



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Downtown Authorization

HEARING DATE: FEBRUARY 06, 2014

Date: January 30, 2014
Case No.: 2013.0628EHUVX
Project Address: 300 POST STREET
Zoning: C-3-R (Downtown Retail)
80-130-F Height and Bulk District
Block/Lot: 0295/016
Project Sponsor: Apple, Inc.
c/o Daniel Frattin
Reuben, Junius & Rose, LLP
One Bush Street, Suite 600
San Francisco, CA 94104
Staff Contact: Elizabeth Watty – (415) 558-6620
Elizabeth.Watty@sfgov.org
Recommendation: **Approval with Conditions**

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 contains a 550,599-square-foot (sf) building complex with two above-grade components (a 35-story hotel structure fronting Stockton and Sutter Streets, and four-story 37,234 sf retail structure fronting Post Street), an elevated plaza between the two structures, and basement levels below the entire project site. The proposed project would replace the existing retail structure with a three-story 23,470 sf retail structure, and would alter and reconfigure the elevated plaza. The retail store fronting Post Street would be reduced in height from approximately 63 feet to approximately 47 feet, eight-inches, lowering the number of floors from four-to-two. The loading entrance would remain at the southwest corner of the property on Post Street, adjacent to Williams-Sonoma retail building. The 63-foot tall segment of the building above the loading entrance is presently used for retail and hotel service space. It would be reconstructed for the same use. In total, the proposed alterations would go from 37,234 square feet to 23,470 square feet. The plaza would be reconfigured to increase in size from 4,586 square feet to 6,059 square feet. The fountain, designed by local artist Ruth Asawa, would be retained and moved approximately 10-feet south to a new location in the center of the stairs leading from Stockton Street to the renovated and expanded plaza.

SITE DESCRIPTION AND PRESENT USE

The Subject Property is located at the northwest corner of Post and Stockton Streets; Lot 016 in Assessor's Block 0295, in a C-3-R (Downtown Retail) Zoning District, the Kearny-Market-Mason-Sutter Conservation District, and an 80-130-F Height and Bulk District. The Subject Property is 35,930 square feet in area, with approximately 275.75 feet of frontage on Stockton Street, 137.5 feet of frontage on Post Street, and 117.5 feet of frontage along Sutter Street. The property is developed with a 550,599 square-foot building, which

has two above-grade components and an integrated basement level that extends between the two above-grade buildings. The Grand Hyatt San Francisco is a 35-story hotel building (built in 1972), which is located on the northern portion of the Property with frontages on Stockton and Sutter Streets. The southern portion of the Property is occupied by a four-story Levi's store, as well as above- and below-grade support space and loading access for the hotel. At the center of the property between the two buildings is an elevated plaza. The basement level contains conference rooms, ballrooms, and hotel service space.

SURROUNDING PROPERTIES AND NEIGHBORHOOD

The Project Site comprises a single parcel in the Union Square neighborhood of San Francisco. The surrounding area consists primarily of large retail tenants, with related visitor amenities, such as hotels and food service establishments throughout. The property to the west is developed with a tall three-story retail building, occupied by Williams-Sonoma; the property to the east is developed with a seven-story retail building, occupied by Nike; and the property to the south is Union Square.

This district is a regional center for comparison shopper retailing and direct consumer services. It covers a compact area with a distinctive urban character, consists of uses with cumulative customer attraction and compatibility, and is easily traversed by foot. Like the adjacent Downtown Office District, this district is well-served by City and regional transit, with automobile parking best located at its periphery. Within the district, continuity of retail and consumer service uses is emphasized, with encouragement of pedestrian interest and amenities and minimization of conflicts between shoppers and motor vehicles.

ENVIRONMENTAL REVIEW

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

HEARING NOTIFICATION

TYPE	REQUIRED PERIOD	REQUIRED NOTICE DATE	ACTUAL NOTICE DATE	ACTUAL PERIOD
Classified News Ad	20 days	January 17, 2014	December 26, 2013	42 days
Posted Notice	20 days	January 17, 2014	January 17, 2014	20 days
Mailed Notice	10 days	January 27, 2014	January 3, 2014	34 days

PUBLIC COMMENT

- The Department has received comments from the Service Employees International Union – United Service Workers West (“SEIU-USWW”) expressing opposition to this Project. The Department has also received a letter in support of the proposed project from the Union Square Business Improvement District.

ISSUES AND OTHER CONSIDERATIONS

- **Major Permit to Alter:** The Project is pending review and approval by the Historic Preservation Commission (HPC) for a Major Permit to Alter. This hearing is scheduled for February 05, 2014. If the Major Permit to Alter is not granted by the HPC, this hearing will be continued to a later date.

- **Floor Area Ratio.** The existing development on the Subject Property exceeds the maximum floor area ratio permitted in the C-3-R District. Pending legislation (Board File No. 13-1059) would allow secondary structures on lots that are noncomplying with regard to floor area the ability to remove a portion of the secondary structure and reconstruct it so long as the project meets certain criteria, including criteria requiring the property to result in an overall net reduction of square footage. This pending legislation would require a recommendation of approval by the Planning Commission through a Downtown Project Authorization. The Commission would need to first recommend approval of the legislation in order to enable an action on the proposed entitlements for the Project. If the Commission does recommend approval of the proposed legislation, it would subsequently need to make the nine findings outlined in that Ordinance as it applies to the proposed new Apple Store Project, the findings for which are outlined in the attached draft Motion.

- **Downtown Project Authorization (Section 309).** Major alteration projects in the C-3-R District require a Downtown Project Authorization (Section 309 Review). Although the project does not require the approval of any Planning Code exceptions, the Department felt that this project warranted review under Section 309 by the Planning Commission rather than at a staff-level.

- **Variance: Street Frontage Transparency.** The Planning Code requires that all street frontages that contain “active uses” must be at least 60% transparent. Although the Post Street frontage is almost entirely transparent, as is the façade facing the public open space, the Stockton Street frontage contains only 10% transparency, and as such, requires the granting of a variance. The Zoning Administrator will opine on this variance immediately following the Commission’s action on the Downtown Project Authorization.

REQUIRED COMMISSION ACTION

In order for the project to proceed, the Commission must 1) determine that the Project complies with Planning Code Section 309, including findings outlined in the Board File No. 131059 to allow for the demolition and reconstruction of noncomplying floor area. The Zoning Administrator must subsequently grant a variance from Planning Code Section 145.1.

BASIS FOR RECOMMENDATION

- The Project promotes the retention and expansion of a prominent retail tenant by enabling the creation of a new Apple, Inc. flagship retail store on Union Square.
- The Project will result in approximately 100 new jobs.
- The Project will result in a building of lesser height, which will reduce the amount of shadow on Union Square.
- The Project will result in an improved public open space, located between the retail building and the adjacent Grand Hyatt hotel building, and retain the Ruth Asawa fountain as its focal point.
- The Project will result in a more regularized building, one that holds the corner at Post and Stockton Streets, resulting in an improved urban form.

- The Project meets all applicable requirements of the Planning Code, other than the street frontage transparency requirement, relief for which is being sought through a Variance Application.
- The Project is desirable for, and compatible with the surrounding neighborhood.

RECOMMENDATION: Approval with Conditions
--

Attachments:

- Draft Motion
- Block Book Map
- Sanborn Map
- Zoning Map
- Aerial Photographs
- CEQA Determination
- Public Comments
- Context Photos, Plans and Renderings
- Project Sponsor Submittal, including:
 - Sponsor's Brief
 - Alternative Façade Design

Attachment Checklist

- | | |
|---|---|
| <input checked="" type="checkbox"/> Executive Summary | <input checked="" type="checkbox"/> Project sponsor submittal |
| <input checked="" type="checkbox"/> Draft Motion | Drawings: <u>Existing Conditions</u> |
| <input checked="" type="checkbox"/> Environmental Determination | <input checked="" type="checkbox"/> Check for legibility |
| <input checked="" type="checkbox"/> Zoning District Map | Drawings: <u>Proposed Project</u> |
| <input type="checkbox"/> Height & Bulk Map | <input checked="" type="checkbox"/> Check for legibility |
| <input checked="" type="checkbox"/> Block Book Map | 3-D Renderings (new construction or significant addition) |
| <input checked="" type="checkbox"/> Sanborn Map | <input checked="" type="checkbox"/> Check for legibility |
| <input checked="" type="checkbox"/> Aerial Photo | |
| <input checked="" type="checkbox"/> Context Photos | |
| <input checked="" type="checkbox"/> Site Photos | |

Exhibits above marked with an "X" are included in this packet

EW
Planner's Initials

EW: G:\Documents\309\300 Post Street (Apple)\PC Packet\ExecutiveSummary_DRAFT.doc



SAN FRANCISCO PLANNING DEPARTMENT

Subject to: (Select only if applicable)

- Affordable Housing (Sec. 415)
- Jobs Housing Linkage Program (Sec. 413)
- Downtown Park Fee (Sec. 412)
- First Source Hiring (Admin. Code)
- Child Care Requirement (Sec. 414)
- Other

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

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Planning Commission Motion No. _____ Section 309

HEARING DATE: FEBRUARY 6, 2014

Date: January 30, 2014
Case No.: **2013.0628EHUVX**
Project Address: **300 POST STREET (aka 345 STOCKTON STREET)**
Zoning: C-3-R (Downtown Retail)
 80-130-F Height and Bulk District
Block/Lot: 0295/016
Project Sponsor: Apple, Inc.
 c/o Daniel Frattin
 Reuben, Junius & Rose, LLP
 One Bush Street, Suite 600
 San Francisco, CA 94104
Staff Contact: Elizabeth Watty – (415) 558-6620
Elizabeth.Watty@sfgov.org

ADOPTING FINDINGS PURSUANT TO SECTION 309 OF THE SAN FRANCISCO PLANNING CODE RELATED TO A DETERMINATION OF COMPLIANCE FOR THE MAJOR ALTERATION OF AN EXISTING RETAIL STORE (“LEVI’S”) TO ACCOMMODATE A NEW RETAIL BUILDING (“APPLE, INC.”) AND THE ASSOCIATED RENOVATION AND RECONFIGURATION OF AN OUTDOOR PUBLIC PLAZA AT 300 POST STREET (AKA 345 STOCKTON STREET) WITHIN THE C-3-R (DOWNTOWN RETAIL) DISTRICT, THE KEARNY-MARKET-MASON-SUTTER CONSERVATION DISTRICT, AND THE 80-130-F HEIGHT AND BULK DISTRICT.

PREAMBLE

On August 20, 2013, Daniel Frattin of Reuben, Junius & Rose, LLP on behalf of Rick Millitello of Apple, Inc. (hereinafter “Project Sponsor”) filed an application with the Planning Department (hereinafter “Department”) for a Section 309 Determination of Compliance, to alter and reconfigure the existing retail

building ("Levi Strauss") to accommodate a new retail tenant ("Apple, Inc.") and to alter and reconfigure the adjacent elevated plaza at 300 Post Street (aka 345 Stockton Street, Lot 016 in Assessor's Block 0295 (hereinafter "Subject Property").

On August 21, 2013, Daniel Frattin of Reuben, Junius & Rose, LLP on behalf of the Project Sponsor filed an application with the Department for a Certificate of Appropriateness to alter and reconfigure the existing retail building ("Levi Strauss") to accommodate a new retail tenant ("Apple, Inc.") and to alter and reconfigure the adjacent elevated plaza that fronts Stockton Street.

On August 22, 2013, Daniel Frattin of Reuben, Junius & Rose, LLP on behalf of the Project Sponsor filed an application with the Department for Environmental Review to alter and reconfigure the existing retail building ("Levi Strauss") to accommodate a new retail tenant ("Apple, Inc.") and to alter and reconfigure the adjacent elevated plaza that fronts Stockton Street.

On October 02, 2013, Daniel Frattin of Reuben, Junius & Rose, LLP on behalf of the Project Sponsor filed an application with the Department for a Variance to alter and reconfigure the existing retail building ("Levi Strauss") to accommodate a new retail tenant ("Apple, Inc.") and to alter and reconfigure the adjacent elevated plaza that fronts Stockton Street.

On January 16, 2014, the San Francisco Planning Commission (hereinafter "Commission") continued a regularly scheduled meeting on Determination of Compliance Case No. 2013.0628EHUVX.

On February 06, 2014, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting on Determination of Compliance Case No. 2013.0628EHUVX.

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

The Planning Department, Jonas P. Ionin, is the custodian of records, located in the File for Case No. 2013.0628EHUVX, at 1650 Mission Street, Fourth Floor, 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 Determination of Compliance requested in Application No. 2013.0628EHUVX, subject to the conditions contained in "EXHIBIT A" of this motion, based on the following findings:

FINDINGS

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

1. The above recitals are accurate and constitute findings of this Commission.
2. **Site Description and Present Use.** The Subject Property is located at the northwest corner of Post and Stockton Streets; Lot 016 in Assessor's Block 0295, in a C-3-R (Downtown Retail) Zoning District, the Kearny-Market-Mason-Sutter Conservation District, and an 80-130-F Height and Bulk District. The Subject Property is 35,930 square feet in area, with approximately 275.75 feet of frontage on Stockton Street, 137.5 feet of frontage on Post Street, and 117.5 feet of frontage along Sutter Street. The property is developed with a 550,599 square-foot building, which has two above-grade components and an integrated basement level that extends between the two above-grade buildings. The Grand Hyatt Hotel is a 35-story hotel building (built in 1972), which is located on the northern portion of the Property with frontages on Stockton and Sutter Streets. The southern portion of the Property is occupied by a four-story Levi's retail store, with above- and below-grade support space and loading access for the hotel. At the center of the property between the two buildings is an elevated plaza. The basement level contains conference rooms, ballrooms, and hotel service space.
3. **Surrounding Properties and Neighborhood.** The Project Site comprises a single parcel in the Union Square neighborhood of San Francisco. The surrounding area consists primarily of large retail tenants, with related visitor amenities, such as hotels and food service establishments throughout. The property to the west is developed with a tall three-story retail building, occupied by Williams-Sonoma; the property to the east is developed with a seven-story retail building, occupied by Nike; and the property to the south is Union Square.

This district is a regional center for comparison shopper retailing and direct consumer services. It covers a compact area with a distinctive urban character, consists of uses with cumulative customer attraction and compatibility, and is easily traversed by foot. Like the adjacent Downtown Office District, this district is well-served by City and regional transit, with automobile parking best located at its periphery. Within the district, continuity of retail and consumer service uses is emphasized, with encouragement of pedestrian interest and amenities and minimization of conflicts between shoppers and motor vehicles.

4. **Project Description.** The Project would alter and reconfigure the retail and support portion of the building fronting on Post and Stockton Streets, as well as the elevated plaza. The retail store fronting Post Street would be reduced in height from approximately 63 feet to approximately 47 feet, eight-inches, lowering the number of floors from four-to-two. The loading entrance is at the southwest corner of the property on Post Street, adjacent to Williams-Sonoma. The 63-foot tall segment of the building above the loading entrance is presently used for retail and hotel service space. It would be reconstructed for the same use. In total, the proposed alterations would reduce the amount of floor area for this portion of the lot from 37,234 square feet to 23,470 square feet. The plaza would be reconfigured to increase in size from 4,586 square feet to 6,059 square feet. The fountain, designed by local artists Ruth Asawa, would be retained and moved approximately 10 feet to the south, within the reconfigured stairs leading from Stockton Street to the renovated and expanded plaza.

5. **Public Comment.** The Department has received comments from the Service Employees International Union – United Service Workers West (“SEIU-USWW”) expressing opposition to this project. The Department has also received a letter in support of the proposed project from the Union Square Business Improvement District.
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. **Floor Area Ratio (Section 124).** The floor area ratio (FAR) limit as defined by Planning Code Section 124 for the Downtown Office District is 6.0 to 1, and can be increased to 9.0 to 1 with the purchase of Transferable Development Rights (“TDR”).

The lot area of the Subject Property is 35,930 sf. The base FAR allows for up to 215,580 sf and the maximum FAR allows for up to 323,370 sf at the Property. The gross floor area of the existing buildings on the lot is 550,599 sf, which exceeds the current FAR maximum. At the time of the construction of the existing hotel and retail buildings on the lot, the Planning Code allowed up to six floor-area bonuses to the building in exchange for the provision of certain project amenities. These bonuses included shortening of walking distance (through the block), the provision of a plaza, and the provisions of a public observation deck above the twentieth story of the building (which never materialized, although the 10,000 sf FAR bonus was utilized). As a result of these floor-area bonuses, the lot exceeds the current FAR maximum, since the bonuses are no longer allowed under the Planning Code; the buildings are therefore considered legal noncomplying with regard to FAR.

The Project results in a 13,764 sf reduction, which will eliminate the need for the 10,000 sf bonus associated with an observation deck. Although the Project results in an overall reduction in square footage, the project must meet additional findings under Planning Code Section 309, under pending legislation recently recommended for approval by this Commission, since Planning Code Section 188 does not currently allow noncomplying structures to be demolished – in whole or in part – and reconstructed, even if to a lesser extent.

Pursuant to Board File No. 13-1059, the project must meet the following criteria:

- i. *The project would promote and enhance the C-3-R District as a retail destination.*

The Project would promote and enhance the C-3-R District and would result in a structure of substantially the same use by creating a well-designed, contemporary new Apple flagship store on Union Square, which is the heart of the C-3-R District. This new store would draw customers north on Stockton Street from the current location, increasing foot traffic near and around the property.

- ii. *The project would result in an increased benefit to the public and the adjacent properties;*

The Project includes the renovation of the adjacent public plaza that is located between the Grant Hyatt hotel building and the smaller retail building at the northwest corner of Stockton and Post Streets. The renovated plaza will include a more inviting setting, with seating, tables, landscaping, a water feature, and lighting, in addition to the retention of the Ruth Asawa fountain, which will be the centerpiece of the plaza's stair case. These improvements to a public open space, along with a new retail tenant who will attract a large number of consumers will benefit the public as well as the adjacent properties.

- iii. *The project would enhance the aesthetic qualities and/or character of the property;*

The current building is triangular in shape and is not considered an exemplar of quality design. The proposed building, designed by Foster & Partners, is a well-designed contemporary structure that is a more regularized form, consistent with other corner building forms that "hold" the corner. The new building, in addition to the redesigned public plaza, would enhance the aesthetic qualities and character of the property.

- iv. *The project would result in a net decrease of gross floor area of all structures on the property;*

The Project would result in a net decrease of 13,764 gsf of floor area.

- v. *The project would result in a structure that more closely conforms to the floor area ratio limit;*

The Project would result in the property going from an FAR of 15.3:1 to an FAR of 14.9:1, thereby more closely conforming to the floor area ratio limit of 9:1.

- vi. *The project would not result in an adverse impact to a historic resource;*

Although the property does not contain an historic resource, the Project is pending approval by the Historic Preservation Commission (HPC) as to its compatibility with the Kearny-Market-Mason-Sutter Conservation District. This Downtown Project Authorization approval is contingent on the HPC's approval of the Major Permit to Alter.

- vii. *The project would not cause significant shadows or wind impacts on public sidewalks or parks;*

The Project would not cause significant shadows or wind effects on public sidewalks or parks. In fact, since the project results in a building of lesser height than the existing Levi's building, the project will reduce the existing shadow cast on Union Square.

- viii. *The project would not obstruct significant public view corridors; and*

The Project would not obstruct significant public view corridors, since the new building is of a lesser height than the existing Levi's Store building. Regularizing the building form from a triangle to a rectangle will not affect any identified public view corridor.

- ix. *The Project would not significantly impair light and air to abutting properties.*

The Project would not significantly impair light and air to abutting properties, since the new building is of a lesser height than the existing Levi's Store building. Regularizing the building form from a triangle to a rectangle will not adversely affect light and air to abutting properties, since the structure will remain unchanged along its west side property line, and remains a significant distance (approximately 62 feet) from the adjacent Grand Hyatt building, which is on the same property and under the same ownership as the proposed Apple retail store.

- B. **Public Open Space (Section 138).** New buildings or an addition equal to twenty percent or more of the existing building shall provide public open space.

The Project does not propose new construction (the project is technically a major alteration, since the below-grade portion of the building that connects the retail building to the hotel building will remain), nor does it propose a twenty percent addition; the project results in an overall reduction in gross floor area on the lot. Although no publicly accessible open space is required under these circumstances, the Project will expand and renovate the existing Plaza.

- C. **Streetscape Improvements (Section 138.1).** Section 138.1 requires project sponsors to make streetscape Improvements where the proposed project includes the construction of a new building or the addition of floor area equal to 20 percent or more of an existing building. Under Section 138.1(c), the Commission may also require the Project Sponsor to install additional sidewalk improvements such as lighting, special paving, seating and landscaping in accordance with the guidelines of the Downtown Streetscape Plan if it finds that these improvements are necessary to meet the goals and objectives of the General Plan.

The Project does not entail new construction or an addition of floor area; therefore, it does not require a Streetscape Plan per Section 138.1. Nonetheless, the Project will include improvements to the adjacent public plaza as part of the Project.

- D. **Standards for Bird-Safe Buildings (Section 139).** Section 139 requires that buildings incorporate certain bird-safe building features. Certain requirements apply to new buildings when located within an Urban Bird Refuge, while other requirements apply anywhere in the City.

The Property is not located within 300 feet of an Urban Bird Refuge (Union Square is not considered to be an Urban Bird Refuge due to the lack of tree canopy and native birds), and therefore the Project is not required to incorporate the location-related bird-safe building

standards. As currently proposed, the building does not include any feature-related hazards, such as free-standing glass walls, wind barriers, skywalks, balconies, and greenhouses on rooftops. The Project therefore complies with Planning Code Section 139.

E. Street Frontage Controls in Commercial Districts (Section 145.1(c)). Section 145.1(c) of the Planning Code requires that within Downtown Commercial Districts, certain street frontage standards be included in the design of the lower floors of buildings:

- i. Above Grade Parking Setback. *Neither the existing building nor the Project includes any above ground parking, and therefore this requirement does not apply.*
- ii. Parking and Loading Entrances. *No more than one-third or 20 feet, whichever is less, of any given street frontage may be devoted to ingress or egress to parking or loading. The existing access to the loading docks is along Post Street, and measures 16'-6" wide. The loading entrance would remain as the single-point of access to the loading docks serving both the retail and hotel use, and therefore complies with this requirement.*
- iii. Active Uses. *With some exceptions, "active uses" must be provided in the first 25 feet of the ground floor and 15 feet on floors above from any façade facing a street of at least 30 feet. The Property fronts two streets that are equal to or greater than 30-feet in width: Post Street and Stockton Street. Retail uses are provided within the project for the first 25 feet of the ground floor, and 15 feet on floors above. The project complies with this requirement.*
- iv. Ground Floor Height. *The ground floor height of buildings in the C-3 District must be at least 14 feet. The new ground floor will be approximately 43'-0", with a mezzanine level constructed approximately 16'-0" above grade. The Project therefore meets this requirement.*
- v. Street-Facing ground-level spaces. *Street-fronting interior spaces with non-residential uses and lobbies must be as close as possible to the level of the adjacent sidewalk and must open directly to the street, instead of just through building lobbies. The retail space complies with this requirement as the principal entrance opens directly onto Post Street, while the secondary entrance opens onto the plaza level.*
- vi. Transparency. *Frontages with active uses must be at least 60 percent transparent on the ground floor in order to allow visibility to the inside of the building. The Project complies with this requirement along the Post Street frontage, as nearly the entire frontage is transparent. The Project's Stockton Street frontage, however, includes only eight feet of glazing, resulting in approximately 10 percent of the frontage, which does not comply with the 60 percent transparency requirement, and therefore requires a variance.*

F. Shadows on Public Sidewalks (Section 146). Section 146(a) establishes design requirements for buildings on certain streets in order to maintain direct sunlight on

public sidewalks in certain downtown areas during critical use periods. Section 146(c) requires that other buildings, not located on the specific streets identified in Section 146(a), shall be shaped to reduce substantial shadow impacts on public sidewalks, if it can be done without unduly creating an unattractive design and without unduly restricting development potential.

Section 146(a) provides that in order to maintain direct sunlight on public sidewalks in certain downtown areas during critical use periods, projects must avoid the penetration of a sun access plane as defined in Table 146. The north side of Post Street is not subject to these requirements, although the west side of Stockton Street is subject to these requirements. Along the west side of Stockton Street, buildings can be no more than 65 feet tall at the property line, and no portion of the building can penetrate a sun access plane, defined by a 50-degree angle sloping away from the street at a height of 65 feet. The Project complies with this requirement because it ranges from approximately 47-to-63 feet in height.

- G. **Shadows on Public Open Spaces (Section 147).** Section 147 seeks to reduce substantial shadow impacts on public plazas and other publicly accessible open spaces other than those protected under Section 295. Consistent with the dictates of good design and without unduly restricting development potential, buildings taller than 50 feet should be shaped to reduce substantial shadow impacts on open spaces subject to Section 147. In determining whether a shadow is substantial, the following factors shall be taken into account: the area shaded, the shadow's duration, and the importance of sunlight to the area in question.

The Project will result in an overall reduction in building height, and will therefore not create any substantial new shadow impacts on public plazas and other publically accessible spaces other than those protected under Section 295.

- H. **Ground Level Wind (Section 148).** Pursuant to Section 148, in C-3 Districts, buildings and additions to existing buildings shall be shaped, or other wind-baffling measures shall be adopted, so that the developments will not cause ground-level wind currents to exceed more than 10 percent of the time year round, between 7:00 a.m. and 6:00 p.m., the comfort level of 11 miles per hour equivalent wind speed in areas of substantial pedestrian use and seven miles per hour equivalent wind speed in public seating areas.

When preexisting ambient wind speeds exceed the comfort level, or when a proposed building or addition may cause ambient wind speeds to exceed the comfort level, the building shall be designed to reduce the ambient wind speeds to meet the requirements. An exception may be granted, in accordance with the provisions of Section 309, allowing the building or addition to add to the amount of time that the comfort level is exceeded by the least practical amount if (1) it can be shown that a building or addition cannot be shaped and other wind-baffling measures cannot be adopted to meet the foregoing requirements without creating an unattractive and ungainly building form and without unduly restricting the development potential of the building site in question, and (2) it is

concluded that, because of the limited amount by which the comfort level is exceeded, the limited location in which the comfort level is exceeded, or the limited time during which the comfort level is exceeded, the addition is insubstantial.

