorrect. The fair argument standard does not apply to the department's determination that the project is within the scope of the EIR completed and certified for the Eastern Neighborhoods including the Mission Area Plan, pursuant to CEQA section 21083.3 and CEQA Guidelines section 15183.

As stated in the department's appeal response, project-specific and cumulative analyses were conducted for this project. Mitigation measures from the PEIR were applied to the project to reduce project impacts to a less-than-significant level.

Appellant has not provided substantial evidence that there would be any significant impacts peculiar to the project or site, or not addressed as a significant impact in the PEIR, or that could not be substantially mitigated by imposition of uniformly applied development policies or standards. A CPE is the appropriate environmental process and document for this project. The department's determination to issue a CPE is supported by substantial evidence; the appellant has not demonstrated otherwise.

### **Ongoing City Efforts Regarding Socioeconomic Impacts of Development**

Economic and social effects of a project shall not be treated as effects on the environment but may be used to determine the significance of a physical effect. Such an analysis is beyond the scope of environmental review under CEQA. City staff acknowledge the concerns of the community and the appellant raised in the appeal. The information provided in the August 10, 2020 department response summarizes the ways in which the Planning Department, in collaboration with community and City-agency partners, is working to address the socioeconomic issues of racial and social equity, affordability, economic displacement, and gentrification through land use planning and policy efforts.

### **CONCLUSION**

The planning department's determination that the proposed project qualifies for a community plan evaluation pursuant to CEQA section 21083.3 and CEQA Guidelines section 15183 is supported by substantial evidence in the record, and this is the correct standard of review for a project within a community plan for which an EIR was certified. The project is consistent with the development density established for the project site under the Mission Area Plan in that it is consistent with the zoning applicable to the site (uses, height, density). Therefore, the appropriate level of environmental review is a CPE. Accordingly, the department conducted necessary studies and analyses and provided the planning commission with the information and documents

necessary to make an informed decision at a noticed public hearing in accordance with the planning department's CPE initial study and standard procedures, and pursuant to CEQA and the CEQA Guidelines. The appellant's supplemental letter does not provide substantial evidence to refute the department's conclusions. Therefore, the planning department respectfully recommends that the board of supervisors uphold the department's determination that the CPE conforms with the requirements of CEQA and reject the appeal.





# SAN FRANCISCO PLANNING DEPARTMENT

## Community Plan Evaluation Eligibility Determination Current Planning

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*Case No.:* 2016-010589ENV  
*Project Address:* 2300 Harrison Street/3101 19<sup>th</sup> Street  
*Zoning:* UMU (Urban Mixed-Use)  
Mission Alcoholic Beverage Special Use District  
*Height/Bulk:* 68-X Height & Bulk District  
*Block/Lot:* 3593/001  
*Lot Size:* 38,676 square feet  
*Plan Area:* Eastern Neighborhoods Area Plan

### A. PROJECT DESCRIPTION

The approximately 38,676 sf Project Site encompasses the entire block bounded by 19<sup>th</sup> Street to the north, Harrison Street to the east, Treat Avenue to the west, and Mistral Street to the south, in the Mission District. The proposal is a horizontal addition to an existing three-story office building via new construction of a six-story-over-basement, 75-foot-tall mixed use building, including 3,242 sf of retail use on the ground floor; 27,152 sf of office use on the second and third floors; and 28,567 sf of residential use on the fourth through sixth floors. The Project would contain 24 dwelling units. The Project would take advantage of the State Density Bonus Law (California Government Code Sections 65915-65918), which allows waivers and concessions from local development standards for Projects. Under the State Density Bonus Law, the Project would seek concessions for active ground floor uses, narrow street height limit, ground floor height, and rear yard setback requirements.

The proposed building would consist of below-grade parking, one story of mixed use and parking, two stories of office use and three stories of residential use. Office and retail open space would be provided on the ground floor. Residential common open space would be provided on the fourth and fifth floors, to a total of approximately 2,840 sf.

The Project would consist of 14 one-bedroom units and 10 two-bedroom units, mixed on floors four through six. The proposed Project would include 39 Class 1 bicycle parking spaces at the basement and ground floor levels and 41 vehicle parking spaces.

In compliance with inclusionary affordable house requirements in effect on January 12, 2016, the Project would include 5 on-site affordable dwelling units, which is 20 percent of 24 dwelling units of the base Project.

### B. PRELIMINARY PLAN CONSISTENCY REVIEW

Section 15183(a) of the California Environmental Quality Act (CEQA) Guidelines states that "...projects which are consistent with the development density established by the existing zoning,

community plan, or general plan policies for which an EIR was certified shall not require additional environmental review, except as may be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site.”

The proposed project satisfies this requirement with regard to Planning Code consistency. YES  NO

### Comments

The Project Site is located in the (UMU) Urban Mixed-Use Zoning District with a Height and Bulk District designation of 68-X. The 68-X Height and Bulk District permits buildings up to 68 feet in height with no bulk restrictions. The UMU District permits residential dwelling units without specific density limitations, allowing physical controls such as height and bulk to control dwelling unit density. At least 40% of all dwelling units must contain two or more bedrooms or 30% of all dwelling units must contain three or more bedrooms in the UMU District. The UMU District also permits non-residential development at a floor area ratio of 5.0:1 in a 68-X Height and Bulk District.

The proposed development is approximately 78-feet and exceeds the permitted height in the 68-X Height and Bulk District. However, because the Project has elected to utilize the State Density Bonus Law, pursuant to California Government Code Sections 65915-65918, a waiver, incentive, or concession from the development standards for building height may be included in the proposal.

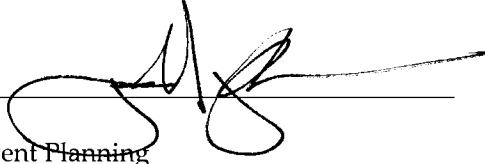
The Project proposes 24 dwellings units, 42% of which are 2 bedroom units with a 3,242 sf ground floor retail space. The Project would have 27,152 sf of office space located on the 2<sup>nd</sup> and 3<sup>rd</sup> floors and would be subject to a Small Cap Office Allocation Pursuant to Planning Code Section 321 and within the allowable FAR. The Project is seeking height concessions pursuant to California Government Code Section 65915-65918 to exceed the applicable 68-foot height limit and Height Limits for Narrow Streets and Alleys Pursuant to Planning Code Section 261.1. The Project would also include height-exempt rooftop appurtenances, such as open space features, mechanical screens, and stair and elevator penthouses, as allowed by the Planning Code. As proposed, with the allowable height concessions pursuant to California State Code, and with the approval of a Small Cap Office Allocation Pursuant to Planning Code Section 321, the Project is permitted in the UMU District and would be consistent with the development density as envisioned in the Mission Eastern Neighborhood Area Plan.

### Determination

For the purposes of the Current Planning Division, the Project is eligible for consideration Community Plan Evaluation under California Public Resources Code Sections 21159.21, 21159.23, 21159.24, 21081.2, and 21083.3, and/or Section 15183 of the California Environmental Quality Act (CEQA) Guidelines.



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Jeff Joslin  
Director of Current Planning



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Date

2.12.18

*The determination above is intended to be used solely for the purpose of determining eligibility for a Community Plan evaluation, and does not indicate conformity with all General Plan and Planning Code requirements applicable to the proposed project, or any intent on the part of the Planning Department to recommend approval or disapproval of the project as proposed. Elements that were reviewed in relation to the foregoing determination only included Planning Code analysis of project height, bulk, use permissibility, use sizes, floor area ratio, and dwelling unit density.*