No exception shall be granted and no building or addition shall be permitted that causes equivalent wind speeds to reach or exceed the hazard level of 26 miles per hour for a single hour of the year.

The subject building is surrounded by taller buildings. Tall buildings, particularly buildings that are much taller than their neighbors, can redirect and accelerate naturally occurring winds. This is not concern at the project site, where neighboring buildings to the north and west (the prevailing wind direction in San Francisco) are much taller than the proposed height of the Project. As such, the Project would not appreciably alter existing wind conditions in the vicinity.

- I. **Parking (Section 151.1).** Planning Code Section 151.1 does not require any off-street parking for projects in the C-3 districts. Parking up to 7 percent of the gross floor area of office use is permitted.

The Project does not include any off-street parking.

- J. **Off-Street Freight Loading (Section 152.1).** Planning Code Section 152.1 requires one off-street freight loading space when a retail space is between 10,000 gsf and 30,000 gsf.

The Project reduces the retail square footage, and therefore does not require any additional off-street loading as part of the Project. The site includes one dedicated loading space in the shared three-space delivery dock that is located below grade.

- K. **Loading Access.** Planning Code Section 155(s)(5) limits façade openings for off-street loading to 15'-0" wide in the C-3 Districts.

The loading access is 15'-0" wide and therefore complies with this Code requirement.

- L. **Bicycle Parking (Section 155.2).** Planning Code Section 155.2 requires existing commercial buildings that undergo major renovations that increase the building's gross floor area by more than 20 percent to include bicycle parking spaces.

Since the Project results in a net reduction of gross floor area, bicycle parking is not required.

- M. **Use (Sections 218(b)).** The project site is located in a Downtown Retail (C-3-R) District wherein retail uses are permitted and encouraged.

The Project will retain retail uses at the site, and thus complies with Planning Code Section 218.

- N. **Height (Section 260).** The property is located in an 80-130-F Height and Bulk District, allowing a base height of up to 80 feet. Exceptions to the 80 foot height limit, up to 130 feet, may be approved in appropriate cases in accordance with the provisions of Section 309.

The Project would retain a height of 63 feet for the bay along the west side of the project site that contains the loading entrance. The remainder of the retail structure will result in an overall reduction in height, from 63 feet to 47'-8". The Project would therefore be well under the Planning Code's base permitted height of 80 feet.

- O. **Bulk Limits (Section 270).** Planning Code Section 270 places certain bulk controls on buildings in F-Bulk Districts. Certain controls apply to the portion of the building above the base height of 80 feet.

The Project is under a height of 80 feet, and thus the F-Bulk controls do not apply.

- P. **Shadows on Parks (Section 295).** Section 295 requires any project proposing a structure exceeding a height of 40 feet to undergo a shadow analysis in order to determine if the project will result in the net addition of shadow to properties under the jurisdiction of the Recreation and Park Department.

The Department conducted a shadow analysis as part of the Preliminary Project Assessment and determined that the Project would not have the potential to create any net-new shadow on any property under the jurisdiction of, or designated for acquisition by, the Recreation and Park Department. In fact, since the project results in a building of lesser height than the existing Levi's Store building, the Project will reduce the existing shadow cast on Union Square. The Project therefore complies with this requirement.

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

COMMERCE AND INDUSTRY ELEMENT

Objectives and Policies

OBJECTIVE 2:

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

Policy 2.1:

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

The Project supports this policy in that it enhances the retail economic base by facilitating the retention and expansion of Apple, Inc. within the City's destination retail shopping core. It will result in an increase in tax revenue for the City and an increase in employment opportunities for City residents.

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 supports this policy by allowing for the retention and expansion of Apple, Inc. within the Union Square area. Apple's retail store provides employment opportunities for unskilled and semi-skilled workers, and they plan to hire approximately 100 more employees than are currently employed at the Levi's retail store on this property.

DOWNTOWN AREA PLAN

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

The Project strongly supports this Policy, as it replaces an unusually-shaped retail building with a more traditionally-shaped retail building across the street from Union Square. The building will be of a lesser height, while maintaining a similar level of retail activity and employment, and will therefore produce substantial net benefits while minimizing undesirable consequences.

OBJECTIVE 3:

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

Policy 3.1:

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

The Project strongly supports this Policy, in that it enables one of the world's most prominent technology companies to locate its flagship retail store in the heart of the Union Square.

OBJECTIVE 9:

PROVIDE QUALITY OPEN SPACE IN SUFFICIENT QUANTITY AND VARIETY TO MEET THE NEEDS OF DOWNTOWN WORKERS, RESIDENTS, AND VISITORS.

Policy 9.2:

Provide different kinds of open space downtown.

Policy 9.4

Provide a variety of seating arrangements in open spaces throughout downtown.

The Project strongly supports these Policies, in that it enables the reconfiguration and improvement of an existing public plaza that is currently not well used. The improvements to this plaza as part of this Project will result in a well-designed open space within the Union Square area that is more intimate than the large public plaza of Union Square. The remodeled plaza will include new tables and chairs, landscaping, lighting, and water features along its east and west sides.

OBJECTIVE 10:

ASSURE THAT OPEN SPACES ARE ACCESSIBLE AND USABLE

Policy 10.3:

Keep open space facilities available to the public.

Policy 10.4:

Provide open space that is clearly visible and easily reached from the street or pedestrian way.

The Project will result in an improved and redesigned public plaza. The reconfigured public plaza will be available to the public, clearly visible, and easily reached from Stockton Street. Furthermore, the design of the Apple Store retail building will allow the open space to be visible from Union Square, through the building, further reinforcing its visibility and accessibility to the public.

8. **Planning Code Section 101.1(b)** establishes eight priority-planning policies and requires review of permits for consistency with said policies. On balance, the project does comply with said policies in that:
 - A. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses be enhanced.

The existing Levi's retail store is not just a neighborhood-serving retail use, but also contributes to the visitor shopping experience that is prevalent in Union Square. The proposed Apple flagship store will similarly serve both the immediate neighborhood as well as the visitor shopping experience in Union Square. The new Apple store will employ approximately 425 employees, 70% of whom are San Francisco residents, thereby increasing the resident employment opportunities within the City.

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

The Project would not adversely affect any existing housing, since the Property is currently occupied by a retail building that would be replaced by a new retail building. The Union Square shopping district is defined by destination retail shopping and visitor services, such as restaurants and hotel uses; the proposed Apple flagship store will positively contribute to the other retail, restaurant, and hotel uses in the area.

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

The Project replaces an existing retail building with a new retail building, and as such, will not adversely affect the City's supply of affordable housing.

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

The Property is situated in Union Square, the City's destination shopping district, which is within two blocks of BART and the MUNI metro, and within one block of numerous MUNI bus lines. The Central Subway's Union Square Station will further improve the Project's transit accessibility. Apple expects that the majority of its workers will commute by transit and will encourage them to do so by offering a \$100 monthly reimbursement for public transit. There is almost no long-term on-street parking available in the area, so employees who do choose to drive to work would likely use one of the large public parking garages, which are priced to discourage long-term parking.

- E. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced.

The Project will replace an existing retail building with a new retail building that includes no commercial office development. The new Apple, Inc. retail store is expected to staff approximately 425 employees (about 70% of whom reside in San Francisco) and generate substantial retail activity.

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

The Project would be constructed to meet all of the most current and rigorous seismic and life-safety requirements of the San Francisco Building Code. This proposal would not adversely affect the property's ability to withstand an earthquake.

- G. That landmarks and historic buildings be preserved.

No landmarks or historic buildings would be modified as part of this Project.

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

The project will have no negative impact on existing parks and open spaces; there will be no net new shadows cast on any park, and the Project includes improvements to the adjacent public open space.

9. 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.
10. The Commission hereby finds that approval of the Downtown 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 a Determination of Compliance under Section 309, Application No. 2013.0628EHUVX**, subject to the following conditions attached hereto as "EXHIBIT A", and subject to the Conditions of Approval of Planning Commission Motion No. _____, in general conformance with plans on file, dated August 15, 2013, and stamped "EXHIBIT B", which is incorporated herein by reference as though fully set forth.

APPEAL AND EFFECTIVE DATE OF MOTION: Any aggrieved person may appeal this Section 309 Determination of Compliance to the Board of Appeals within fifteen (15) days after the date of this Motion. The effective date of this Motion shall be the date of this Motion if not appealed OR the date of the decision of the Board of Appeals if appealed to the Board of Appeals. For further information, please contact the Board of Appeals in person at 1650 Mission Street, Room 304, San Francisco, or call (415) 575-6880.

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on January 16, 2014.

Jonas P. Ionin
Commission Secretary

AYES:

NAYS:

ABSENT:

ADOPTED: February 06, 2014

EXHIBIT A

AUTHORIZATION

1. This authorization is for the granting of a Downtown Authorization pursuant to Planning Code Section 309, to allow the alteration and reconfiguration of the existing retail building to accommodate a new retail tenant ("Apple, Inc.") and to alter and reconfigure the adjacent elevated plaza at 300 Post Street (aka 345 Stockton Street), Lot 016 in Assessor's Block 0295 within the C-3-R District and a 80-130-F Height and Bulk District; in general conformance with plans, dated February 06, 2014, and stamped "EXHIBIT B" included in the docket for Case No. 2013.0628EHUVX and subject to conditions of approval reviewed and approved by the Commission on February 6, 2014, under Motion No. _____. 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

2. 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 **February 06, 2014**, under Motion No. _____.

PRINTING OF CONDITIONS OF APPROVAL ON PLANS

3. The conditions of approval under the 'Exhibit A' of this Planning Commission Motion No. _____ 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 Planning Code Section 309 Determination of Compliance and any subsequent amendments or modifications.

SEVERABILITY

4. 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

5. 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 Planning Code Section 309 Determination of Compliance.

Conditions of Approval, Compliance, Monitoring, and Reporting

PERFORMANCE

6. **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

7. **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

8. **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

9. **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

10. **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

11. **Additional Project Authorization.** The Project Sponsor must obtain a variance for street frontage transparency under Section 145.1 to allow less than 60% of the Stockton Street frontage to be transparent at the pedestrian level, 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.

DESIGN – COMPLIANCE AT PLAN STAGE

12. **Final Materials.** The Project Sponsor shall continue to work with Planning Department on the building design. The final design – including the final glazing details – shall be reviewed and approved by the Planning Department prior to issuance of the architectural addenda.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org
13. **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
14. **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.
15. **Lighting Plan.** The Project Sponsor shall submit an exterior lighting plan to the Planning Department prior to Planning Department approval of the site permit application.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org
16. **Open Space Provision - C-3 Districts.** Pursuant to Planning Code Section 138, the Project Sponsor shall continue to work with Planning Department staff to refine the design and programming of the public open space so that the open space generally meets the standards of the Downtown Open Space Guidelines in the Downtown Plan of the General Plan.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

17. **Open Space Plaques - C-3 Districts.** Pursuant to Planning Code Section 138, the Project Sponsor shall install the required public open space plaques at each building entrance including the standard City logo identifying it; the hours open to the public and contact information for building management. The plaques shall be plainly visible from the public sidewalks on California and Battery Streets and shall indicate that the open space is accessible to the public. Design of the plaques shall utilize the standard templates provided by the Planning Department, as available, and shall be approved by the Department staff prior to installation.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

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

- a. On-site, in a basement area accessed via a garage or other access point without use of separate doors on a ground floor façade facing a public right-of-way;
- b. On-site, in a driveway, underground;
- c. On-site, above ground, screened from view, other than a ground floor façade facing a public right-of-way;
- d. Public right-of-way, underground, under sidewalks with a minimum width of 12 feet, avoiding effects on streetscape elements, such as street trees; and based on Better Streets Plan guidelines;
- e. Public right-of-way, underground; and based on Better Streets Plan guidelines;
- f. Public right-of-way, above ground, screened from view; and based on Better Streets Plan guidelines;
- g. On-site, in a ground floor façade (the least desirable location).

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

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

19. **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

PARKING AND TRAFFIC

20. **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

MONITORING - AFTER ENTITLEMENT

21. **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

22. **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

23. **Garbage, Recycling, and Composting Receptacles.** 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 Bureau of Street Use and Mapping, Department of Public Works at 415-554-.5810, <http://sfdpw.org>

24. **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>

25. **Community Liaison.** Prior to issuance of a building permit to construct the project and implement the approved use, the Project Sponsor shall appoint a community liaison officer to deal with the issues of concern to owners and occupants of nearby properties. The Project Sponsor shall provide the Zoning Administrator with written notice of the name, business address, and telephone number of the community liaison. Should the contact information change, the Zoning Administrator shall be made aware of such change. The community liaison

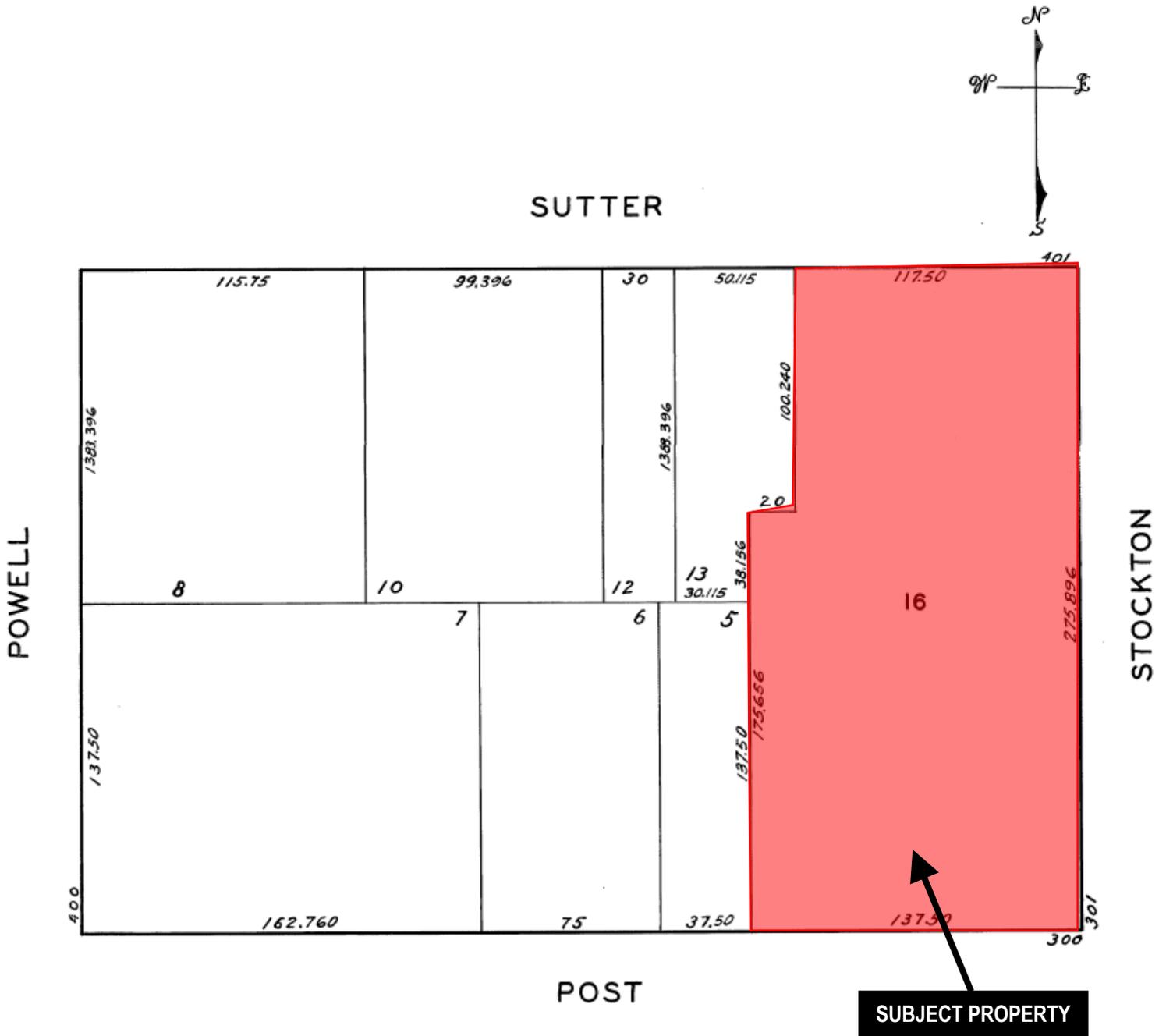
shall report to the Zoning Administrator what issues, if any, are of concern to the community and what issues have not been resolved by the Project Sponsor.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

26. **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

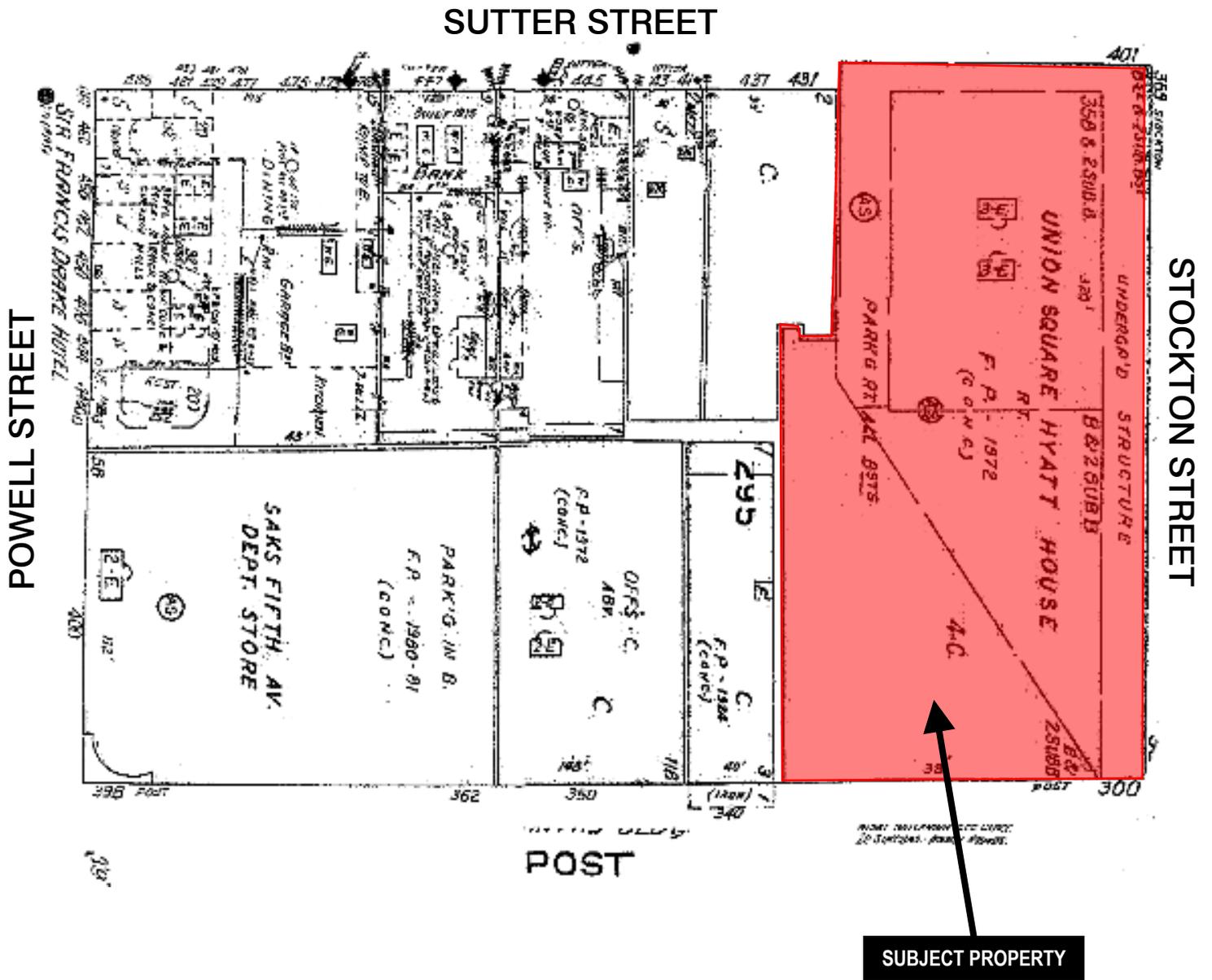
Parcel Map



Downtown Project Authorization
Case Number 2013.0628EHUVX
Proposed Apple, Inc. Retail Store
300 Post Street (aka 345 Stockton Street)



Sanborn Map*



*The Sanborn Maps in San Francisco have not been updated since 1998, and this map may not accurately reflect existing conditions.



Downtown Project Authorization
Case Number 2013.0628EHUVX
Proposed Apple, Inc. Retail Store
300 Post Street (aka 345 Stockton Street)

Aerial Photo



SUBJECT PROPERTY



Downtown Project Authorization
Case Number 2013.0628EHUVX
Proposed Apple, Inc. Retail Store
300 Post Street (aka 345 Stockton Street)

Aerial Photo



SUBJECT PROPERTY



Downtown Project Authorization
Case Number 2013.0628EHUVX
Proposed Apple, Inc. Retail Store
300 Post Street (aka 345 Stockton Street)

Aerial Photo

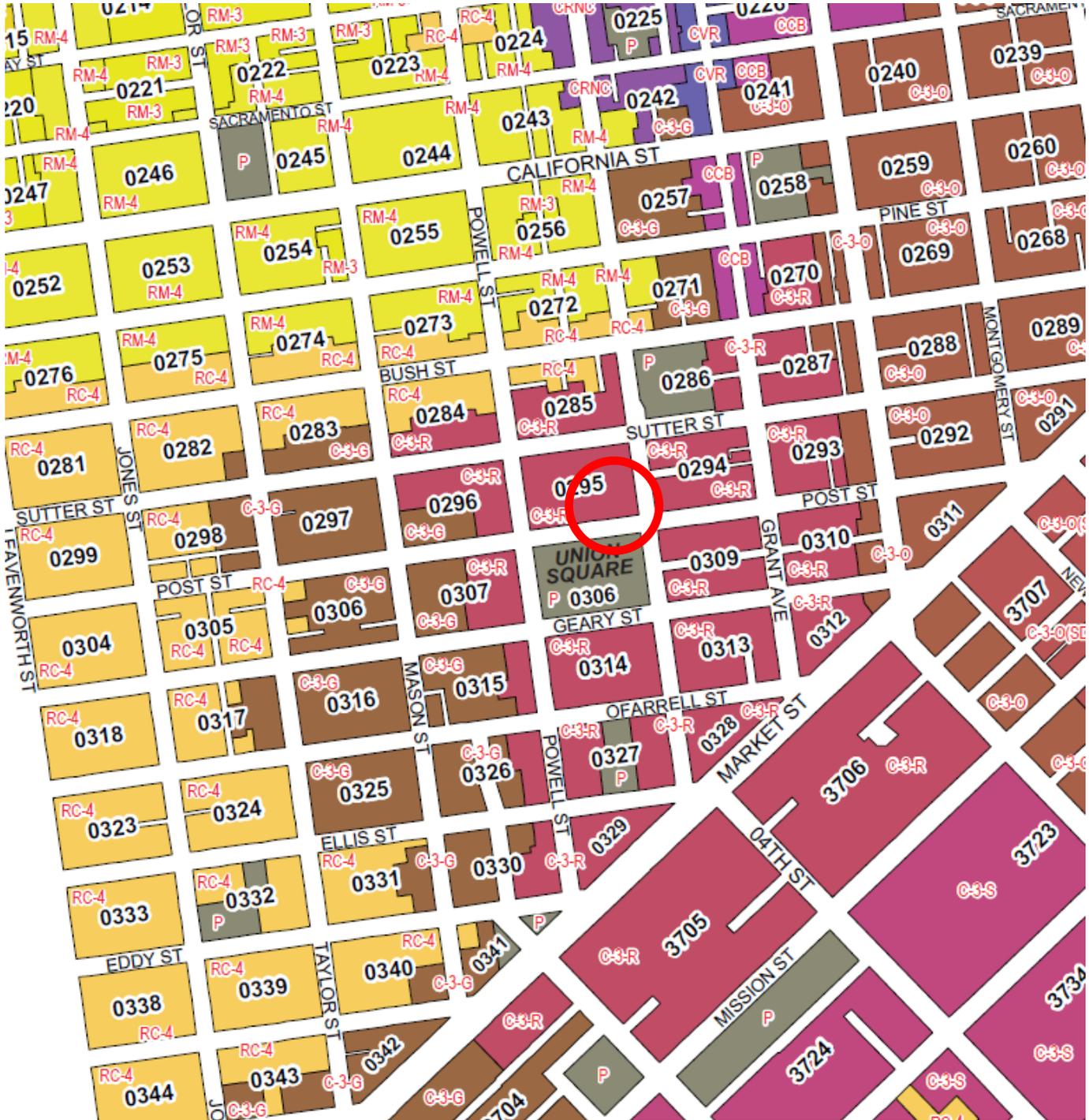


SUBJECT PROPERTY



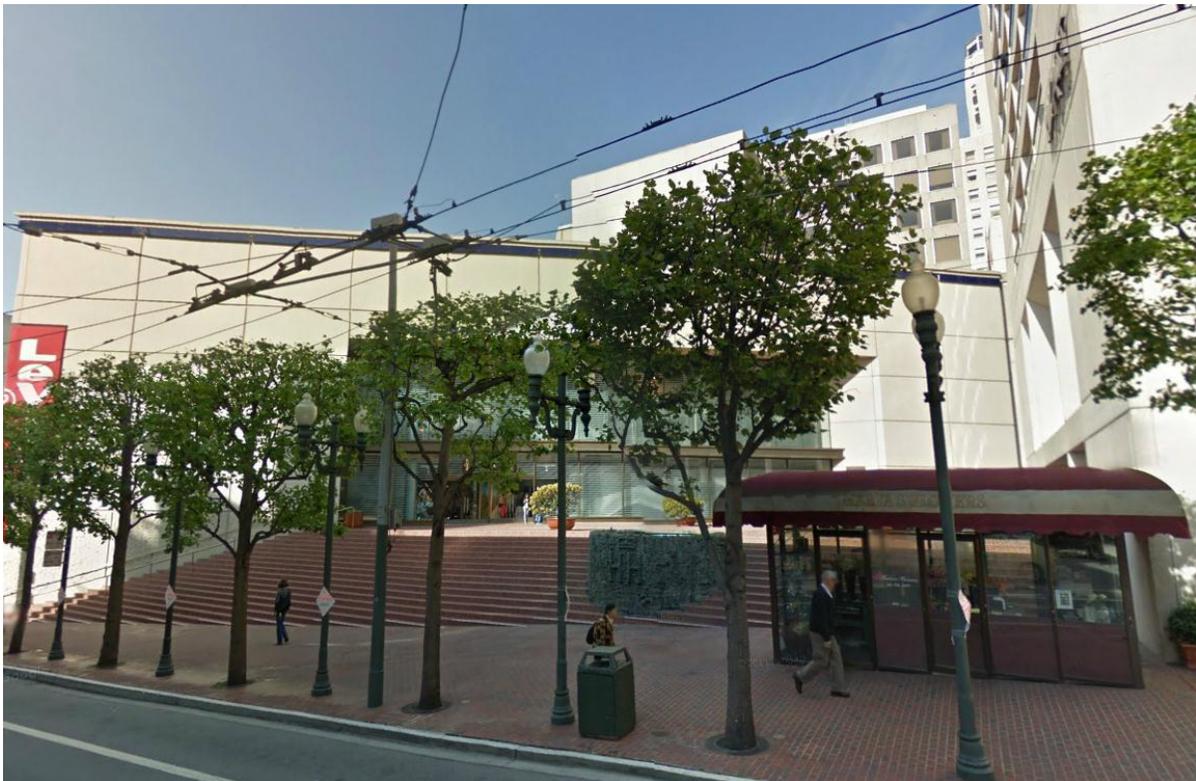
Downtown Project Authorization
Case Number 2013.0628EHUVX
Proposed Apple, Inc. Retail Store
300 Post Street (aka 345 Stockton Street)

Zoning Map



Downtown Project Authorization
Case Number 2013.0628EHUVX
Proposed Apple, Inc. Retail Store
300 Post Street (aka 345 Stockton Street)

Site Photos



Downtown Project Authorization
Case Number 2013.0628EHUVX
Proposed Apple, Inc. Retail Store
300 Post Street (aka 345 Stockton Street)



SAN FRANCISCO PLANNING DEPARTMENT

Certificate of Determination Exemption from Environmental Review

Case No.: 2013.0628E
 Project Title: 300 Post Street/345 Stockton Street
 Zoning: C-3-R (Downtown Retail)
 Kearny-Market-Mason-Sutter Conservation District
 80-130-F Height and Bulk District
 Block/Lot: 0295/016
 Lot Size: 35,391 square feet
 Project Sponsor: Apple, Inc., c/o Daniel Frattin, Reuben, Junius & Rose
 (415) 567-9000
 Staff Contact: Jeanie Poling – (415) 575-9072
 jeanie.poling@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 is located in the Downtown/Civic Center neighborhood on the northwest corner of Post and Stockton Streets within the block bounded by Post, Stockton, Sutter, and Powell Streets. The project site contains a 550,599-square-foot (sf) building complex with two above-grade components (a 35-story hotel structure fronting Stockton and Sutter Streets, and four-story 37,234 sf retail structure fronting Post Street), an elevated plaza between the two structures, and basement levels below the entire project site. The proposed project would replace the existing retail structure with a three-story 23,470 sf retail structure.

EXEMPT STATUS:

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

REMARKS:

See next page.

DETERMINATION:

I do hereby certify that the above determination has been made pursuant to State and local requirements.


 Sarah B. Jones
 Environmental Review Officer

January 28, 2014
 Date

cc: Daniel Frattin, Project Sponsor
 Elizabeth Watty, Current Planner
 Kelly Wong, Preservation Planner

Supervisor David Chiu, District 3
 Historic Preservation Distribution List
 Distribution List; Virna Byrd, M.D.F.

PROJECT DESCRIPTION (continued):

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

The proposed project would include the following elements:

- Reconfigure the triangular structure to an L-shaped plan with the two-story retail store at the street corner and a narrow three-story back of house space between the retail store and the adjacent building to the west along Post Street.
- Reduce the height of the retail store structure from four to two stories at the Post Street (front) façade (from approximately 63 feet to approximately 47.5 feet) and reclad the exterior.
- Reconfigure the triangular plaza into a rectangle, increasing the plaza in size from 4,586 sf to 6,059 sf, and renovating it with new landscaping, lighting, seating, and paving.
- Move the Ruth Asawa fountain 10 feet from its current location to the center of the stairs that lead from Stockton Street to the renovated and expanded plaza.

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

Project Approvals. The proposed project requires a legislative amendment that would allow secondary structures that are non-conforming with regards to floor area ratio in a C-3-R Zoning District to be demolished and rebuilt, if the Planning Commission can make certain findings.¹ The legislative amendment requires approval by the Board of Supervisors and signature by the Mayor. The proposed project also requires approval of a Major Permit to Alter by the Historic Preservation Commission, is subject to a Downtown Project Authorization from the Planning Commission, and requires a variance for glazing requirements from the Zoning Administrator. In addition, the project requires the issuance of a building permit by the Department of Building Inspection. For purposes of CEQA, the approval action is the Downtown Project Authorization from the Planning Commission.

¹ Board of Supervisors File No. 131059, introduced October 29, 2013. For purposes of this legislation, a secondary structure means a structure located on a lot with two or more structures that has no more than one-quarter of the gross floor area of the primary structure on the lot. The project site (300 Post Street/345 Stockton Street) is the only parcel in a C-3-R Zoning District that contains a secondary structure that is nonconforming with regards to floor area ratio; thus, this ordinance would apply to only the project site and would affect no other properties. The Planning Department is recommending an amendment to the legislation that would expressly limit it to the 300 Post Street/345 Stockton Street property.

REMARKS:

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

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

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

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

No persons who have made significant contributions to local, state, or national history have been identified with the establishment or operation of any hotel-associated uses and retail business that have occupied the subject property. Therefore, the complex does not appear eligible for listing in the California Register under Criterion 2 (events). Although Ruth Asawa was a well-known San Francisco sculptor and artist, her association with the fountain is not eligible for listing under Criterion 2 but is most significant under Criterion 3.

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

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

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

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

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

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

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

- The removal of the existing structure at 300 Post would not have an adverse impact on the district, because the structure is a non-contributory resource.
- The proposed replacement structure would reintroduce a rectilinear plan that would extend to the property line at both Post and Stockton Streets; the rectilinear plan characterizes buildings throughout the district.
- The proposed height of the structure would match that of its immediate neighbor to the west, which is the only historic building along that block of Post Street, and would provide a strong street wall massing at the Post and Stockton Street elevations. Overall, the proposed height and massing would be consistent with the varied building heights found throughout the district.
- At the back of house portion of the retail structure, incised joints in the cast stone paneling would break up its mass in a manner similar to belt or string coursing, and additional articulation at the roofline would reference cornice details found within the district in a contemporary manner.
- At the front (Post Street) façade of the retail structure, the raised entrance and stairs would emphasize the base of the structure while the full-height steel framing members set within the

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

- The large windows would be framed with full-height steel members that would articulate the façade into five bays, with the end bays differentiated by their reduced width and the location of the two main retail entrances. This emphasis on the end or center bays is a common compositional device in the district, as noted in the district designation.
- The steel framing members would articulate the façade, emphasize the vertical composition, and express underlying structural requirements in a contemporary manner that would be in conformance with the Secretary's Standards and that would be compatible with the district.
- At the Stockton Street façade, the frontage would be broken into two parts with the inset full-height glazed bay. Emphasis on the vertical composition would be made with the orientation and size of the metal panel cladding and with the glazed bay. The glazed bay would divide this façade into two parts in a manner similar to historic buildings with wider frontages; the glazed bay would be broken up by articulation of the facade, making the structure appear narrower. As divided, the Stockton Street frontage would relate in width and proportion with buildings found within the district.
- The cladding material and color of back of house portion of the retail structure would be compatible with the surrounding district and would be in conformance with the Secretary's Standards, as it is a stone material with a texture and color that would be consistent with other masonry cladding found throughout the district.
- While the metal panel cladding proposed on the retail structure is not a material that is typical of the district, the color and matte finish proposed would be compatible with the texture and tone of masonry found on surrounding buildings and throughout the district. The Secretary's Standards allow, or do not discourage, use of contemporary materials provided they are "harmonious" with the surrounding character. The proposed metal paneling would not be reflective and would have a matte finish such that it would not be disruptive to the character of the district.
- The plaza to the north of the proposed new retail structure would change in shape from triangular to rectangular. While there are no specific requirements for open spaces within the Kearny-Market-Mason-Sutter Conservation District, the proposed reconfiguration of the plaza would be designed in a manner that would improve the compatibility of the plaza with the district. The rectilinear space would be more consistent with the pattern and shape of buildings in the district. The proposed stone paving and simple landscaping would be compatible with the character of the district and in conformance with the Secretary's Standards.
- The Ruth Asawa fountain would be photo-documented in situ and carefully removed from its existing location, protected, and stored during construction in conformance with the Secretary's Standards. When the site is ready, the fountain would be reinstalled approximately 10 feet from its existing location in a manner that matches the existing as closely as possible in conformance with the Secretary's Standards.

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

Air Quality. Project construction activities would be temporary and variable in nature and would not be expected to expose sensitive receptors to substantial air pollutants. Furthermore, the proposed project would be subject to, and would comply with, California regulations limiting idling to no more than five minutes,³ which would further reduce the exposure of nearby sensitive receptors to temporary and variable toxic air contaminant emissions. The project would also be subject to the City's construction dust control ordinance (Ordinance 176-08, effective July 30, 2008), which requires specific fugitive dust control measures that reduce the quantity of dust generated during site preparation, demolition, and construction in order to protect the health of the general public and of onsite workers. Therefore, project construction would result in a less-than-significant impact with respect to exposing sensitive receptors to substantial levels of air pollution.

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

Subsoil Contamination. The proposed project would involve approximately 116 cubic yards of excavation starting at approximately 34 feet below street grade on a site that has no history of industrial use or prior contamination. Thus, impacts related to exposure to subsoil contamination would be less than significant.

Biological Resources. The project is subject to bird-safe standards to reduce bird mortality from circumstances that are known to pose a high risk to birds.⁵ A wildlife ecologist conducted an analysis to assess the proposed project's compliance with these bird-safe standards, and evaluated any potential adverse effects on candidate, sensitive, or special-status bird species, and the potential for bird collisions with the proposed project's glass façades.⁶ The report is summarized as follows.

³ California Code of Regulations, Title 13, Division 3, § 2485.

⁴ San Francisco Planning Department, *Compliance Checklist, Greenhouse Gas Analysis, 300 Post Street/345 Stockton Street*, January 16, 2014. This document is available for review at 1650 Mission Street, 4th Floor, as part of Case No. 2013.0628E.

⁵ Per Planning Code Section 139 the project site is subject to feature-related hazards but not location-related hazards, as Union Square is not an urban bird refuge. Feature-related hazards include free-standing glass walls, wind barriers, skywalks, balconies, and greenhouses on rooftops that have unbroken glazed segments 24 square feet and larger in size.

⁶ HT Harvey & Associates Ecological Consultants, *300 Post St. Proposed Project – Avian Collision Risk/Bird Safe Design Assessment*, September 24, 2013. This report is available for review at 1650 Mission Street, 4th Floor, as part of Case No. 2013.0628E.

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

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

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

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

In summary, while occasional collisions between native birds and the glass façades of the proposed project may occur – as could occur with any building – the number of such collisions is expected to be low due to the low abundance of native birds and suitable habitat for these birds present in the vicinity; the low reflectivity of the proposed glass; and the lack of any vegetation proposed in front of the store or just inside the façades. Lighting from the project would have little, if any, adverse effect on the few native birds that would occur in the project vicinity. Furthermore, there are no significant or landmark trees on or adjacent to the property. Thus the proposed project's potential adverse effects on candidate, sensitive, or special-status animal or plant species would be less than significant.

Geology and Soils. The proposed project was evaluated in a geotechnical report that addresses foundation support.⁷ The report is summarized as follows.

⁷ URS Corporation, *Geotechnical Report, Apple Store (Union Square), San Francisco, California*, December 11, 2013. This report is available for review at 1650 Mission Street, 4th Floor, as part of Case No. 2013.0628E.

The triangular retail structure is founded on a combination of isolated spread footings and a mat foundation; the hotel tower is founded on 38 drilled piers socketed in Franciscan bedrock. The proposed project would replace the existing above-ground triangular (retail) structure with a three-story rectangular structure in the same location. Based on the available information, the proposed structure can be constructed as planned, provided the recommendations presented in the geotechnical report are incorporated into the project plans and implemented during design and construction.

The proposed structural support would consist of a mega truss system supported by two columns. To accommodate the anticipated loading conditions, the mega truss should be supported by spread footings at least 13 by 13 feet square below the existing third basement level. If construction of the footings is not feasible due to site constraints, deep foundation (rock-socketed cast-in drill hole pile foundations, or micropiles) may be required.

Cast-in drill hole (CIDH) pile foundations (also known as drilled piers, drilled caissons and bored piles) are considered to be a feasible foundation alternative for this project. CIDH piles may range from 2 to 6 feet in diameter. Installing CIDH piles of greater than 4 feet in diameter would require heavy equipment (e.g. Bauer BG-40, 171 tons), which may not be feasible for this site location.

If the use of heavy equipment is not feasible, micropiles can be designed to provide foundation support. Micropiles consist of small-diameter (typically 6- to 14-inch-diameter), drilled concrete- or grout-filled shafts with steel bars or pipes embedded in the concrete or grout. Micropiles should be spaced at least four shaft diameters or 4 feet apart, whichever is greater. The actual bond strength should be designed by the contractor and verified by a load test program. It is recommended that a minimum of at least one performance load test be performed on a sacrificial micropile to confirm if the design capacities have been achieved.

The San Francisco Building Code ensures the safety of all new construction in the City. Decisions about appropriate foundation and structural design are considered as part of the Department of Building Inspection (DBI) permit review process. Prior to issuing a building permit for the proposed project, the DBI would review the geotechnical report to ensure that the security and stability of adjoining properties and the subject property is maintained during and following project construction. Potential damage to structures from geologic hazards on the project site would be addressed through compliance with the San Francisco Building Code.

In light of the above, the proposed project would not result in a significant effect related to geology and soils.

Neighborhood Notification. A "Notification of Project Receiving Environmental Review" was mailed on December 26, 2013, to community organizations, tenants of the affected property and properties adjacent to the project site, and those persons who own property within 300 feet of the project site. One letter was received from a law firm representing the Service Employees International Union – United Service Workers West (SEIU-USWW). The letter raised concerns related to historical architectural resources, air quality, greenhouse gas emissions, and subsoil contamination. These topics are addressed above. Other comments in the letter were not related to the physical impacts of the proposed project. One additional phone call was received in response to this notification from a commenter who objected to any development on the site.

Exemption Status. CEQA State Guidelines Section 15302, or Class 2, consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced. Class 2(b) includes replacement of a commercial structure with a new structure of substantially the same size, purpose, and capacity. The proposed project would replace a four-story 37,234 sf retail structure with a three-story 23,470 sf retail structure on the same project site. Therefore, the proposed project is appropriately exempt under Class 2.

Conclusion. CEQA State Guidelines Section 15300.2 states that a categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. The project is located within the Kearny-Market-Mason-Sutter Conservation District but would not cause a substantial change in the significance of this historic district. There are no unusual circumstances surrounding the current proposal that would suggest a reasonable possibility of a significant effect. The proposed project would have no significant environmental effects. The project would be exempt under the above-cited classification. For the above reasons, the proposed project is appropriately exempt from environmental review.



SAN FRANCISCO PLANNING DEPARTMENT

Historic Resource Evaluation Response

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

PART I: HISTORIC RESOURCE EVALUATION

Buildings and Property Description

The subject property, in Assessor's Block 0295, Lot 016, on the west side of Stockton Street between Post and Sutter Streets, contains a 550,599-square-foot (sf) building complex with two above-grade components (a 35-story hotel structure fronting Stockton and Sutter Streets, and four-story 37,234 sf retail structure fronting Post Street), an elevated plaza between the two structures, and basement levels below the entire project site. The proposed project involves the current Levi's Store structure (300 Post Street) and the plaza. The property is identified as Category V (Unrated) in the Kearny-Market-Mason-Sutter Conservation District and is within a C-3-R (Downtown Retail) Zoning District and an 80-130-F Height and Bulk District.

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

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

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

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

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

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

Pre-Existing Historic Rating / Survey

The subject property was previously evaluated in the San Francisco Architectural Heritage 1977-1978 Downtown Survey, as well as the 1976 Department of City Planning Architectural Quality Survey, and is a Category V (Unrated/non-contributing) property within the Kearny-Market-Mason-Sutter Conservation District designated pursuant to Article 11 of the Planning Code.

Neighborhood Context and Description

345 Stockton Street is located at the northeast corner of Union Square. The Union Square neighborhood is composed primarily of large masonry commercial and hospitality buildings.² Four solid block faces and corner buildings front onto Union Square. This area of the city was almost wholly destroyed after the 1906 Earthquake and Fire and around half of the buildings surrounding the park date from the period of reconstruction after the disaster with the most of the buildings constructed between 1907 and 1910. Several buildings around the square date from quarter- to mid-century, and a number are redevelopment projects from the later 1970s and 1980s. Predominant architectural styles are classical or Beaux-Arts and more recent modernist examples. With the exception of 340 Post Street (1923), which is adjacent to the subject property, all other buildings on this block of Post Street, including the subject property, date from the 1970s and 1980s.

The Kearny-Market-Mason-Sutter Conservation District is one of the few homogeneous collections of early Twentieth Century commercial architecture of its type in the United States.³ The District is characterized by "small-scaled, light-colored buildings predominantly four to eight stories in height..." and forms the "dense area at the heart of San Francisco's retail and tourist sectors, containing a concentration of fine shops, department stores, theaters, hotels, and restaurants." The District is further defined by the location of Union Square in its heart. Buildings within the district are described in Section 6 of Appendix E of Article 11 the Planning Code as follows:

² The Union Square neighborhood description is excerpted from Page & Turnbull *300 Post Street/345 Stockton Street Historic Resource Evaluation* (August 15, 2013).

³ San Francisco Planning Code, Article 11, Section 5(d).

For the most part, building facades in the district are two- or three-part vertical compositions consisting either of a base and a shaft, or a base, a shaft and a capital. In addition, the facade of a building is often divided into bays expressing the structure (commonly steel and reinforced concrete) beneath the facade. This was accomplished through fenestration, structural articulation or other detailing which serves to break the facade into discrete segments. The massing of the structures is usually a simple vertically oriented rectangle, which is an important characteristic of the District. Almost without exception, the buildings in the Kearny-Market-Mason-Sutter Conservation District are built to the front property line and occupy the entire site.

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

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

CEQA Historical Resource(s) Evaluation

Step A: Significance

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

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

Based on the information provided by the Historic Preservation consultant, Page & Turnbull, Inc., and found in the Planning Department, Preservation staff concurs that the subject building (300 Post Street) does not appear individually eligible for inclusion on the California Register under any criteria. However, as the property is a non-contributor to a locally designated district, the district is an historical

resource for the purposes of CEQA evaluation.

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

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

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

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

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

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

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

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

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

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

Criterion 3: Property embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of a master, or possesses high artistic values.

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

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

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

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

Step B: Integrity

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

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

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

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

Step C: Character Defining Features

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

Fountain

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

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

Conservation District

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

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

CEQA Historic Resource Determination

Fountain

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

No Historical Resource Present

300 Post Street building

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

No Historical Resource Present

PART I: SENIOR PRESERVATION PLANNER REVIEW

Signature: _____

Tim Frye, Preservation Coordinator

Date: _____

1/21/14

PART II: PROJECT EVALUATION

PROPOSED PROJECT Demolition Alteration New Construction

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

PROJECT DESCRIPTION

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

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

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

- Recladding the back of house (Bar Building) building. The back of house portion of the building will be clad with cast stone panels articulated with regular horizontal joints suggesting belt or string coursing over the body of the building and more closely-spaced joints at the roofline to suggest a cornice detail. The Bar Building will have a solid gate at Post Street to provide vehicular access to existing loading docks, will be unfenestrated, and will support a water feature/wall at the east elevation facing onto the reconfigured plaza. A narrow inset clad with metal louvers transitions the retail store to the taller back-of-house portion of the building.
- Reconfiguring the triangular plaza into a rectangle increasing the plaza in size from 4,586 square feet to 6,059 square feet, and renovating it with new landscaping, lighting, seating, and paving.

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

PROJECT EVALUATION

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

Subject Property/Historic Resource: (Ruth Asawa fountain)

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

California Register-eligible Historic District or Context:

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

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

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

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

Replacement of 300 Post Street

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

New Building

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

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

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

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

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

The back of house portion of the new building is proposed to be clad in Indiana Limestone cast stone panels. This cladding material and color appears to be compatible with the surrounding District in conformance with the *Secretary's Standards* as it is a stone material with a texture and color that is consistent with other masonry cladding found throughout the District. Although the metal panel cladding proposed on the retail store portion of the building is not a material that is typical of the District, the color and matte finish proposed appears to be compatible with the texture and tone of masonry found on surrounding buildings and throughout the District. The *Secretary's Standards* allow, or don't discourage, use of contemporary materials provided they are "harmonious" with the surrounding character. Although it is not a typical cladding material found within the District, the proposed metal paneling will not be reflective and will have a matte finish such that it will not be disruptive to the character of the District.

Plaza and fountain

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

While there are no specific requirements for open spaces within the Conservation District, the proposed reconfiguration of the plaza appears to be designed in a manner that will improve the compatibility of plaza with the District. The rectilinear space will be more consistent with the pattern and shape of buildings in the district. The proposed stone paving and simple landscaping appears to be compatible with the character of the District and in conformance with the *Secretary's Standards*.

PART II: SENIOR PRESERVATION PLANNER REVIEW

Signature:  _____
Tim Frye, Preservation Coordinator

Date: 1/21/14

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



300 Post Street/345 Stockton Street



T 510.836.4200
F 510.836.4205

410 12th Street, Suite 250
Oakland, Ca 94607

www.lozeaudrury.com
richard@lozeaudrury.com

Via E-Mail and U.S. Mail

Jeanie.poling@sfgov.org;
Elizabeth.watty@sfgov.org

January 9, 2014

Jeanie Poling
Elisabeth Watty
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, CA 94103

Re: Comments on Environmental Review
300 Post St./345 Stockton St.
Case No. 2013.0628E

Dear Ms. Poling and Ms. Watty:

This Office respectfully writes on behalf of the Service Employees International Union – United Service Workers West (“**SEIU-USWW**” or “**Commentor**”). SEIU-USWW appreciates the opportunity to provide environmental comments on the referenced Apple Retail Store at 300 Post St./345 Stockton St. (“**Apple Store**” or “**Apple Project**”), in the heart of the Union Square area. Commentor specifically is providing these comments in response to the Planning Department’s “Notification of Project Receiving Environmental Review” that requested public comment on environmental “concerns” by January 9, 2014.

We are informed that the Apple Project, which will require Planning Commission and Zoning Administrator discretionary approvals and a fenestration variance, will be set for hearing on February 6, 2014.¹ Given this timeline, it appears that the Planning Department plans to proceed under a California Environmental Quality Act (“**CEQA**”) exemption, as the minimum timelines for a CEQA negative declaration or environmental impact report (“**EIR**”) certainly cannot be satisfied in time for a February 6, 2014 hearing.

¹ This hearing was originally set for January 16, 2014.

SEIU-USWW is extremely concerned about any CEQA exemption for the Apple Project, and believes that an exemption would violate CEQA for several reasons.

First, it seems the Planning Department is prejudging the CEQA review before it considers environmental comments from the public, including this comment, as requested in the Planning Department's "Notification of Project Receiving Environmental Review" that solicited such public comment by January 9, 2014. How can a hearing be set for February 6, 2014 -- in less than 30 days -- before the Planning Department has a *bona fide* chance to read the public's environmental comments? This is improper and "puts the cart before the horse." The hearing must be continued; otherwise, the record will evidence a clear intent to disregard public comment and prejudge the Apple Project as CEQA-exempt in violation of CEQA. San Francisco should not give special favors to a large technology firm at the expense of a legitimate public process for its residents.

Second, the Apple Project does not qualify for any CEQA exemption. As set forth herein and in the expert comments submitted herewith, there is a "fair argument" of environmental impacts caused by the Apple Project, including but not limited to environmental hazards, air quality and historic resource/land use impacts. Such a "fair argument" of environmental impacts generally requires an EIR. See *Friends of Davis v. City of Davis* (2000) 83 Cal.App.4th 1004, 1016-1017. In fact, on December 4, 2013, the Apple Project was presented to the Architectural Review Committee of the Historic Preservation Commission, which expressed serious concerns about the compatibility and scale of the Apple Project within the Union Square area. This Project, facing the heart of the City's beloved commercial district at Union Square, presents "unusual circumstances."

Proceeding with a CEQA exemption would short-circuit careful and methodical evaluation and mitigation of many environmental impacts concerning the Apple Project including, but not limited to, the following:

- Aesthetics and architectural scale and compatibility, including pedestrian circulation and historic impacts
- Air emissions, energy efficiency, greenhouse gas emissions, water conservation and waste diversion standards
- Potential subsoil contamination
- Significant impacts on MUNI and other transportation infrastructure
- Maintaining critical bird habitat and limiting bird strikes
- Assuring legal and adequate compensation and benefits for the increased numbers of both direct and contracted employees working at the site

Third, a CEQA exemption would impermissibly continue the ongoing failure to install the overdue observation deck mitigation at the Apple Project location. Years ago, extra Floor Area Ratio (“**FAR**”) density was allowed at the site. In exchange for the additional FAR, various public benefits were provided. One of the public benefits was the requirement to build an observation deck. *This observation deck was never built, although the related development bonuses were used.* This is improper under CEQA. An agency breaches a mandatory duty when it fails to comply with prior mitigation measures. [*Katzeff v. Dept. of Forestry* (2010) 181 Cal.App.4th 601, 611, 614.] That is the case here, where the Planning Department admits that the site failed to install the observation deck required as part of the increased density. Before exempting the Apple Store from environmental review, the Planning Department must review the requirement for the observation deck. This is a key public amenity, and it must not continue to be ignored and discarded. [See *Lincoln Place Tenants v. City of Los Angeles* (2005) 130 Cal.App.4th 1491, 1507-1508 (“[h]aving placed these conditions . . . the city cannot simply ignore them. Mitigating conditions are not mere expressions of hope”).]

Fourth, the Planning Department’s environmental review of the Apple Store must also include the pending “Amendments to Planning Code to Allow Non-Complying Floor Area Ratio,” Case No.: 2013.1695T [Board File No. 13-1059] which seeks to allow non-complying FAR in the C-3-R Zoning District (“**FAR Legislation**”). As documented herein, it is readily apparent that this FAR Legislation has been proposed to expedite and “spot-legislate” the Apple Project. Without the FAR Legislation, the Apple Project is considered non-complying as it has a FAR of 15.3:1, whereas the current Code allows for a maximum FAR of 9:1. While the FAR Legislation may apply to several sites in the C-3-R Zoning District, the Staff Report for the December 19, 2013 hearing on the FAR Legislation admits that “[t]he Apple store project would require the approval of this Ordinance in order to be approved.”

This FAR Legislation is a CEQA Project, under 14 Cal.Code Regs. § 15378(a)(1) (“**CCR**” or “**CEQA Guidelines**”) that expressly confirms that CEQA projects include “enactment and amendment of zoning ordinances,” including the pending FAR Legislation. The CEQA study of such zoning ordinances must include analysis of “the secondary effects that can be expected to follow from the adoption, or amendment.” [*FUTURE v. Board of Sups. of El Dorado County* (1998) 62 Cal.App.4th 1334, 1335.] Expert comment submitted herewith shows there is a “fair argument” that the FAR Legislation, including 38 sites, will have the potential for extremely significant and serious impacts to historic resources in Union Square and the Kearny-Market-Mason-Sutter Street Conservation District.

The FAR Legislation must be analyzed now under CEQA, along with the Apple Project, because it is an “essential step” in a process that will foreseeably

lead to the Apple Project. CEQA requires environmental factors to be considered at the “earliest possible stage . . . before [the project] gains irreversible momentum,” [*Bozung v. Local Agency Formation Comm.* (1975) 13 Cal.3d 263, 277], “at a point in the planning process where genuine flexibility remains” [*Sundstrom v. Mendocino County* (1988) 202 Cal.App.3d 296, 307.] Also, a CEQA project is defined as the whole of an action, and a public agency generally may not segment or “piecemeal” a project into several pieces to avoid full disclosure of environmental impacts. [See *Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1231.]

We prepared these comments with the assistance of experts Matt Hagemann, P.G., C.Hg., a licensed professional geologist, and Katherine T. Petrin, an architectural historian and preservation planner. Their comments are attached to this comment letter as Exhibits A and B. As a matter of law under CEQA, “substantial evidence includes . . . expert opinion.” [Pub. Res. Code § 21080(e)(1); 14 CCR § 15064(f)(5).] Where experts present conflicting evidence on the extent of the environmental effects of a project, the agency must consider the environmental effects to be significant and prepare an EIR. [14 CCR § 15064(f)(5); *Pocket Protectors v. Sacramento* (2003) 124 Cal.App.4th 903, 935.]

In sum, a rushed, CEQA-exempt environmental process for the Apple Project is not how proper planning occurs. There is a “fair argument” that the Apple Project, and its accompanying FAR Legislation, will have significant impacts on the residents of San Francisco, including SEIU-USWW members. They, and indeed all San Franciscans, deserve the best, most sustainable Apple Project and FAR Legislation under CEQA and local law.

Commentor SEIU-USWW therefore respectfully requests that the Planning Department defer any hearing pending complete CEQA review of the Apple Project and FAR Legislation in an EIR. More thoughtful analysis and comment is needed, as CEQA is designed, and required, to provide. Commentor also respectfully reserves the right to submit additional legal and expert comment at future hearings on the Apple Project and FAR Legislation, including the fenestration variance under Planning Code Section 145.1, once the Planning Department makes any CEQA recommendations or determinations on these projects. [See *Stolman v. City of Los Angeles* (2003) 114 Cal.App.4th 916 (strict interpretation of findings needed to allow variance); *Ross v. City of Yorba Linda* (1991) 1 Cal.App.4th 954 (unlawful spot-zoning).]

I. Commentor SEIU-USWW's Standing And Exhaustion Of Remedies

SEIU-USWW represents thousands of property service workers across California, including approximately 8,500 security officers. SEIU-USWW and its sister local unions have many members, including public sector and healthcare workers, who reside and work in San Francisco. SEIU-USWW union standards include provisions on living wages, worker and environmental safety, access to healthcare, paid sick days, training, and dispute resolution procedures that have resulted in better retention and labor conditions among signatories, and a better quality of life for security officers and their families.

An important part of SEIU-USWW's ongoing advocacy involves participating in and, where appropriate, challenging projects that would result in harmful environmental effects, or the violation of environmental laws, to the detriment of the interests of SEIU-USWW's members. Workers often suffer environmental impacts that are more severe than the general population.

As a result, SEIU-USWW is a stakeholder in the Apple Project and FAR Legislation, and worker and labor organizations like SEIU-USWW have a long history of engaging in the CEQA process to secure safe working conditions, reduce environmental impacts, and maximize economic benefits. The courts have held that "unions have standing to litigate environmental claims." [*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1198.]

This comment letter therefore is made to exhaust remedies under Pub. Res. Code § 21177 concerning the Apple Project and FAR Legislation, and incorporates by this reference all written and oral comments submitted on the FAR Legislation and Apple Project by any commenting party or agency, including but not limited to the written and oral comments submitted at the December 19, 2013 Planning Commission hearing on the FAR Legislation. It is well-established that any party, as SEIU-USWW here, who participates in the administrative process can assert all factual and legal issues raised by any commenting party or agency. [*Citizens for Open Government v. City of Lodi* (2006) 144 Cal.App.4th 865, 875; *Federation of Hillside & Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1263.]

II. The Apple Store Project Description And Connection To The FAR Legislation

Proposed in May 2013, the Apple Project is to demolish the existing 35,930 sq. ft. Grand Hyatt/Levi's Store Building at 300 Post Street and to construct from the ground up a new 23,470 sq. ft. Apple retail store. Proposed exterior work includes reconfiguring the building to an L-shaped plan, reducing

the building height, recladding the building, and reconfiguring the existing plaza between the existing building and Grand Hyatt Hotel building, including relocating and reinstalling the Ruth Asawa fountain. The retail portion of the new building is proposed to have structural glass facades behind framed overhangs and be clad in bead blasted stainless steel panels. These will require a fenestration variance under Planning Code §145.1. The back of house portion of the new building is proposed to be clad with cast stone panels.

The Project is considered non-complying as it has a FAR of 15.3:1, whereas the current Code allows for a maximum FAR of 9:1 in that location. On December 4, 2013, the Apple Project was presented to the Architectural Review Committee of the Historic Preservation Commission, which expressed serious concerns about the compatibility and scale of the Project within the Union Square area. These concerns, discussed below, are memorialized in Meeting Notes dated December 17, 2013 and attached hereto as Exhibit C.

The Planning Department's June 23, 2013 Preliminary Project Assessment for the Apple Project, attached as Exhibit D, confirms that "[s]ince the noncomplying issue relating to this project is the FAR, a portion of the building cannot be demolished and rebuilt, since the rebuilt portion of the building will still exceed the permitted FAR allowed under today's Code, albeit to a lesser extent. In order for the project to move forward, a legislative change is needed."

Of note with regard to FAR and density issues at the site, the June 23, 2013 Preliminary Project Assessment for the Apple Project attached as Exhibit D indicates that the property was approved with FAR bonuses that allowed the development on the site to exceed the 10:1 FAR limit. It states, with emphasis added, that "[i]n exchange for the additional floor area, various public benefits were provided. One of those public benefits was the requirement to build an observation deck. The observation deck provided the property with an additional 10,000 sq. ft. of developable area. *It appears that the observation deck within the Grant Hyatt hotel was never built, although the related development bonuses were used.*"

It is plainly apparent that this FAR Legislation has been proposed to expedite and "spot-legislate" the development of the Apple Project. The FAR Legislation proposal, made pursuant to Planning Code Section 302, apparently will allow 38 noncomplying secondary structures located within the C-3-R (Downtown Retail) Zoning District that exceed a property's maximum floor area ratio limit to be demolished, in whole or in part, and reconstructed. This changes the current Code, that now requires that a noncomplying structure that is voluntarily razed – in whole or in part – may only be reconstructed in full conformity with the requirements of the Planning Code. In fact, to resolve any doubts about the clear link between the FAR Legislation and the Apple Project,

the Staff Report for the December 19, 2013 Planning Commission hearing on the FAR Legislation, attached as Exhibit E, admits with emphasis added that the FAR Legislation may apply to 38 other sites in the C-3-R Zoning District, but "[t]he Apple store project would require the approval of this Ordinance in order to be approved."

The FAR Legislation was introduced by Supervisor David Chiu and is identified as Board of Supervisors File No. 13-1059. The Planning Commission on December 19, 2013 held a hearing to consider a resolution recommending this Text Amendment to the Board of Supervisors, adopt findings, including CEQA environmental findings, Planning Code Section 302 findings, and findings of consistency with the General Plan and the priority policies of Planning Code Section 101.1. SEIU-USWW provided comments, and the item was continued, apparently to February 6, 2014.

III. Background On CEQA Requirements

CEQA, Pub. Res. Code § 21000 *et seq.*, applies to agency projects that may have an adverse environmental impact. [*CBE v. SCAQMD* (2010) 48 Cal.4th 310, 319; *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259; *Friends of B Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1003.] CEQA's procedural and substantive requirements are "interpreted . . . to afford the fullest possible protection to the environment within its reasonable scope of the statutory language." [*Friends of Mammoth*, 8 Cal.3d at 259.] CEQA has two broad purposes: 1) avoiding, reducing or preventing environmental damage by requiring alternatives and mitigation measures [CEQA Guidelines § 15002(a)]; and 2) providing information to decisionmakers and the public concerning the environmental effects of the proposed project. [CEQA Guidelines § 15002(a)(1).] If a project will have a significant effect on the environment, an EIR is required. [CEQA Guidelines §§ 15002(k), 15063(b)(2), 15070.]

CEQA's "purpose is to inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made. Thus, the EIR protects not only the environment but also informed self-government." [*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.] The EIR has been described as "an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return." [*Berkeley Keep Jets Over the Bay v. Bd. of Port Comm'rs.* (2001) 91 Cal.App.4th 1344, 1354; *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.]

CEQA directs public agencies to avoid or reduce environmental damage when possible by requiring alternatives or mitigation measures. [14 CCR § 15002(a)(2–3); see also *Berkeley Jets*, 91 Cal.App.4th at 1354; *Citizens of*

Goleta Valley, 52 Cal.3d at 553; *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1988) 47 Cal.3d 376, 400.] The EIR serves to provide public agencies and the public in general with information about the effect that a proposed project is likely to have on the environment and to “identify ways that environmental damage can be avoided or significantly reduced.” [14 CCR § 15002(a)(2).] If the project has a significant effect on the environment, the agency may approve the project only upon finding that it has “eliminated or substantially lessened all significant effects on the environment where feasible” and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns.” [Pub. Res. Code § 21081; 14 CCR § 15092(b)(2)(A–B).]

A prejudicial abuse of discretion occurs “if the failure to include relevant information precludes informed decision-making and informed public participation, thereby thwarting the statutory goals of the EIR process.” [*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722; *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1117; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 946.]

In particular, determination of whether an EIR is required when a project is first reviewed depends upon the “fair argument” test. [See *Friends of Davis*, 83 Cal.App.4th at 1016-1017; *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1316.] The “fair argument” test is derived from CEQA section 21151, which requires an EIR on any project which “may have a significant effect on the environment.” That section mandates preparation of an EIR in the first instance “whenever it can be fairly argued on the basis of substantial evidence that the project may have significant impact.” Section 21151 creates a low threshold requirement for initial preparation of an EIR, and reflects a preference for resolving doubts in favor of environmental review when the question is whether any such review is warranted. For example, if there is a disagreement among experts over the significance of an effect, the agency is to treat the effect as significant and prepare an EIR. [*Sierra Club*, 6 Cal.App.4th at 1316-1317.]

IV. Required Early Timing For CEQA Review, And Prohibition On Piecemealing

An agency may not commit itself to a definite course of action on a project before evaluating its environmental effects. [*Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 139.] The duty to perform CEQA review applies at the first instance that a public agency proposes to “approve” a project. [Pub. Res. Code § 21080(a); CEQA Guidelines § 15352(a); *Save Tara*, 45 Cal.4th 116; *RiverWatch v. Olivenhain Municipal Water Dist.* (2009) 170 Cal.App.4th 1186.] For private projects (i.e., projects carried out by entities other than public agencies but requiring discretionary approval from one or more agencies), the

lead agency must encourage project proponents to incorporate environmental considerations into project planning as early as feasible. [14 CCR § 15004(b)(3).] Public agencies may not “approve” a project before completing the CEQA process.

As the California Supreme Court explained in *Save Tara*, 45 Cal.4th at 137-139, CEQA analysis must be “done early enough to serve, realistically, as a meaningful contribution to public decisions.” The Court explained that early CEQA review is designed to inform decision-makers because:

[d]ecisions reflecting environmental considerations could most easily be made when other basic decisions were being made, that is, during the early stage of project conceptualization, design and planning . . . [a]t this early stage, environmental review would be an integral part of the decisionmaking process. Any later environmental review might call for a burdensome reconsideration of decisions already made and would risk becoming the sort of post hoc rationalization to support action already taken.

Similarly, because a project is defined as the whole of an action, a public agency generally may not segment or “piecemeal” a project into several pieces if the effect is to avoid full disclosure of environmental impact. [See *Tuolumne County*, 155 Cal.App.4th at 1231 (because opening of home improvement center was conditioned on completion of road realignment, two acts were part of single project for purposes of CEQA).] Even where individual projects are undertaken in phases or multiple parts, where the total undertaking comprises a project with significant environmental effect, the lead agency must fully analyze each project in a single environmental document. [14 CCR § 15165.]

CEQA requires that “environmental considerations do not become submerged by chopping a large project into many little ones--each with a minimum potential impact on the environment--which cumulatively may have disastrous consequences.” [*Bozung*, 13 Cal.3d at 283-84; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 716; *McQueen v. Board of Directors* (1988) 202 Cal.App.3d 1136, 1143-44; see also *Association for a Cleaner Environment v. Yosemite Community College Dist.* (2004) 116 Cal.App.4th 629, 637-40 (decisions to close, clean up, salvage, and relocate shooting range constituted single project for purposes of evaluation under CEQA); *Arviv Enterprises, Inc. v. South Valley Area Planning Com.* (2002) 101 Cal.App.4th 1333, 1345-47 (separate applications from same developer to build various numbers of houses on same street comprised single project requiring EIR).]

V. The Apple Store Is A CEQA Project, And It Is Not Exempt

As set forth above, given the planned February 6, 2014 hearing² on the Apple Store discretionary approvals, it appears that the Planning Department plans to proceed under a CEQA exemption, as the minimum timelines for a CEQA negative declaration or EIR certainly cannot be satisfied in time for a February 6, 2014 hearing.

We wish to re-emphasize that it seems the Planning Department is prejudging the CEQA review before it even considers environmental comments from the public, including this comment, as requested in the "Notification of Project Receiving Environmental Review" that solicited such public comment by January 9, 2014. This is improper and "puts the cart before the horse." *The hearing must be continued*; otherwise, the record will evidence a clear intent to disregard public comment and prejudge the Apple Project's CEQA clearance in violation of CEQA. The City should not be doing such favors for technology giant Apple at the expense of City residents' rights.

A. The Apple Store Is A CEQA Project

The Apple Project to construct a new 35,930 sq. ft. store certainly is a CEQA project. Private activities are subject to CEQA if they involve government participation, financing, or authorization. [Pub. Res. Code § 21065(b)-(c); 14 CCR §§ 15002(c), 15377.] Activities that involve government participation or financing include those that are supported in whole or in part through contracts, Pub. Res. Code § 21065(b), and include issuance by a public agency of a lease, permit, license, certificate or other entitlement for development or use. [Pub. Res. Code § 21065(c); *NRDC v. Arcata National Corp.* (1976) 59 Cal. App.3d 959.]

That is the case here. The required Planning Commission findings under the FAR Ordinance, as well as the fenestration variance under Section 145.1 of the Code are discretionary approvals that trigger CEQA.

B. The Apple Store Is Not CEQA Exempt

CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project. [CEQA Guidelines § 15002(a)(1).] "Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus,

² Commentor reserves all rights to comment on the CEQA clearance, Code compliance and land use issues after the Staff Report for the February 6, 2014 Planning Commission hearing is published. [See *Stolman*, 114 Cal.App.4th at 916 (strict interpretation of findings needed to allow variance); *Ross*, 1 Cal.App.4th at 954 (unlawful spot-zoning.)]

the EIR ‘protects not only the environment but also informed self-government.’”
[*Citizens of Goleta Valley*, 52 Cal.3d at 564.]

Here, exempting the 23,470 sq. ft. Apple Store facing Union Square from any CEQA review will violate this key principle, and will be grossly improper because there is a “fair argument” of significant environmental impacts from the Apple Project in categories including hazards and hazardous substances, air quality and greenhouse gas and aesthetics and historic resources. These impacts should be studied and mitigated.

1. CEQA Exemptions Are Narrowly Construed

CEQA and its regulations provide that certain project may be exempt. However, “[a]n activity that may have a significant effect on the environment cannot be categorically exempt.” [*Salmon Protectors v. County of Marin* (2004) 125 Cal.App.4th 1098, 1107; *Azusa Land Reclamation v. Main San Gabriel Basin* (1997) 52 Cal.App.4th 1165, 1191, 1202 (“[w]here there is any reasonable possibility that a project or activity may have a significant effect on the environment, an exemption would be improper . . . [the] determination [is whether] on the basis of the whole record . . . there was no substantial evidence that there would be a significant effect.”)] If a project may have a significant impact, second tier CEQA review determines whether a negative declaration (including mitigation measures and public notice and comment period) is appropriate, and in some circumstances third tier review requires preparation of an EIR. *Salmon Protection*, 125 Cal.App.4th at 1105-1107.

CEQA requires the agency conduct a preliminary review to determine whether a project is exempt. [14 CCR §§ 15060(c), 15061(a).] “An agency should decide whether a project is eligible for a categorical exemption as part of its preliminary review of the project.” [*Salmon Protection*, 125 Cal.App.4th at 1106.] “Only with a considered awareness of the purposes and policy behind this law, and a careful analysis of the proposed project, can an agency apply an exemption to a specific project which appears to meet the exemption criteria.” [*Dehne v. County of Santa Clara* (1981) 115 Cal.App.3d 827, 843; *East Peninsula v. Palos Verdes Peninsula School Dist.* (1989) 210 Cal.App.3d 155,171.]

However, exemptions are not to be expanded or broadened beyond the scope of their language. [*Dehne*, 115 Cal.App.3d at 842.] Such exemptions may only be created by the Secretary of the Resources Agency for classes of projects for which it is found that there is no reasonable possibility that the class of projects may have a significant effect on the environment. [*Azusa Land Reclamation*, 52 Cal.App.4th at 1191.]

Under these principles, there is no CEQA exemption that can reasonably apply to the Apple Project, which is to raze the existing 37,234 sq. ft. building to ground level and then build an entirely new 23,470 sq. ft. building with a new scale above ground.

For example, this is not repair or minor alteration of an existing structure or facility under the Class 1 exemption of 14 CCR § 15301 that typically applies to “negligible” activities. While there may be a square footage and FAR reduction from the current Levi Store, this Project to construct a complicated 23,470 sq. ft. building right along historic Union Square, simply does not qualify for this exemption that is intended for “repairs and alterations,” “rehabilitation,” or “small additions.” [14 CCR § 15301 *Azusa Land Reclamation*, 52 Cal.App.4th at 1191; *County of Amador*, 76 Cal.App.4th at 967.]

So too, this simply is not the replacement or reconstruction of an existing structure under the Class 2 exemption of 14 CCR § 15302. This Apple Store is an entirely different structure, with different architecture, scale and aesthetic design from the Levi’s Store, including the need for a fenestration variance under Planning Code § 145.1 because it will have less than the required 60% transparency along the Stockton Street frontage along Union Square. The Planning Department’s Preliminary Project Assessment attached as Exhibit D concedes that “[t]he proposal would reduce public visibility from the street toward the plaza . . . [and] would create an approximately 80’-0” blank wall along an important commercial street with high pedestrian volumes in the heart of the City’s premier retail district.” Moreover, “the single-surface glazing wall of approximately 115’ absent a defined pedestrian entry is a departure from the characteristic pattern of the District.” In fact, the Apple Project was presented on December 4, 2013, to the experts who sit on the City’s Architectural Review Committee of the Historic Preservation Commission, which expressed serious concerns about the compatibility and scale of the Project within the unusual location facing Union Square. This makes this situation much different from *Dehne*, 115 Cal.App.3d at 838, where the new Class 2 exempt structure in a typical industrial district had fewer aesthetic impacts.

Also, the Class 3 exemption of 14 CCR § 15303 for “small structures” cannot apply because at 23,470 sq. ft, the Apple Project exceeds the 10,000 sq. ft. size limitation for the exemption under 14 CCR § 15303(c) in an “urbanized” area.

2. **The “Common Sense” Exemption Does Not Apply To The Apple Project, No Mitigated Categorical CEQA Exemptions Are Allowed, and This Project, In An Unusual Location Along Union Square In The “Heart” of the City’s Commercial District, Will Have Significant Impacts**

It is true that the CEQA Guidelines, 14 CCR § 15061(b)(3), also contains the so-called “common sense” exemption for projects which have no potential for causing a significant effect on the environment. However, this exemption is construed very narrowly, and can be defeated by as little as a reasonable argument that the project might have a significant impact. [*Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, 113 (agency must refute reasonable argument against exemption to a certainty); *Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 641, 644 (when evidence is presented to a lead agency showing possibility of adverse impact, agency must show with certainty that there is no possibility of significant effect); *Myers v. Board of Supervisors* (1976) 58 Cal.App.3d 413, 427 (explicit claims that adverse impacts will occur are sufficient to defeat use of exemption).]

Also, a categorical exemption shall not be used where there is a reasonable possibility that an activity otherwise exempt will have significant effect on the environment due to unusual circumstances. [14 CCR §§ 15060(c)(2), 15300.2(c), 15360.] An activity has a significant effect if it “has the potential to degrade the quality of the environment.” [Pub. Res. Code § 21060.5; *Azusa Land*, 52 Cal.App.4th at 1189, 1201.]

Furthermore, an agency may not rely on mitigation measures as a basis for concluding that a project is categorically exempt or subject to the “common sense” exemption. [*Salmon Protection*, 125 Cal.App.4th at 1102.] If there is a reasonable possibility of a significant effect, then the project must be reviewed under CEQA, and mitigation measures may be considered only as part of that CEQA review. [*Id.*]

Here, the “common sense” exemption cannot apply because there is a “fair argument” of significant environmental impacts from the Apple Project in categories including hazards and hazardous substances, air quality and greenhouse gas, as well as upon aesthetics and historic resources given the “unusual circumstance” that the site faces Union Square. Moreover, the impact of the FAR Legislation, which may involve up to 38 other properties, qualifies as an “unusual circumstance,” as discussed at length below. In this circumstance, an EIR should be prepared.

a. **There Is A “Fair Argument” Of Significant Impacts From Hazards and Hazardous Substances From The Apple Project**

Environmental hazards and hazardous waste impacts can be significant impacts that must be studied under CEQA. [See CEQA Guidelines App. G.] Numerous cases deem impacts on these resources as significant. [*Citizens for Responsible Equitable Environmental Development v. City of Chula Vista* (2011) 197 Cal.App.4th 327, 332 (2011) [in a case involving soil contamination beneath a former gas station, the court held that “it [could] be fairly argued that [the project at issue] may have a significant environmental impact by disturbing contaminated soils”]; *Association for a Cleaner Environment*, 116 Cal.App.4th at 635, 638–640 [project to remove a shooting range that would not increase the lead contamination already present due to bullets might nevertheless “spread[] [that] contamination, which is a direct physical change in the environment,” through increased vehicle and foot traffic and donations of portion of range to another site].)

With regard to the Apple Project, expert Matt Hagemann P.G., C.Hg, has concluded in his comments submitted hereto as Exhibit A that there is a “fair argument” of significant environmental hazards from the Apple Project that should be studied and mitigated, particularly in light of the fact that no Phase 1 Study or Assessment has been done for this Project:

“The Project would involve excavation of soils up to 10 feet below ground surface for foundation work (PPA, p.2). Subsurface environmental conditions at the Project site, including the potential presence of soil contamination, have not been disclosed because a Phase I Environmental Site Assessment (ESA) was not completed. Because a Phase I ESA was not completed, potential hazardous environmental conditions which may be encountered by workers during excavation at the Project site were not identified.

Phase I ESAs are commonly commissioned by developers to identify hazardous soil conditions that may pose a risk to workers or the environment, and which may require further investigation, including environmental sampling and cleanup. Failure to conduct a Phase I ESA to evaluate potentially hazardous environmental conditions demonstrates a fundamental lack of due diligence on the part of the applicant in disclosing needed baseline environmental conditions.

Phase I ESAs are conducted to identify conditions indicative of releases of hazardous substances and involve a review of all known sites in the vicinity of the subject property that are on regulatory agency databases undergoing assessment or cleanup activities, an inspection, and interviews with people knowledgeable about the property. Standards for performing a Phase I ESA have been promulgated by the US EPA and are based in part on American Society for Testing and Materials (ASTM) Standard E1527-05. Phase I ESAs conclude with the identification of any “recognized environmental conditions” (RECs) and recommendations to address such conditions. A REC is the presence or likely presence of any hazardous substances or petroleum products on a property under conditions that indicate an existing release, a past release, or a material threat of a release of any hazardous substances or petroleum products into structures on the property or into the ground, groundwater, or surface water of the property.

During excavation, workers may be exposed to contamination through dermal contact and through inhalation of dust and vapors. There is a fair argument that without adequate evaluation in a Phase I ESA, workers face uncertain risks during construction activities that would disturb soil. An IS/MND should be prepared to include reference to a Phase I ESA along with any mitigation measures that would be necessary to protect construction worker health.” [Hagemann Comment, Exhibit A hereto.]

In light of this, the “common sense” exemption cannot apply, and an EIR should be prepared. [*Friends of Davis*, 83 Cal.App.4th at 1016-1017; *Davidon Homes*, 54 Cal.App.4th at 113.] Any contrary conclusion is arbitrary and capricious, as well as an abuse of discretion.

b. There Is A “Fair Argument” Of Air Quality And Greenhouse Gas Impacts From The Apple Project

It is well-established that air quality impacts must be studied under CEQA. [See CEQA Guidelines App. G.] The same is true for greenhouse gas impacts. [CEQA Guidelines § 15064.4.] Despite this, it appears that applicant Apple is claiming in its October 8, 2013 Greenhouse Gas Compliance Checklist, attached hereto as Exhibit F, to be exempt from the City’s green building and energy efficiency requirements on the basis that the Apple Project is not “new construction.” This claim is utterly baseless, as the Project involves destroying the existing Levi’s store down to the ground level and building an entirely new

23,470 sq. ft. store in its place.

Where a local or regional policy of general applicability, such as an ordinance, is adopted in order to avoid or mitigate environmental effects, a conflict with that policy in itself indicates a potentially significant impact on the environment. [*Pocket Protectors*, 124 Cal.App.4th at 903.] Indeed, any inconsistencies between a proposed project and applicable plans must be discussed in an EIR. [14 CCR § 15125(d); *City of Long Beach v. Los Angeles Unif. School Dist.* (2009) 176 Cal.App.4th 889, 918; *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 874 (EIR inadequate when Lead Agency failed to identify relationship of project to relevant local plans).] A project's inconsistencies with local plans and policies constitute significant impacts under CEQA. [*Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 783-4; *see also, County of El Dorado v. Dept. of Transp.* (2005) 133 Cal.App.4th 1376 (fact that a project may be consistent with a plan, such as an air plan, does not necessarily mean that it does not have significant impacts).]

With regard to the Apple Project, the Planning Department's June 23, 2013 Preliminary Project Assessment for the Apple Project, attached hereto as Exhibit D, raised concerns about compliance with these air quality and greenhouse gas issues:

"Proposed design features for the Post Street façade, particularly the contiguous expansive glazing wall, may result in a significant increase in energy consumption. The Planning Department recommends modifying the design by incorporating passive shading structures or by employing advanced glazing systems to reduce thermal loading and demonstrate a net reduction in energy consumption within the new structure. The San Francisco Department of the Environmental also expressed initial concerns to the Planning Department about the proposed building's energy performance, particularly given San Francisco's commitments to climate change mitigation and adaptation." [Exhibit D hereto.]

Furthermore, expert Matt Hagemann P.G., C.Hg, has concluded in his comments submitted hereto as Exhibit A that there is a fair argument of significant air quality and greenhouse gas impacts from the Apple Project that should be studied and mitigated:

"No dust control measures or plans are provided for the Project in the PPA, only the assurance that the City Ordinance would be followed. Because the Project is to be constructed in a densely populated area of San Francisco, all feasible dust control plans

and mitigation measures should be identified in an IS/MND to be prepared for the Project. There is a fair argument that without adequate mitigation, as identified in an IS/MND, public health impacts from inhalation of construction-related dust may be significant.

Additionally, a fair argument can also be made for health risks from Project construction from emissions of diesel particulate matter (DPM) from use of heavy-duty diesel equipment. No analysis of such health risks are provided in the Preliminary Project Assessment, only vague reference that “additional measures may be required to reduce DPM emissions from construction vehicles and equipment” ... “which may affect sensitive receptors located up to and perhaps beyond 300 feet from the project site” (p. 3). An IS/MND should be prepared to identify potential health risks from diesel particulate emissions on public health with an emphasis on impacts to sensitive receptors in the Project vicinity to include identification of the location and types of sensitive receptors in the Project area.

Project construction emissions of diesel particulate matter and fugitive dust (PM10) may impact the health of children, the elderly and other nearby sensitive receptors

...

It is mandatory that green building requirements adopted by the City of San Francisco in 2008 be applied to Major Alterations such as this project, as classified by the Department of Building Inspection.

The Greenhouse Gas Checklist attached to the PPA provides inadequate measures to address the Planning Department's concerns pertaining to energy efficiency of the proposed structure. Consistent with City of San Francisco requirements, energy efficiency provisions should apply. An IS/MND should be prepared to present Project plans in conformance with green building requirements in San Francisco Building Code, Chapter 13C.5.201.1.1 which include:

- a demonstration of a minimum of 15% greater energy efficiency than Title 24 Part 6 2008 California Energy Standards;
- reduction in the amount of potable water use by 20%;
- reduction in the amount of potable water for landscaping by 50%;
- and

- diversion of at least 75% demolition and construction debris to recycling facilities.

The Greenhouse Gas Checklist is incorrect in its assertion that the proposed Project is exempt from these requirements based on the designation of a Major Alteration by the San Francisco Department of Building Inspection (PPA, p.5). As part of the CEQA process, a comprehensive approach to achieving these energy-saving objectives should be prepared." [Hagemann Comment, Exhibit A hereto.]

In light of this, the "common sense" exemption cannot apply, and an EIR should be prepared. [*Friends of Davis*, 83 Cal.App.4th at 1016-1017; *Davidon Homes*, 54 Cal.App.4th at 113.] Any contrary conclusion is arbitrary and capricious, as well as an abuse of discretion.

c. **There Is A "Fair Argument" Of Aesthetic and Historic Resource Impacts From the Apple Project, Especially Given The "Unusual" Circumstance Of The Project's Location Facing Union Square**

It is well-established that aesthetic, architectural and historic resource impacts can be significant impacts that must be studied under CEQA. [See CEQA Guidelines App. G.] Numerous cases deem impacts on these resources as significant. [*Ocean View Estates v. Montecito Water Dist* (2004) 116 Cal.App.4th 396, 401; *Quail Botanic Gardens v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1603-1605.]

In this instance, the Apple Project was presented on December 4, 2013, to the experts who sit on the City's Architectural Review Committee of the Historic Preservation Commission, which expressed serious concerns about the compatibility of the Project within the unusual location facing Union Square. *These concerns, memorialized in Meeting Notes dated December 17, 2013 and attached hereto as Exhibit C, on their own raise a "fair argument" of significant environmental impacts from the Apple Project, and include:*

"New Building. All three Commissioners were complimentary of the proposed design but were concerned about its compatibility with the District. The Commissioners also stated that the compatibility analysis provided by the Project Sponsor did not appropriately address features of the District. Commissioners Hyland and Pearlman stated that they did not believe that the proposed design was compatible with the district.

Commissioner Hyland questioned that since the design is not compatible with the district why not make the argument that it doesn't need to be compatible. Commissioner Wolfram stated that the current proposal did not appear compatible with the District, but with issues of scale addressed it could be.

Composition. All three Commissioners indicated that the proposal did not adequately address the two- or three-part composition that was characteristic of buildings within the District. The emphasis on base, interior mezzanine, and roofline was not an effective means of breaking up the composition into a two- or three-part composition consistent with the District. Commissioner Hyland noted that due to the expense of glass and the focus on transparency, the building "dissolves" so that there can be no real multi-part composition.

Massing. Commissioner Wolfram and Hyland stated that the proposed rectilinear plan of the new building addresses the corner in a more resolved manner than the existing triangular building, but still not as well as it could. Commissioner Wolfram noted that if pedestrian experience is the focus of the new building, then the massing is appropriate. Commissioner Hyland expressed concern that the height at corner was too low given other more massive corner buildings in the vicinity and that the proposed massing had no relationship to other corner buildings on Union Square. Commissioner Pearlman noted that he did not believe that the proposed design holds the corner at all.

Scale. All three Commissioners expressed concerns about the scale of the building and its features. Commissioner Wolfram noted that he would like the building to have more of sense of scale/texture and was concerned that the glass fins would not be visible (and would not break up the scale of the façade as proposed) due to glares/reflection from the glazing. Commissioner Wolfram also stated that the building lacks any sense of scale. Commissioner Pearlman stated that the breakdown of the glass façade with the glass fins would only work when viewed head on.

Commissioner Hyland noted that the addition of the glazed bay on Stockton was an improvement to the design but that he still finds this wall too blank and lacking in scale. Commissioner Pearlman agreed that there was a lack of pedestrian interest

along the long blank stretch of the Stockton façade. Commissioner Pearlman also expressed concern about the solidity of the Stockton façade at the corner. Commissioner Pearlman said something additional is needed at the Stockton façade, possibly slot windows and a break at the corner. Overall, the Commissioners indicated that they did not believe that the scale of the proposed building was compatible with the District and that they would like to see a greater sense of scale and texture for the building. Commissioner Wolfram noted that perhaps there could be buildings considered “jewel boxes” within district but that these are often midblock and to be considered in this vein the proposed building still needs more scale.” [Exhibit C attached hereto.]

In light of this, the “common sense” exemption cannot apply, and an EIR should be prepared. [*Friends of Davis*, 83 Cal.App.4th at 1016-1017; *Davidon Homes*, 54 Cal.App.4th at 113.] Any contrary conclusion is arbitrary and capricious, as well as an abuse of discretion.

VI. The Planning Department Must Not Let The FAR Legislation Override The Overdue Observation Deck Mitigation For the Apple Project Site

As discussed above, Commentor is concerned that Apple is seeking a CEQA exemption, thus possibly eliminating the need for the Apple Project to undergo CEQA review, including imposition of mitigation conditions. This also would allow the continued failure to install the overdue observation deck mitigation at the Apple Project site.

The Planning Department’s June 23, 2013 Preliminary Project Assessment for the Apple Project, attached hereto as Exhibit D, confirms with emphasis added that “[i]n exchange for the additional floor area, various public benefits were provided. One of those public benefits was the requirement to build an observation deck. The observation deck provided the property with an additional 10,000 sq. ft. of developable area. *It appears that the observation deck within the Grant Hyatt hotel was never built, although the related development bonuses were used.*”

This is improper under CEQA. An agency breaches a mandatory duty when it fails to comply with prior mitigation measures. [*Katzeff*, 181 Cal.App.4th at 611, 614.] That is the case here, where the Planning Department admits that the site failed to install the observation deck required as part of the increased density. This is directly tied to the FAR issue before the Planning Commission presented in the FAR Legislation. The Planning Department cannot on the one hand fail to implement mitigation measures, while on the other hand “spot-

legislate” to expedite construction and development at the site. Otherwise, a giant loophole would be inserted into CEQA’s mitigation requirements. The purpose of this requirement “is to ensure that feasible mitigation measures will actually be implemented as a condition of development, and not merely adopted and then neglected or disregarded.” [*Federation of Hillside and Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1260-61.]

Thus, before specially accommodating Apple’s FAR problem for its Union Square site by approving the FAR Legislation, the Planning Commission must review the requirement for the observation deck at the site. This is a key public amenity, and it must not continue to be ignored and discarded. As the Court explained in *Katzeff*, 181 Cal.App.4th at 614, “where a public agency has adopted a mitigation measure for a project, it may not authorize destruction or cancellation of the mitigation . . . without reviewing the continuing need for the mitigation, stating a reason for its actions, and supporting it with substantial evidence.” Otherwise, any mitigation “could be nullified simply by the passage of time” [*Id.* at 611.] The Court ordered that the agency revisit the issue, and justify its decision on not requiring the mitigation. [*Id.* at 614; see also *Lincoln Place Tenants*, 130 Cal.App.4th at 1507-1508 (“[h]aving placed these conditions . . . the city cannot simply ignore them. Mitigating conditions are not mere expressions of hope”).]

VII. The Planning Department Must Study The Apple Project And FAR Legislation Together Under CEQA

The FAR Legislation is an “essential step” in a process that will foreseeably lead to the Apple Project, and they therefore must be studied together under CEQA’s prohibition on piecemealing.

A. Separating CEQA Study Of The Apple Store and FAR Legislation Would Constitute Unlawful Piecemealing

As noted above, a CEQA “project” includes “an essential step leading to ultimate environmental impact.” [*Kaufman & Broad-South Bay, Inc. v. Morgan Hill* (1992) 9 Cal.App.4th 464, 473.] “Agency action is not exempt from CEQA simply because it will not have an immediate or direct effect on the environment. CEQA applies if it is reasonably foreseeable that environmental impacts will ultimately result.” [Kostka & Zischke, Practice Under the California Environmental Quality Act § 4.20 (CEB 2013), citing *Bozung*, 13 Cal.3d at 277.] “If an agency’s action is a necessary step that starts in motion a chain of events that will foreseeably result in impacts to the physical environment, the activity must be treated as a project subject to CEQA.” [*Id.*; see also *Friends of Mammoth*, 8 Cal.3d at 265 (holding that the term “project” includes not only activities directly involving actual physical impacts on the environment, but also

activities, such as the approval of permits, whose environmental effects are indirect).]

Here, there can be no doubt that this FAR Legislation has been proposed to expedite and “spot-legislate” the development of the Apple Store. While the proposed FAR Legislation apparently may apply to 38 other sites in the C-3-R Zoning District, the Staff Report admits that “[t]he Apple store project would require the approval of this Ordinance in order to be approved.” Six months ago, Staff confirmed in the Planning Department’s June 23, 2013 Preliminary Project Assessment for the Apple Project attached as Exhibit D hereto that the legislation would be needed. In this circumstance, the approval of the FAR Legislation is an “essential step” in a process that will foreseeably lead to the Apple Project.

Thus, San Francisco has improperly segmented its environmental review of the Legislation and Apple Project. The record makes clear that the FAR Legislation is linked to the Apple Project. In this situation, the environmental impacts of the Apple Project must be considered as part of the FAR Legislation CEQA review. This is mandated by the prohibition on piecemealing, and the requirement that the CEQA initial study must consider the “whole of an action.” [14 CCR § 15378(a).] That means:

“that the action reviewed under CEQA is not the approval itself but the development or other activities that will result from the approval . . . project descriptions must give an accurate view of the project as a whole, revealing any indirect or ultimate environmental effects of the activity being approved . . . the environmental review accompanying the first discretionary approval must evaluate the impacts of the ultimate development authorized by that approval . . . [e]ven though further discretionary approvals may be required before development can occur, the agency’s environmental review must extend to the development envisioned by the initial approvals. it is irrelevant that the development may not receive all necessary entitlements or may not be built.” [See Kostka, et al., *Practice Under the California Environmental Quality Act*, §§ 4.19, 4.20, 6.31(CEB 2013).]

As a result, this FAR Legislation must be studied under CEQA before any approval occurs. This situation is quite similar to that in the case *Dunn-Edwards* where the court held that the Air District’s approval of a new paint formulation would have the reasonably foreseeable impact of causing people to use the new paint, thereby potentially resulting in environmental impacts. [*Dunn-Edwards*, 9 Cal.App.4th at 658-659; see also *International Longshoremen’s Union v. Bd. of Supervisors* (1981) 116 Cal.App.3d 265 (holding that it was a reasonably foreseeable possibility that facilities would increase their NOx emissions as a

result of a proposed rule change allowing facilities to increase their NOx emissions).] Similarly, in this case, there is a reasonably foreseeable possibility that a regulation allowing this development notwithstanding nonconforming FAR will, in fact, result in the Apple Project being constructed on the site.

B. The FAR Legislation Indisputably Is A CEQA Project

The Staff Report for the December 19, 2013 FAR Legislation hearing before the Planning Commission, attached as Exhibit E, improperly indicates that the FAR Legislation is exempt from CEQA because it is not a "project." This is flatly incorrect because the CEQA Guidelines clearly provide that planning ordinances are CEQA projects.

Under CEQA, the term "project" includes the "issuance of rules, regulations, plans, or other general criteria." [CEQA Guidelines §15168(a)(3); *Bozung*, 13 Cal.3d 263, 277-279; *Dunn-Edwards*, 9 Cal.App.4th at 658-659.] *In fact, CEQA Guidelines § 15378(a)(1) cited by the Staff Report expressly confirms that CEQA projects include "enactment and amendment of zoning ordinances."* Thus, CEQA requires analysis of the effects of such an amendment to the City's Zoning Ordinance. "An EIR on a project such as the adoption or amendment of a comprehensive zoning ordinance or a local general plan should focus on the secondary effects that can be expected to follow from the adoption, or amendment." [*FUTURE*, 62 Cal.App.4th at 1335.] As a result, the Planning Commission's decision of whether to adopt a new zoning ordinance, including the FAR Legislation at issue that is specifically designed to facilitate the Apple Project, is a project subject to CEQA.³ Any conclusion that the FAR Legislation is CEQA exempt is contrary to CEQA Guidelines § 15378(a)(1), and therefore arbitrary and capricious, as well as an abuse of discretion.

³ There is a categorical exemption (Class 5), for minor alterations to land use regulations that do not change allowable land use density. [14 CCR § 15305.] The FAR Legislation certainly does not qualify for this, as its whole purpose is to make non-conforming FAR in the C-3-R Zoning District conforming, thereby increasing density. An exemption "should not be so broadly interpreted so to include a class . . . that will not normally satisfy the statutory requirements for a categorical exemption . . . [t]his principle of interpretation is embodied in the Guidelines, which state that CEQA should be interpreted to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." [*Azusa Land Reclamation*, 52 Cal.App.4th at 1193.] This is especially true where the CEQA exemption that mentions alterations to land use ordinances - Class 5 - specifically rejects an exemption for increased density. [14 CCR § 15305.]

C. There Is A “Fair Argument” Of Significant Historic Resource Impacts From The FAR Legislation

As noted above, it is well-established that aesthetic, architectural and historic resource impacts can be significant impacts that must be studied under CEQA. [See CEQA Guidelines App. G.] Numerous cases deem impacts on these resources as significant. [*Ocean View Estates*, 116 Cal.App.4th at 401; *Quail Botanic Gardens*, 29 Cal.App.4th at 1603-1605.]

Moreover, the impact of the FAR Legislation, which may involve up to 38 other properties including the Kearny-Market-Mason-Sutter Street Conservation District, qualifies as an “unusual circumstance” for this Apple Project. A CEQA exemption shall not be used where there is a reasonable possibility that an activity otherwise exempt will have significant effect on the environment due to unusual circumstances. [14 CCR §§ 15060(c)(2), 15300.2(c), 15360.] An activity has a significant effect if it “has the potential to degrade the quality of the environment.” [Pub. Res. Code § 21060.5; *Azusa Land*, 52 Cal.App.4th at 1189, 1201.]

Expert architectural historian and preservation planner Katherine Petrin has provided comments attached as Exhibit B hereto that show a “fair argument” of significant aesthetic and historic resource impacts from the FAR Legislation, and that the Legislation requires more study of these historic resource issues and impacts to the Kearny-Market-Mason-Sutter Street Conservation District:

“The proposed Planning Code text changes would allow demolition should a proposed project meet certain criteria. One of these criteria is that the project would not result in an adverse impact to a historic resource. However, the Planning Department has also identified a list of 38 specific parcels in the C-3-R District that would be affected under the proposed text changes. Of these 38 parcels, many are within the Kearny-Market-Mason-Sutter Street Conservation District, and include designated historic resources, including some of the City's most significant structures, deemed to be of major importance based on past evaluation. More disclosure and analysis of these 38 parcels is needed in order to understand the true impacts of the proposed Planning Code text changes . . .

The Kearny-Market-Mason-Sutter Street Conservation District is a subarea within the C-3 District. The Kearny-Market-Mason-Sutter Street Conservation District was adopted as part of Article 11 of the San Francisco Planning Code in 1985 . . . As stated in Appendix E to Article 11 of the Planning Code, the purpose of the designation [of the Kearny-Market-Mason-Sutter Street Conservation District] is

to promote the maintenance of the scale and character of the Kearny-Market-Mason-Sutter area by the protection and preservation of the basic characteristics and salient architectural details of structures insofar as these characteristics and details are compatible with the Conservation District.

The proposed Ordinance would amend Planning Code Section 188 to allow demolition should a proposed project meet certain criteria. It is not adequate to state that a proposed project would not result in an adverse impact to a historic resource, especially give the significance and quantity of designated historic resources which are likely to be jeopardized by the proposed Ordinance. At this point, analysis regarding the possible consequences of the proposed Ordinance has been insufficient. Further analysis is necessary to ensure that designated historic resources will not be adversely impacted by the proposed Ordinance to amend Planning Code Section 188 . . .

It is our opinion that the proposed Ordinance to amend Planning Code Section 188, if approved, could result in adverse impacts to known, designated historic resources including some of the City's most significant structures. To date, no analysis has been done by the Planning Department on any of the individual buildings potentially affected by the proposed amendments, though the likelihood exists of a reasonably foreseeable impact to historic resources, including demolition. As such, the proposed amendments to Planning Code Section 188 should not be categorically exempt from the provisions of CEQA because they have the potential to affect historic resources." [Petrin Comment, Exhibit B.]

In sum, by piecemealing the FAR Legislation from the Apple Project, the Planning Department would fail to analyze whether there is a "fair argument" of these potentially significant aesthetic, architectural and historic resource impacts of the Apple Project *as a whole*. Also, the CEQA study for the FAR Legislation must review the secondary effects on the other included properties, and the Kearny-Market-Mason-Sutter Street Conservation District, that can be expected to follow from the ordinance changes. [FUTURE, 62 Cal.App.4th at 1335.] The failure to do so is arbitrary and capricious, as well as an abuse of discretion.

VIII. Conclusion

A rushed, CEQA-exempt environmental process for the Apple Project is not how proper planning occurs. Commentor SEIU-USWW respectfully is concerned that the Planning Department is prejudging the Project's CEQA review before it even considers environmental comments from the public, including this comment, as requested in the Planning Department's "Notification of Project Receiving Environmental Review. This is improper and "puts the cart before the horse." San Francisco should not give special favors to a large technology firm at the expense of a legitimate public process for its residents.

Moreover, any CEQA exemption is improper here because there is expert comment submitted herewith that shows a "fair argument" that the Apple Project, and its accompanying FAR Legislation, will have significant impacts on the environment. The Apple Project, facing the heart of the City's commercial district at Union Square, presents "unusual circumstances." SEIU-USWW members, and indeed all San Franciscans, deserve the best, most sustainable Apple Project and FAR Legislation under CEQA and local law.

Commentor SEIU-USWW therefore respectfully requests that the Planning Department defer any hearing on this item pending complete CEQA review of the Apple Project and FAR Legislation in an EIR. By piecemealing the FAR Legislation from the Apple Project, the Planning Department would fail to analyze whether there is a "fair argument" of these potentially significant aesthetic, architectural and historic resource impacts of the Apple Project as a whole. More thoughtful analysis and comment is needed, as CEQA is designed, and required, to provide.

Also, the Planning Department and Planning Commission must review the requirement for the observation deck at the Apple Project site. This is a key public amenity, and it must not continue to be ignored and discarded.

Commentor also respectfully reserves the right to submit additional legal and expert comment at future hearings on the Apple Project and FAR Legislation, including the fenestration variance under Planning Code Section 145.1, once the Planning Department makes any CEQA recommendations or determinations on these projects. [See *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 86 (EIR invalidated based on comments and expert reports submitted after Final EIR completed); *Bakersfield Citizens*, 124 Cal.App.4th at 1200-1201, 1208 (court found agency did not meaningfully consider expert reports submitted at final hearing on project); *Galante Vineyards*, 60 Cal.App.4th at 1120 (CEQA litigation not limited only to claims made during EIR comment period).]

San Francisco Planning Department
January 9, 2014
Page 27 of 27

Finally, this Office is requesting, on behalf of SEIU-USWW, all notices of CEQA actions and any approvals, Project CEQA exemptions under Pub. Res. Code § 21152 or determinations, or public hearings to be held on the Apple Project and FAR Legislation under any provision of Title 7 of the California Government Code (California Planning and Zoning Law), as well as the San Francisco Code, including but not limited to Planning Code §§ 145.1 and 309. This request is filed pursuant to Pub. Res. Code §§ 21092.2 and 21167(f), and Government Code § 65092, which require local agencies to mail such notices to any person who has filed a written request for them. Please send notice by electronic and regular mail to: Richard Drury, Esq., Lozeau | Drury LLP, 410 12th Street, Suite 250, Oakland, CA 94607, richard@lozeaudrury.com.

Thank you for consideration of these comments. We ask that they be placed in the Administrative Record for the Apple Project and FAR Legislation.

Sincerely,



Lozeau | Drury LLP

Richard T. Drury

Attorneys for Service Employees International Union –
United Service Workers West

Exhibits A-F



January 27, 2014

Dear Members of the Planning Commission:

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

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

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

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

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

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

Sincerely,

A handwritten signature in blue ink that reads "Karin Flood". The signature is written in a cursive, flowing style.

Karin Flood, Executive Director
Union Square Business Improvement District

UNION SQUARE BUSINESS IMPROVEMENT DISTRICT

323 GEARY STREET, SUITE 401 SAN FRANCISCO, CA 94102
TEL (415) 781-7880 FAX (415) 781-0258

300 Post Street - San Francisco

Planning Commission

February 6th, 2014

1.0 Project Overview

1.1 Building History and Description

2.0 Site Context Map

2.1 Site Location

3.0 Existing Conditions

3.1 Site Photos

3.2 District Context Photos

3.3 Existing Drawings

3.4 Ruth Asawa Fountain

4.0 Proposed Design

4.1 Drawings

5.0 Comparisons

5.1 Elevation Comparisons

5.2 Existing and Proposed Massing

5.3 FAR Studies

6.0 Renderings

6.1 Day/Night-Time Renderings



TIFFANY & CO.

24/7



1.1 Building History and Description

1

Building History

The project site has had a long history of occupation by several buildings, including the Union Club in the late nineteenth century and the Union Square Hotel/Hotel Plaza during the earlier twentieth century. In 1967, building permits were issued for demolition of the Hotel Plaza to allow for new construction for the Hyatt Hotel, restaurant, and conference center. A building permit from November 1967 listed information for a hotel with 35,931 square feet of ground floor space and 39 stories in height and a retail complex five stories tall. The design is attributed to Marc Goldstein of Skidmore, Owings, and Merrill (SOM). In 1972, according to building permits and historic photographs, the Hyatt Hotel complex was completed. The hotel restaurant and various retail stores were located in the lower-height building at the corner of Post and Stockton streets.

The Grand Hyatt Hotel is a 355-foot tall, 36-story, reinforced concrete, modernist skyscraper, designed by Skidmore, Owings, and Merrill, LLP [SOM]. Marc Goldstein was design partner. The structure was completed in 1972 and contains 660 guest rooms. It is located on the eastern portion of Block 0295 on the west side of Stockton Street between Post and Sutter Streets. The primary façades face east onto Stockton Street. The flat roof tapers in above the top floor to give the impression of a sloped roof on four sides with the corner posts rising up at the four edges. The modernist hotel occupies a parcel area of 35,931 square feet.

The Levi's store is located on the northwest corner of Post and Sutter Streets. The structure that currently houses the Levi's store is a part of the hotel complex, connected to the guest room tower at several levels below grade. The store has contained various retail stores and restaurants since the hotel opened in 1972. Substantial changes to the SOM design were made to this portion of the hotel in 1998 at inception of the Levi's lease. The primary façade fronts onto Post Street. The roof is flat and is

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

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

Current Historic Status

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

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

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

The California Register of Historical

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

345 Stockton Street is not currently listed in the California Register of Historical Resources.

San Francisco City Landmarks are buildings, properties, structures, sites, districts and objects of "special character or special historical, architectural or aesthetic interest or value and are an important part of the City's historical and architectural heritage." Adopted in 1967 as Article 10 of the City Planning Code, the San Francisco City Landmark program protects listed buildings from inappropriate alterations and demolitions through review by the San Francisco Historic Preservation Commission. These properties are important to the city's history and help to provide significant and unique examples of the past that are irreplaceable. In addition, these landmarks help to protect the surrounding neighborhood development and enhance the educational and cultural dimension of the city. As of 2012, there are 262 landmark sites, eleven historic districts, and nine Structures of Merit in San Francisco that are subject to Article 10.

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

Properties listed or under review by

the State of California Office of Historic Preservation are assigned a California Historical Resource Status Code (Status Code) of "1" to "7" to establish their historical significance in relation to the National Register of Historic Places (National Register or NR) or California Register of Historical Resources (California Register or CR). Properties with a Status Code of "1" or "2" are either eligible for listing in the California Register or the National Register, or are already listed in one or both of the registers. Properties assigned Status Codes of "3" or "4" appear to be eligible for listing in either register, but normally require more research to support this rating. Properties assigned a Status Code of "5" have typically been determined to be locally significant or to have contextual importance. Properties with a Status Code of "6" are not eligible for listing in either register. Finally, a Status Code of "7" means that the resource has not been evaluated for the National Register or the California Register, or needs reevaluation.

345 Stockton Street is listed in the California Historical Resources Information System (CHRIS) database with a "B" Status Code, which means that the building is a "Potential Historic Resource" under the California Historical Resource Status Codes.

San Francisco Architectural Heritage (Heritage) is the city's oldest not-for-profit organization dedicated to increasing awareness and preservation of San Francisco's unique architectural heritage. Heritage has completed several major architectural surveys in San Francisco, the most important of which was the 1977-78 Downtown Survey. This survey, published in the book *Splendid Survivors* in 1978, was an influential precursor of San Francisco's Downtown Plan. Heritage ratings, which range from "D" (minor or no importance) to "A" (highest importance), are analogous to Categories V through I of Article 11 of the San Francisco Planning Code, although the Planning Department did use their own methodology to reach their own

findings. In 1984, the original Heritage survey area was expanded from the Downtown to include the South of Market area in a survey called "Splendid Extended."

345 Stockton Street is located within the area surveyed in *Splendid Survivors* and has been given a "D" rating.

The 1976 Department of City Planning Architectural Quality Survey (1976 DCP Survey) is what is referred to in preservation parlance as a "reconnaissance" or "windshield" survey. The survey looked at the entire City and County of San Francisco to identify and rate architecturally significant buildings and structures on a scale of "-2" (detrimental) to "+5" (extraordinary). No research was performed and the potential historical significance of a resource was not considered when a rating was assigned. Buildings rated "3" or higher in the survey represent approximately the top two percent of San Francisco's building stock in terms of architectural significance. However, it should be noted here that the 1976 DCP Survey has come under increasing scrutiny over the past decade due to the fact that it has not been updated in over thirty-five years. As a result, the 1976 DCP Survey has not been officially recognized by the San Francisco Planning Department as a valid local register of historic resources for the purposes of the California Environmental Quality Act (CEQA).

345 Stockton Street was surveyed as part of the 1976 DCP Survey and given a "5" rating.

The Kearny-Market-Mason-Sutter Conservation District was established in 1985 as part of what was then known as the "New Downtown Plan." Enacted as Appendix E of Article 11 of the San Francisco Planning Code, the district comprises the retail core of the downtown and represents some of those buildings in the C-3 Districts that were described in the *Preservation of the Past* section of the Downtown Plan, a component of the city's Master Plan. At the time, these changes to the Planning Code were seen as

important means of protecting the historic buildings of the city center.

Within the Conservation District, buildings were divided into categories:

Categories I and II, Significant: 324 buildings;

Categories III and IV, Contributing: 114 buildings;

Category V, Unrated: 98 buildings.

345 Stockton Street is within the boundaries of the Kearny-Market-Mason-Sutter Conservation District. It is Unrated; therefore it is in Category V within the District

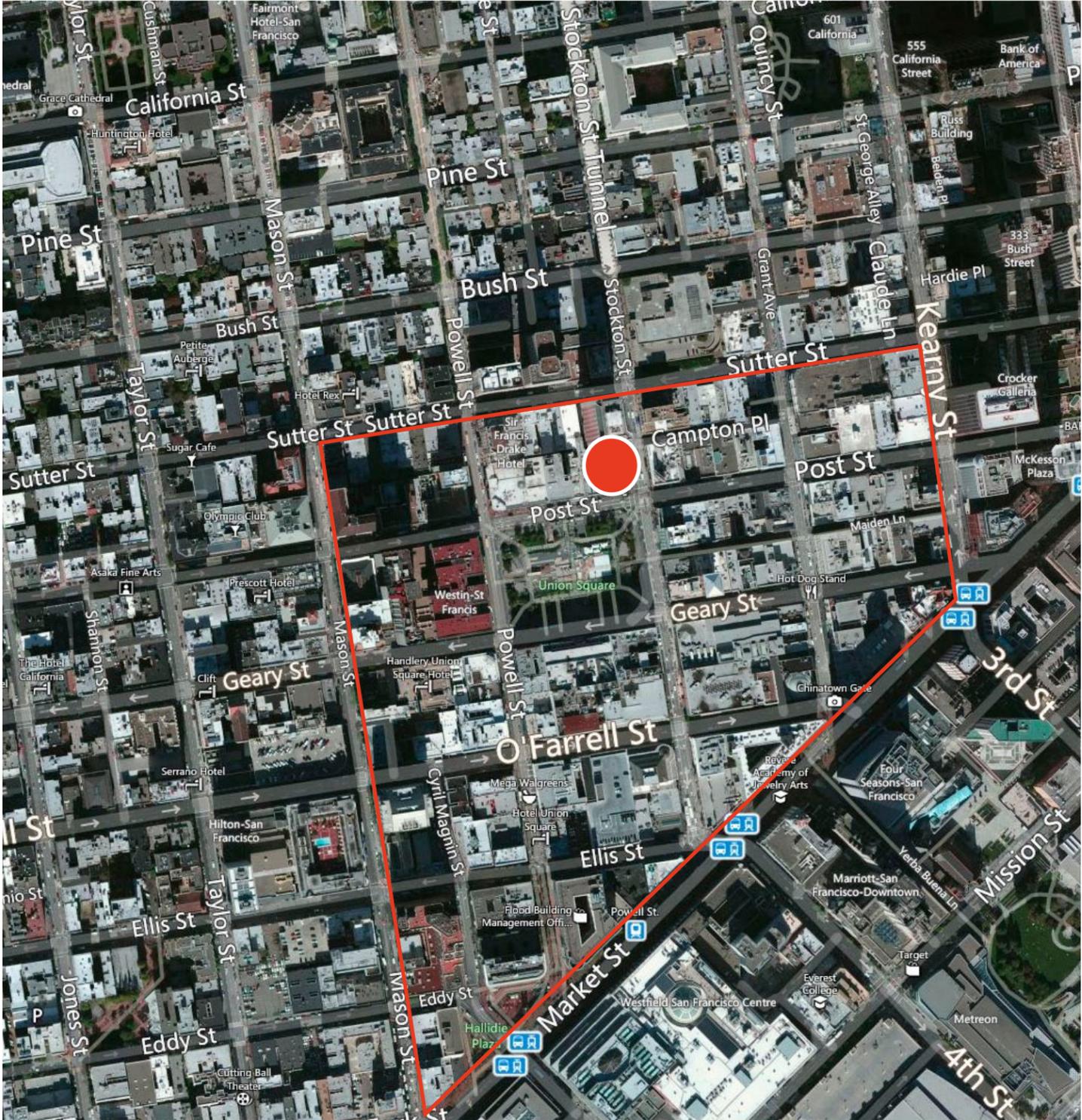
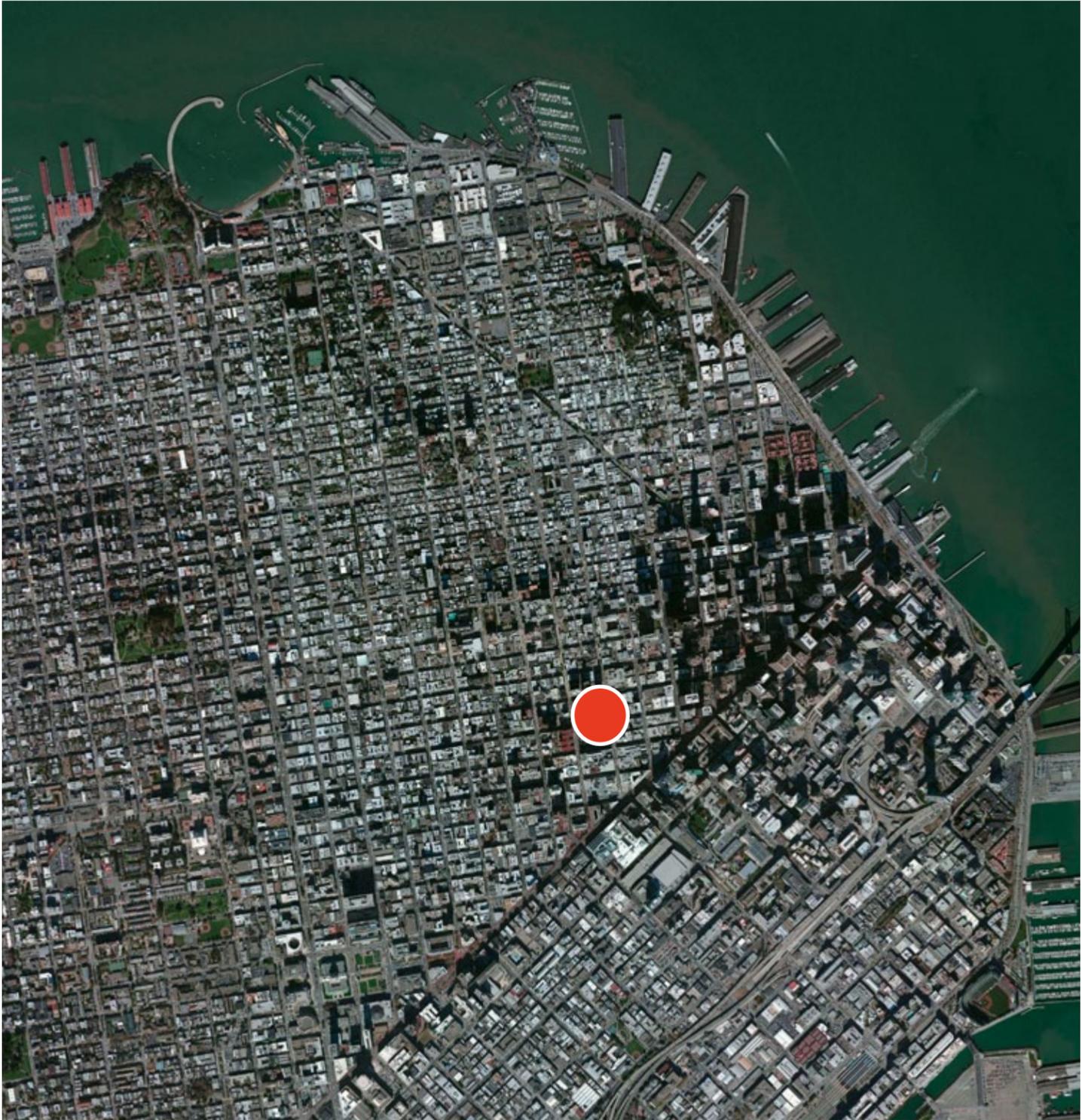
Project Description

The proposed project is a Significant Flagship retail store of type Vintage C.2. The store will have two levels of retail sales above grade, and back of house space below grade and in the adjacent low-rise structure. The approximate area of the store is 14,000 square feet of sales area and 10,000 square feet of back of house area. Structural glass facades, and speciality glass stairs are intended to help bring light throughout the sales area while an eight foot overhang creates shade on the southern facade. The main interior and exterior walls are clad with sleek, minimalist, bead blasted stainless steel panels.

Clear span and cantilevered structural systems are used to create column-free areas above grade to facilitate a better shopping environment. The former under utilized triangular plaza area behind the current retail store is reconfigured into a rectangular tree lined plaza more in keeping with the planning geometry of the surrounding area. The new plaza is book-ended by Ruth Asawa's water fountain and a new water feature at the west end. This new place is intended to be used by both the Hyatt Hotel for special events and also by the general public and patrons of the new proposed retail store.

Site Context Map

300 Post St, San Francisco, CA



Site Context
Site Location





STOCKTON

POST

SAKS FIFTH AVENUE

Union Square

Before 1978

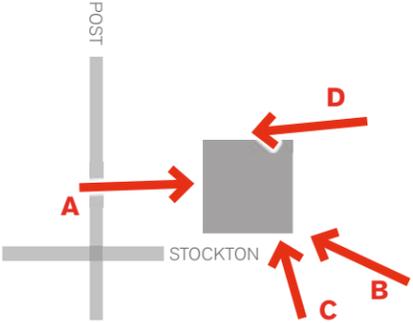


Union Square
After 1998





Site Photos
Grand Hyatt



A. The south façade of the Grand Hyatt hotel.
Source: Page & Turnbull



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



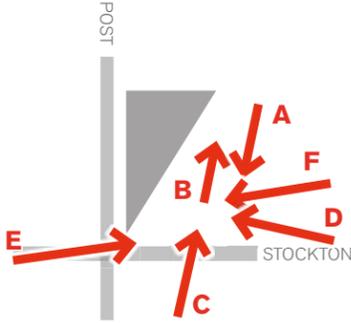
C. View of the west façade of the Grand Hyatt hotel.
Source: Page & Turnbull



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

3.1 Site Photos

Rear Plaza



A. View of the Grand Hyatt Hotel plaza looking east towards Stockton Street.
Source: Page & Turnbull



B. View of the Grand Hyatt Hotel plaza looking from Stockton Street.
Source: Page & Turnbull



C. View of the plaza looking towards north-west.
Source: Foster + Partners



D. View of the northeast façade of the Levis Building.
Source: Page & Turnbull



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



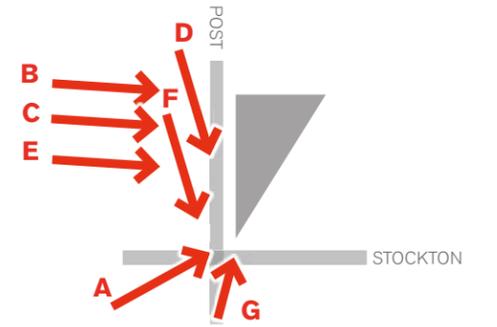
NIKETOWN

Levi's

3.1 Site Photos

A. Levi's





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



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



D. Detail of the copper I-beams on the primary facade of the Levi's store.
Source: Page & Turnbull



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



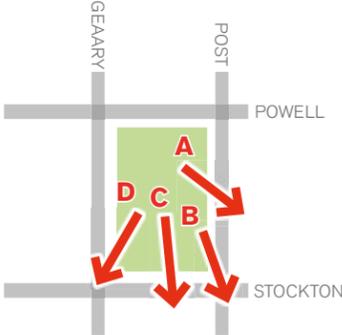
F. Looking west down on Post street
Source: Foster + Partners



G. View of the south-east corner of the Levi's store
Source: Foster + Partners

3.2 Existing Conditions

District Context Photos



A. Williams Sonoma, 340 Post Street, 0295/005, built 1923

Source: Page & Turnbull



B. Nike, Corner of Stockton and Post Streets (324 Stockton Street, 0294/011, built 1910).

Source: Page & Turnbull



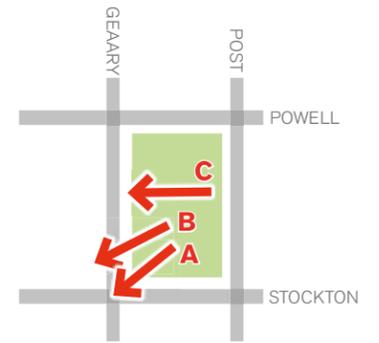
C. This section of Block 0309 faces Stockton Street between Post Street and Maiden Lane. Moving north to south: 275 and 299 Post Street (0309/022, built 1909), 250-260 Stockton Street (0309/021, built 1908), and 234-240 Stockton Street (0309/020, built 1908).

Source: Page & Turnbull

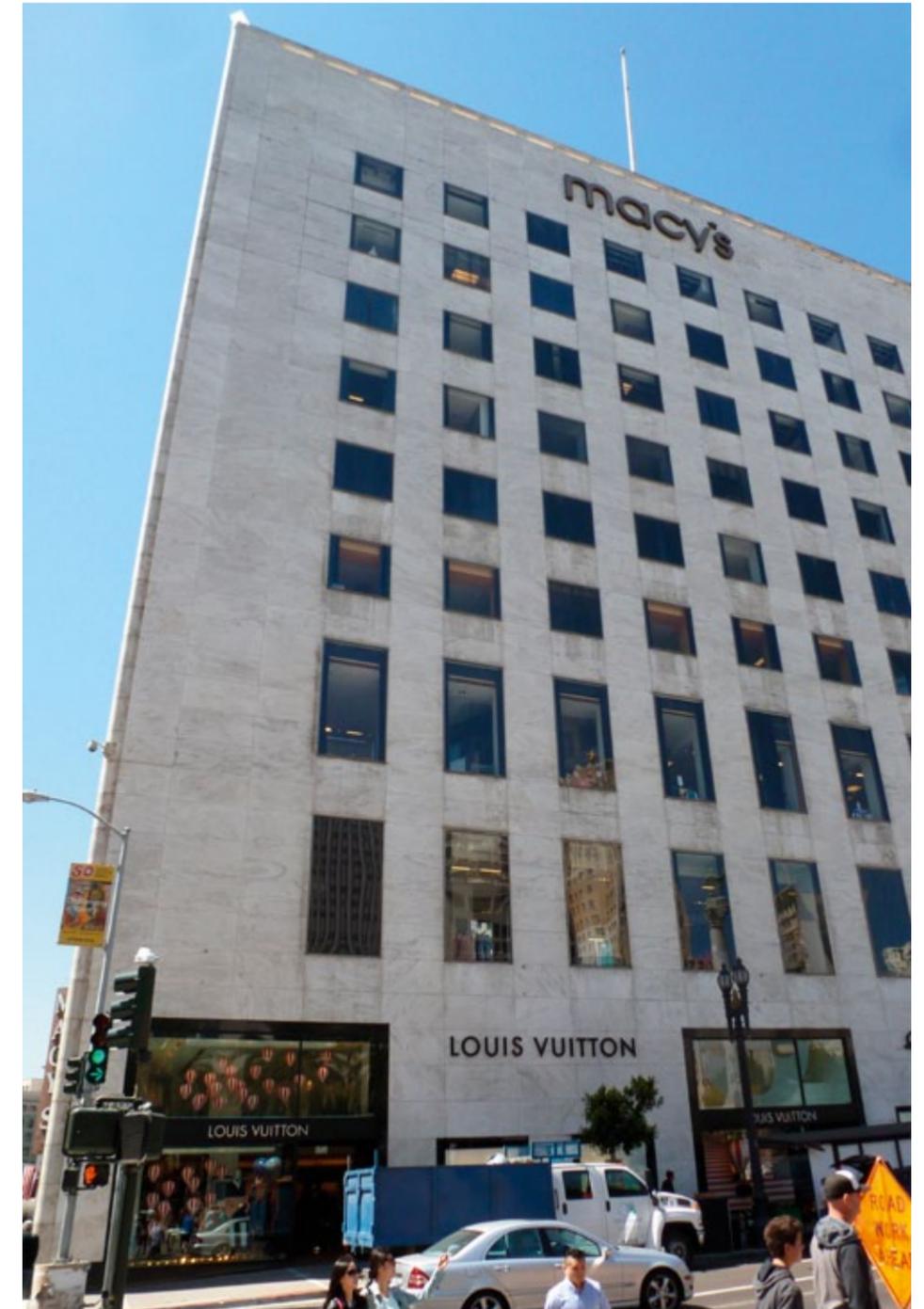


D. This section of Block 0309 faces Stockton Street between Geary Street and Maiden Lane. Moving north to south: 218 and 222 Stockton Street (0309/014, built 1908) and 172-212 Stockton Street (0309/011, built 1987).

Source: Page & Turnbull



A. Corner of Stockton and Geary Streets (150 Stockton Street, 0313/018, built 1983).
Source: Page & Turnbull



B. 233-259 Geary Street at the corner of Geary and Stockton streets (0314/001, 014, 015, built 1946).
Source: Page & Turnbull

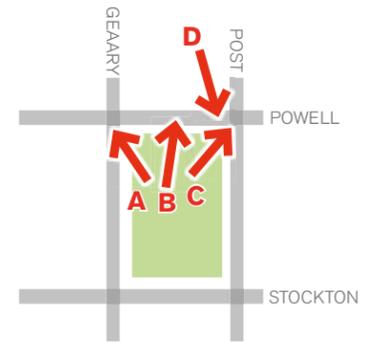
District Context Photos

C. Macy's



B. Stockton Street between Post Street and Maiden Lane.
Source: Page & Turnbull

B. Stockton Street between Post Street and Maiden Lane.
Source: Page & Turnbull



A. 301-323 Geary Street, corner of Geary / Powell streets (0315/001, built 1908).
Source: Page & Turnbull

B. Block 0307, on Powell Street between Geary and Post Streets. Showing the 14-story St. Francis Hotel and connected shops (300-330 Geary Street, 07/001, built 1904).
Source: Page & Turnbull



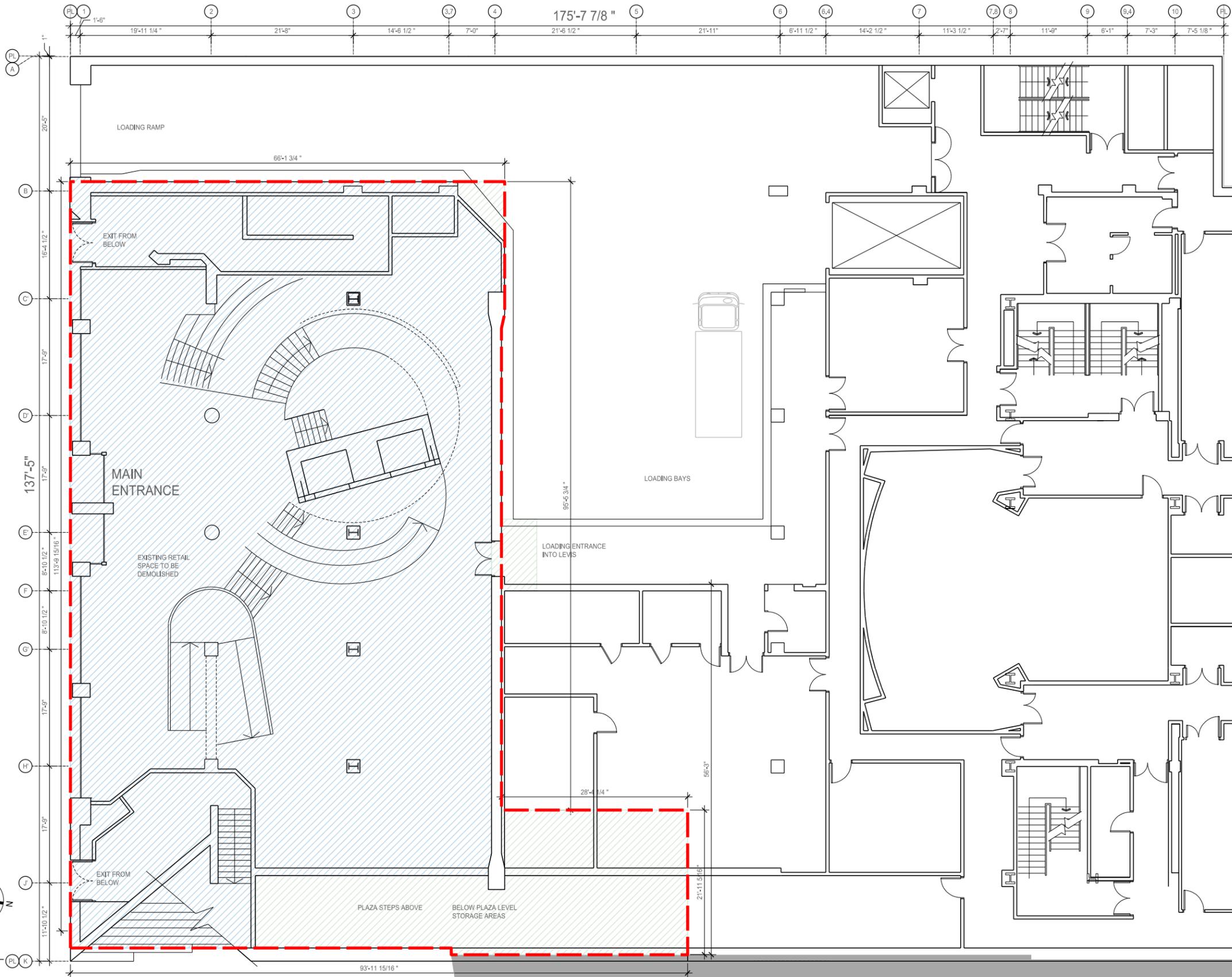
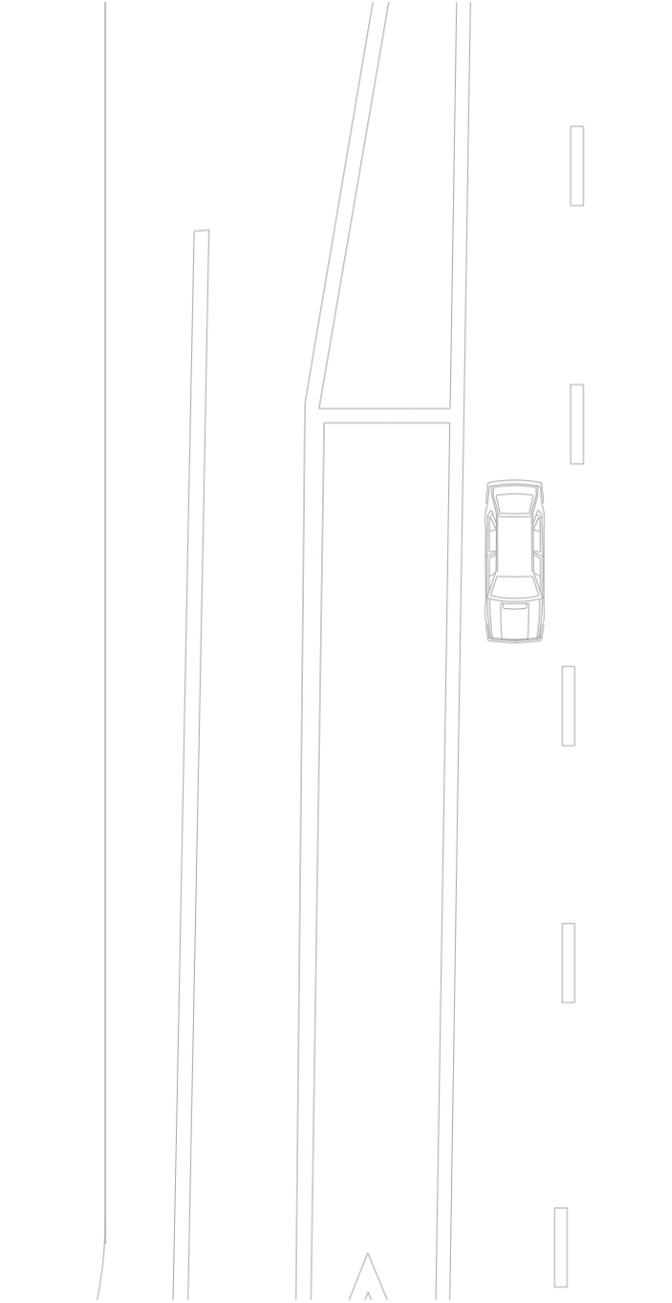
C. 400 & 421 Powell Street at the corner of Powell and Post streets (0296/006, built 1909).
Source: Page & Turnbull



D. 384-398 Post Street at Powell Street (0295/007, built 1980).
Source: Page & Turnbull

3.3 Existing Conditions

Drawings

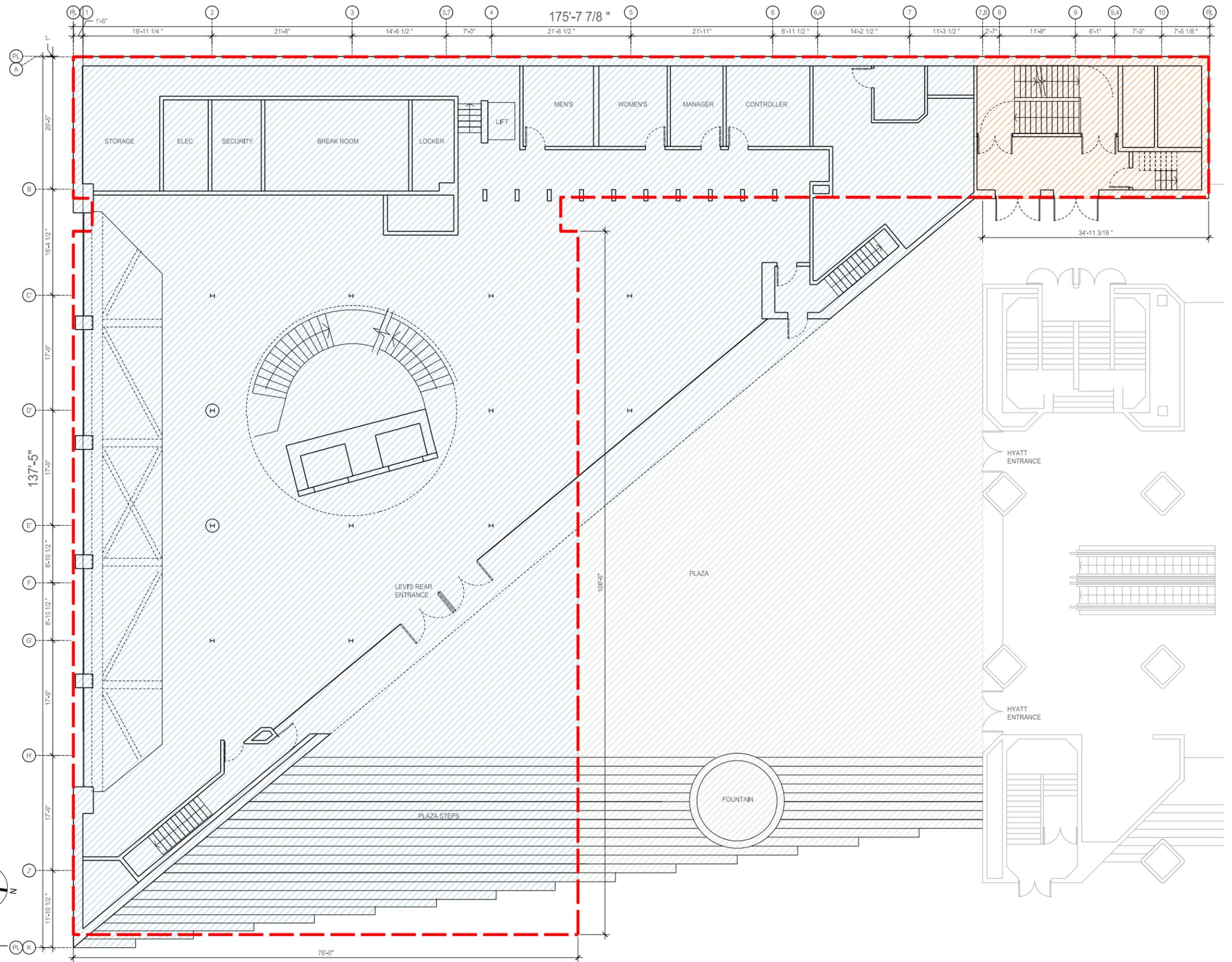


REMOVED
 ALTERED
 RETAINED
 PROPOSED

PROPOSED

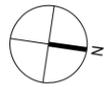
0 2.5' 5' 10' 20' 40'

EXISTING FIRST FLOOR PLAN - SITE STRATEGY
1/16" = 1'-0"

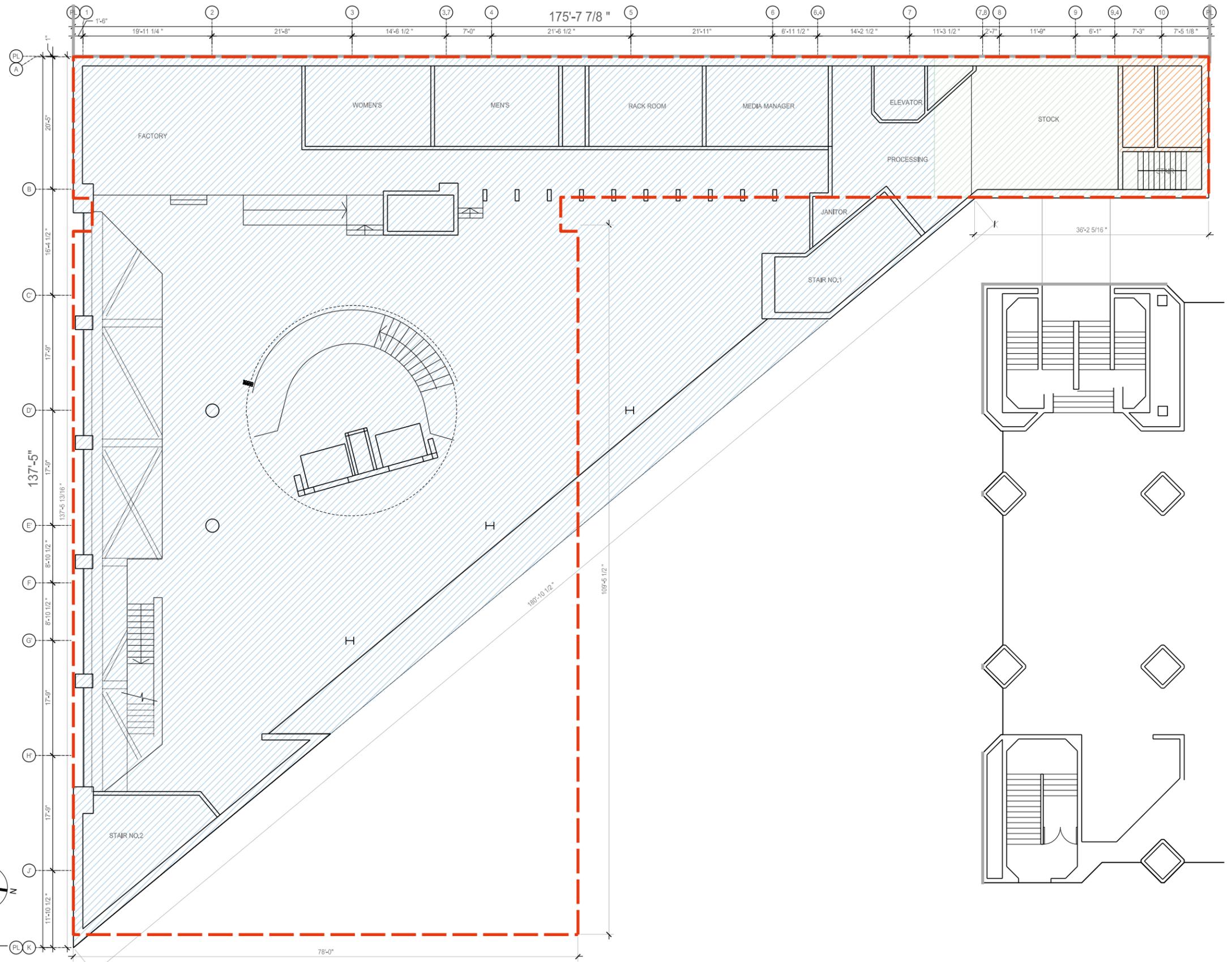


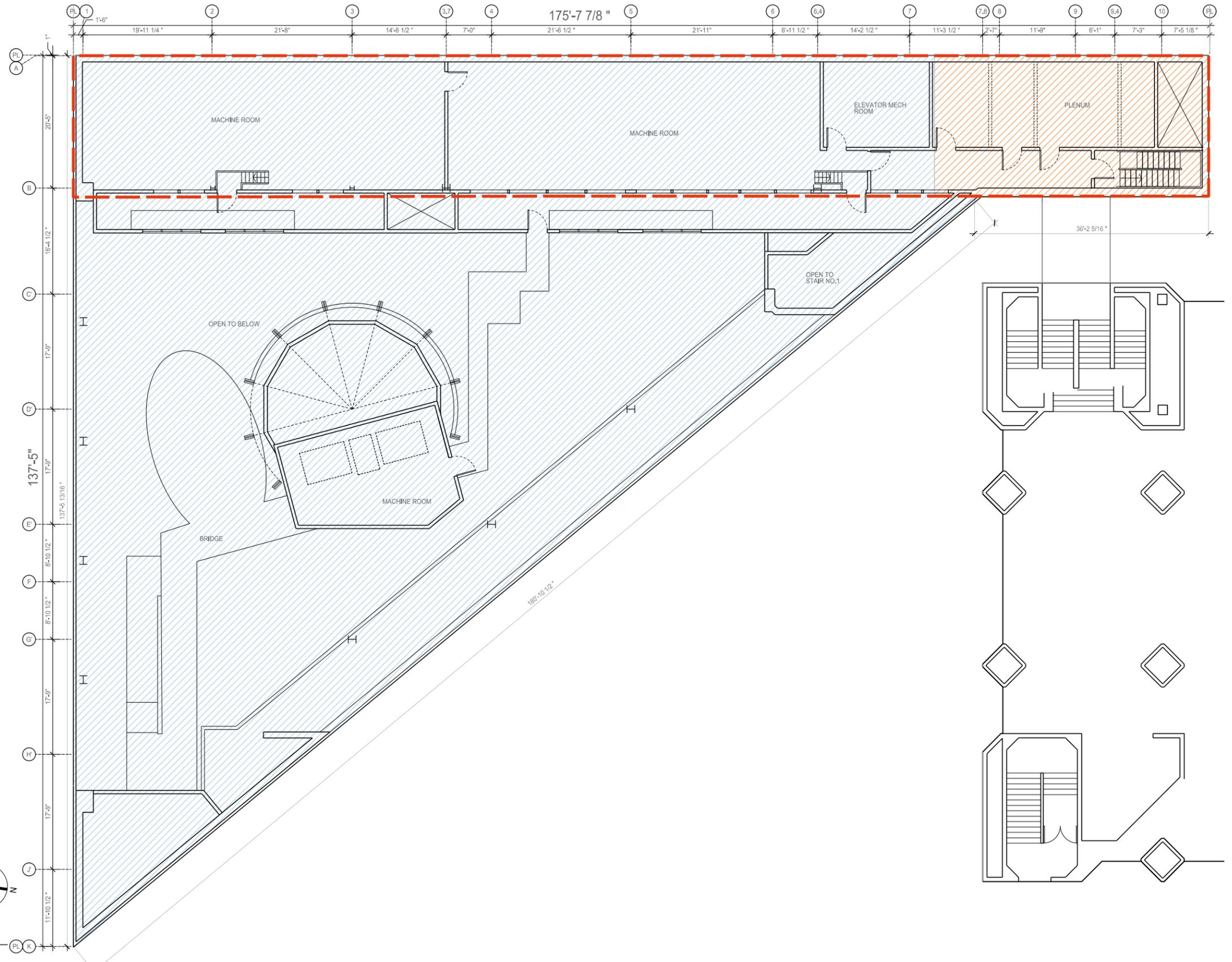
REMOVED
 ALTERED
 RETAINED
 PROPOSED

0 2.5' 5' 10' 20' 40'

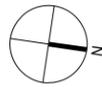


EXISTING SECOND FLOOR PLAN - SITE STRATEGY
1/16" = 1'-0"

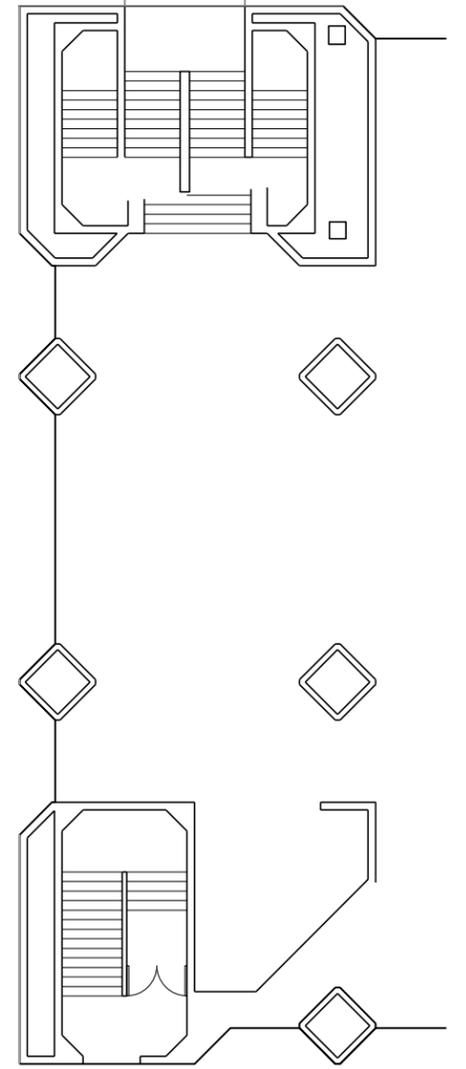


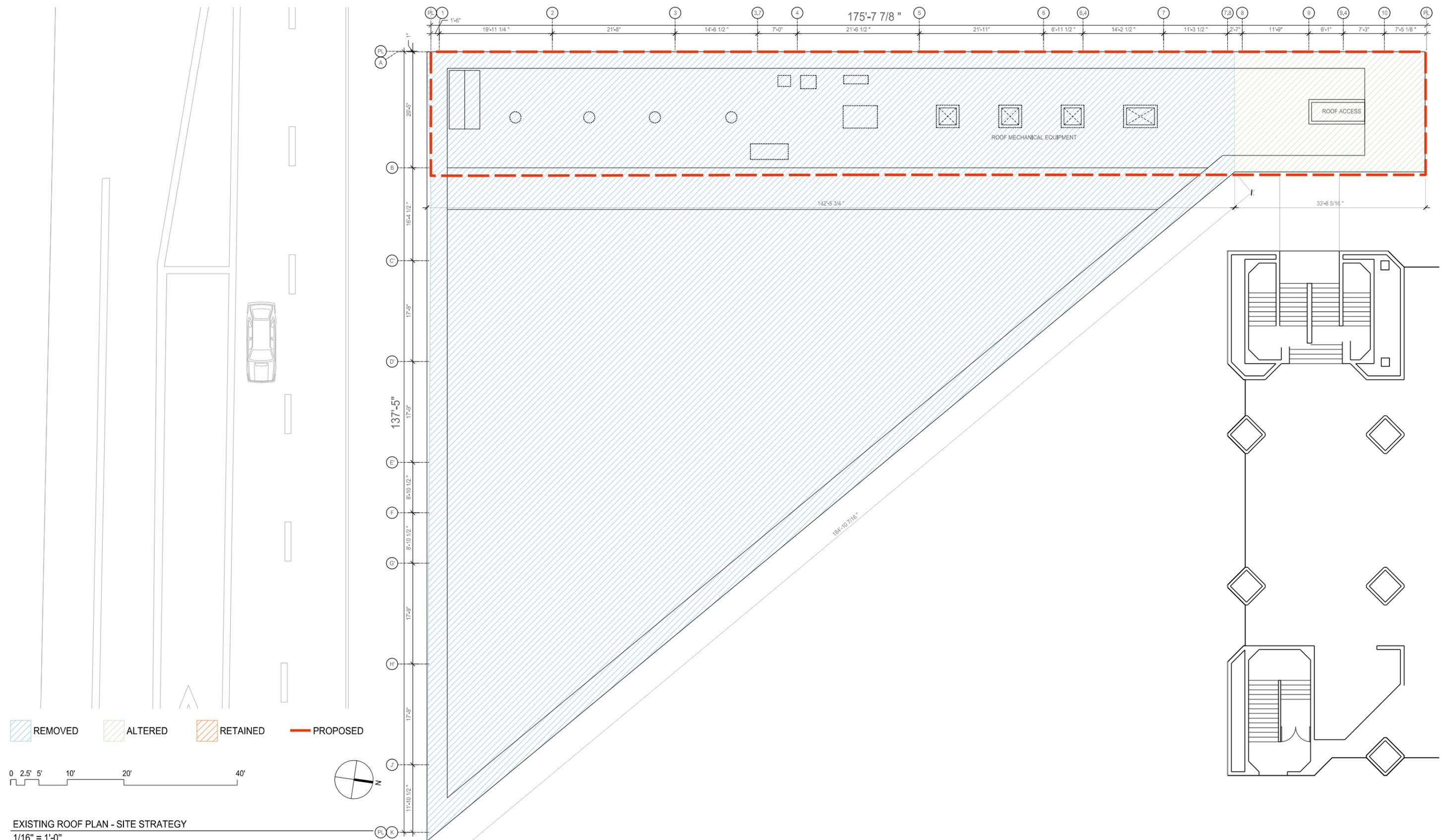


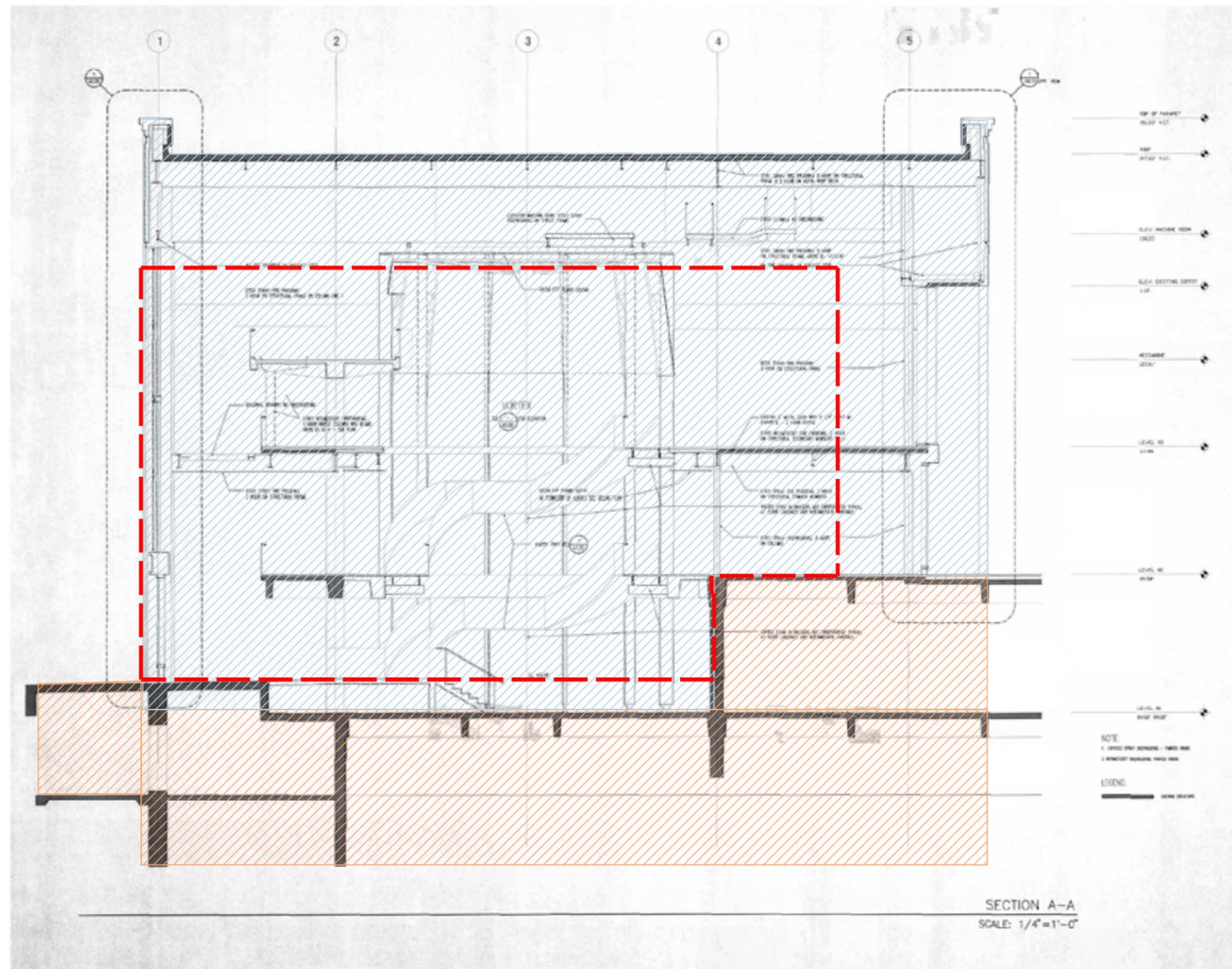
REMOVED
 ALTERED
 RETAINED
 PROPOSED



EXISTING FOURTH FLOOR PLAN - SITE STRATEGY
 1/16" = 1'-0"

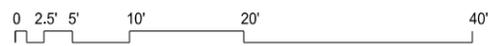






Proposed new store above existing below grade Hyatt functions

REMOVED
 ALTERED
 RETAINED
 PROPOSED



EXISTING CROSS SECTION (ALONG HYATT GRIDLINE F) - SITE STRATEGY
1/16" = 1'-0"

3.4 Ruth Asawa Fountain

Historical Photos

Ruth Asawa Fountain in Grand Hyatt Plaza

As part of the design for the Hyatt hotel, artist Ruth Asawa was hired to design a fountain which would be located in the plaza on Stockton Street, south of the hotel and northeast of the restaurant building. Asawa received assistance on this project from about 250 friends and students from the Rose Resnik Lighthouse for the Blind and Visually Impaired School. The fountain was designed and cast in bronze in Asawa's Noe Valley backyard before being installed at the Hyatt Hotel's plaza. At the 25th anniversary celebration of the fountain at the Grand Hyatt, on May 2, 1998, the installation was touted as "one of the few art objects in the city that blind and visually impaired people can actually touch and feel..." Asawa was commissioned by Hyatt Hotel for this project in 1970; it was completed in 1972.



Ruth Asawa working on the Hyatt on Union Square Fountain Between 1970 -1973

Source: San Francisco Public Library Historical Photograph Collection



Fountain Relief Detail

Source: Wikimedia Commons



Hyatt on Union Square Fountain 1973 in Construction with Son Paul Lanier

Source: Wikimedia Commons



Fountain Relief Detail

Source: Wikimedia Commons



Asawa at Her Fountain
Source: Laurence Cuneo



Asawa and photographer Imogen Cunningham view details from Asawa's Fountain
Source: SFGate



Asawa Fountain at Union Square Hyatt March 1973
Source: SFPL

3.4 Ruth Asawa Fountain

Fountain Relocation Plan

The Ruth Asawa Fountain is a cultural and historic iconic artwork piece located within the existing plaza between the Hyatt Hotel and Levi store located at 345 Post Street, San Francisco.

It is essential that Fountain relocation process occur without causing any harm or distress to the Fountain. Given the recent passing of Ms. Asawa it is more critical that this operation occur flawlessly.

Apple and Hyatt Hotels are planning to relocate the fountain as part of the new Apple store project that will replace the Levi store.

The location of the Fountain is planned to be approximately 10' from its existing location. The new location will center the Fountain within the new stairs for the Plaza.

The Fountain will also be positioned approximately 1 foot closer to the sidewalk allowing for easier viewing by the public.

The process for relocating the Ruth Asawa Fountain is as follows:

Preparation

1. Photo document the Fountain in its current position.
2. Survey the stairs in which the Fountain is located so that the stair placement can be duplicated in the new location.
3. Install a photo document camera to document the entire move process.

Site Preparation

1. Drain the fountain and uncouple the Pump supply and return lines to the fountain as well as the drain line all below the fountain at B1 level. These connections shall remain with the fountain bowl and be utilized for reconnection.

2. Disconnect power to the lighting within the fountain and remove the existing fixtures for reinstallation. Package and store with the fountain bowl for reinstallation.
3. Selectively demo within the fountain pedestal from level B1 below. Remove concrete and verify the construction of the fountain support on the concrete pedestal.
4. At multiple locations around the fountains, carefully remove the brick pavers on which the foundation bronze fountain shell sits upon to provide access for jacks and lifting straps. Cut any additional adhesive between the shell and the brick pavers as well as between the fountain bowl and the shell.

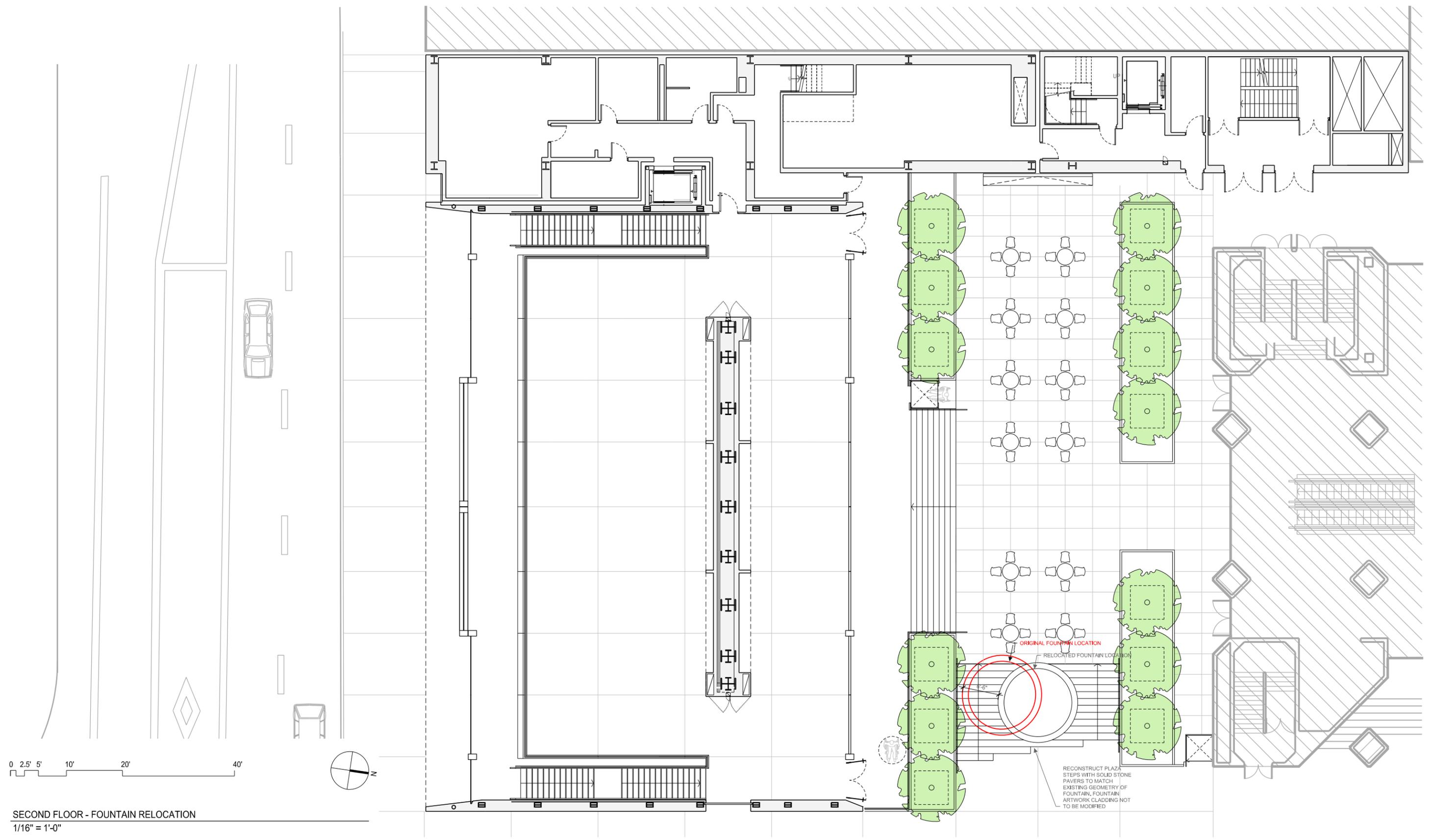
Moving the Fountain from Current Location to Storage

1. Jack the fountain shell vertically to allow lifting straps to be installed between the fountain bowl and the surrounding bronze structure. Install the straps through the voids left from removal of the pavers.
2. Lift the fountain shell up via crane and on to a flatbed truck with a proper structure constructed to adequately support the fountain structure.
3. Rig and lift the bowl structure via crane on to a flatbed truck with a proper structure constructed to adequately support the fountain structure.
4. Transport the fountain shell and bowl to a secure warehouse for storage.

Moving the Fountain from Storage to New Location

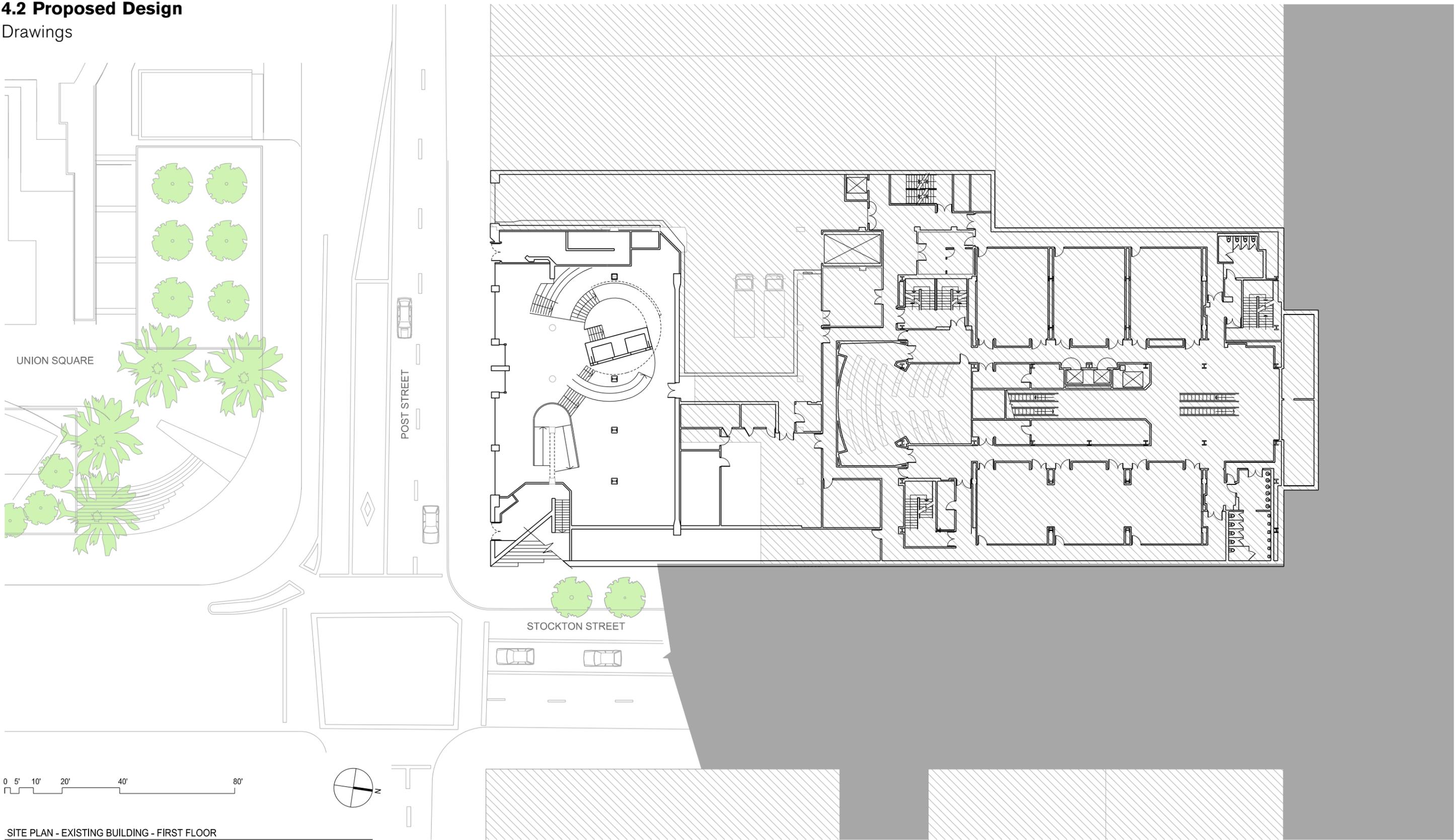
1. Transport the fountain shell and bowl from secure storage to the jobsite.
2. Lower the bowl to the new pedestal location and secure in place.
3. Lower the shell over the bowl in the same manner in which it was removed on

- to jacks recessed around the new stair surrounding finishes.
4. Lower the jacks to allow the shell to rest on the new surrounding finish.
5. Remove jacks and patch at locations of jacks.
6. Caulk fountain shell to the new stair finish.
7. Re-pipe plumbing to the fountain
8. Reinstall electrical to the fountain.
9. Test operation of the fountain.
10. Re-dedicate the fountain upon opening the plaza.

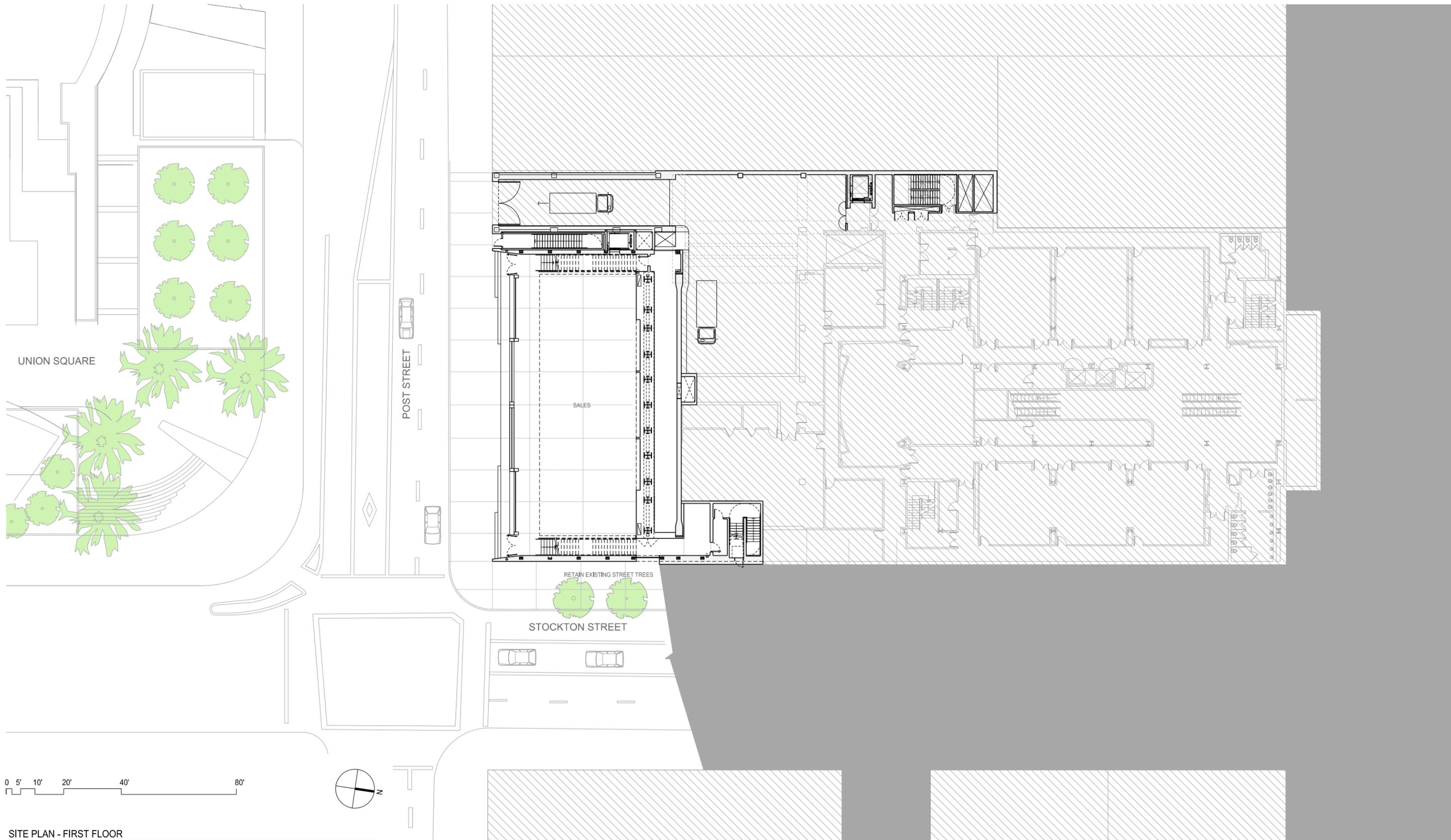


4.2 Proposed Design

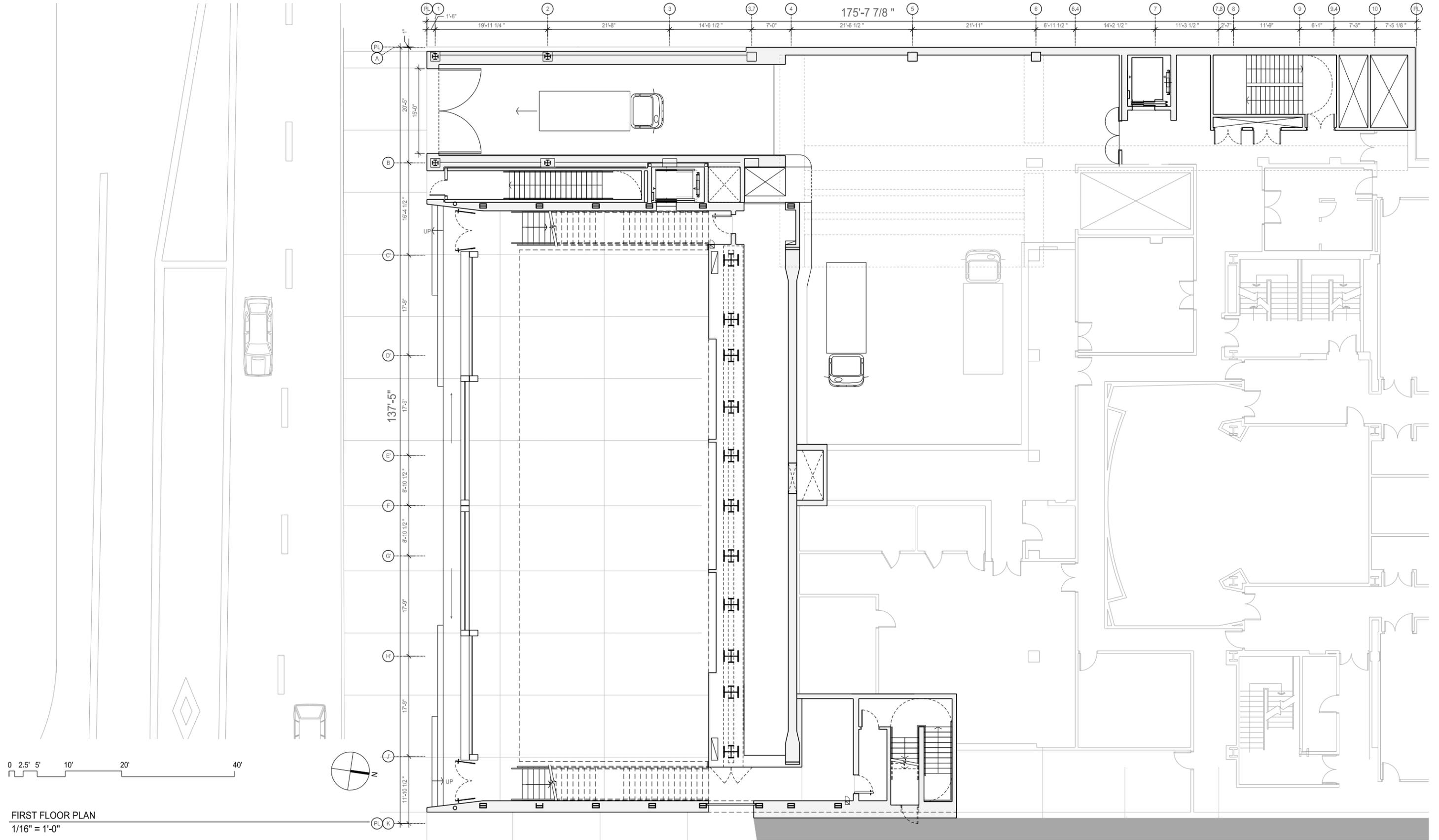
Drawings

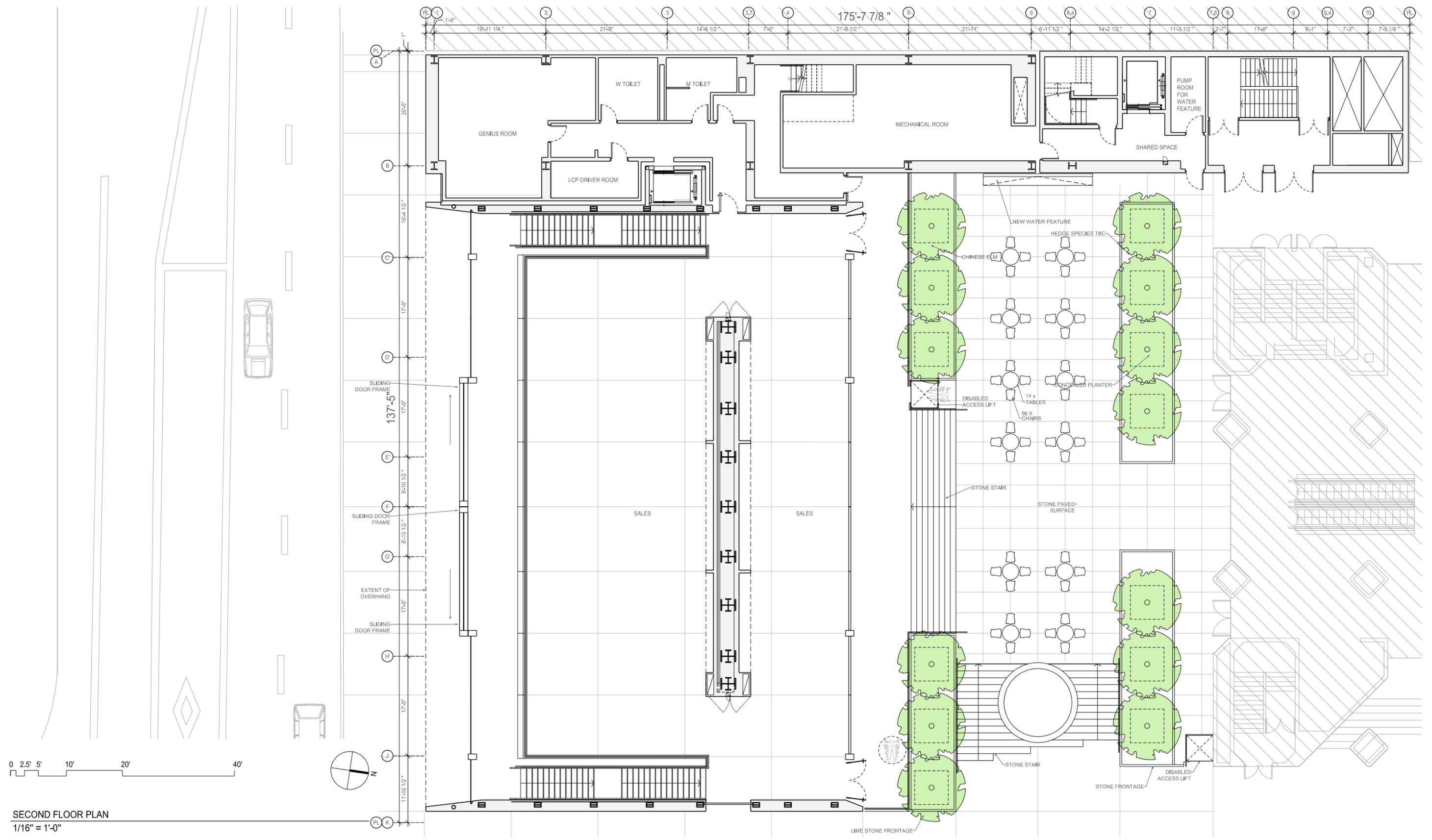


SITE PLAN - EXISTING BUILDING - FIRST FLOOR
1/32" = 1'-0"

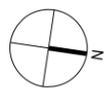
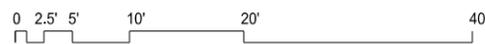
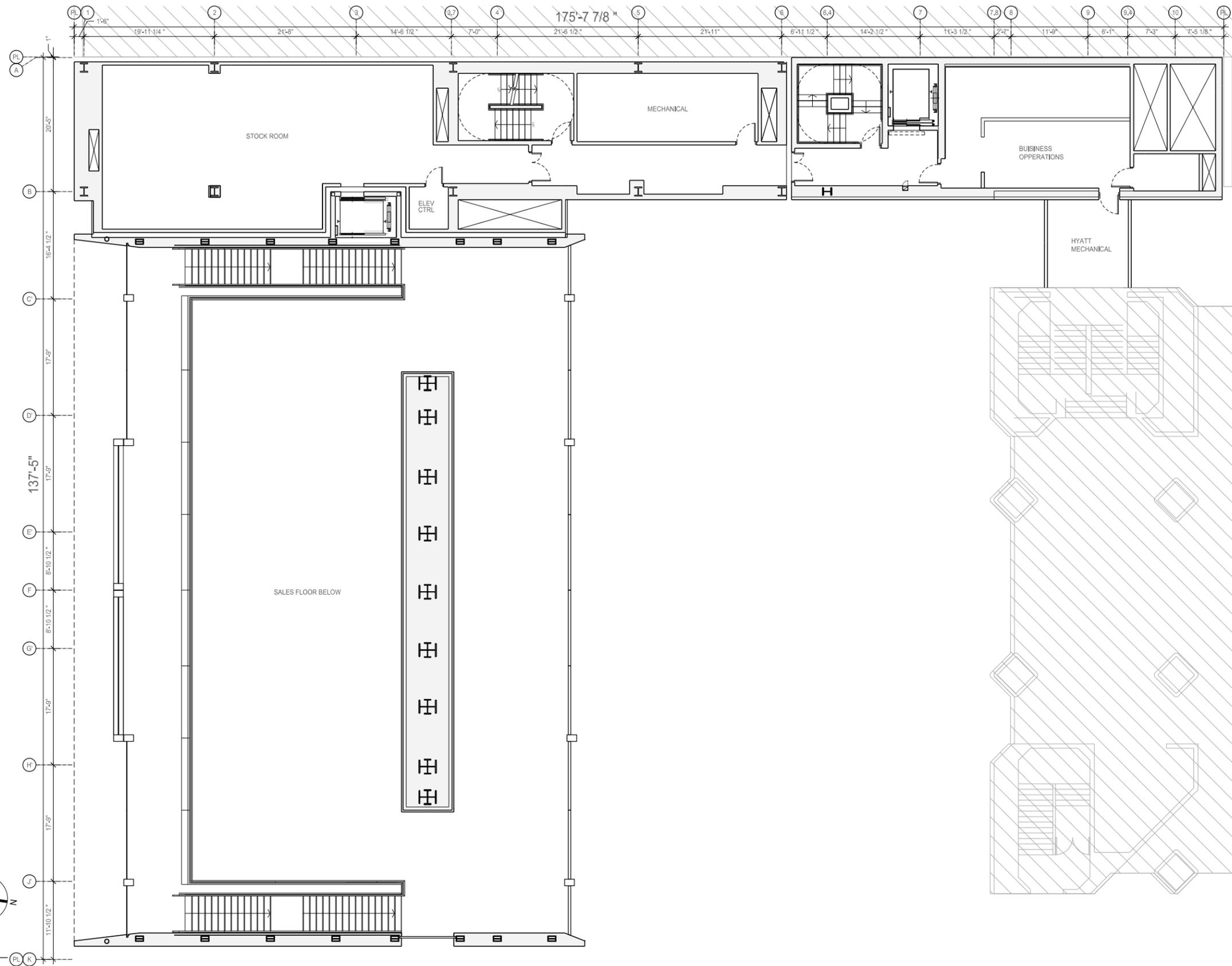


SITE PLAN - FIRST FLOOR
 1/32" = 1'-0"

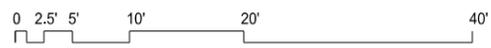
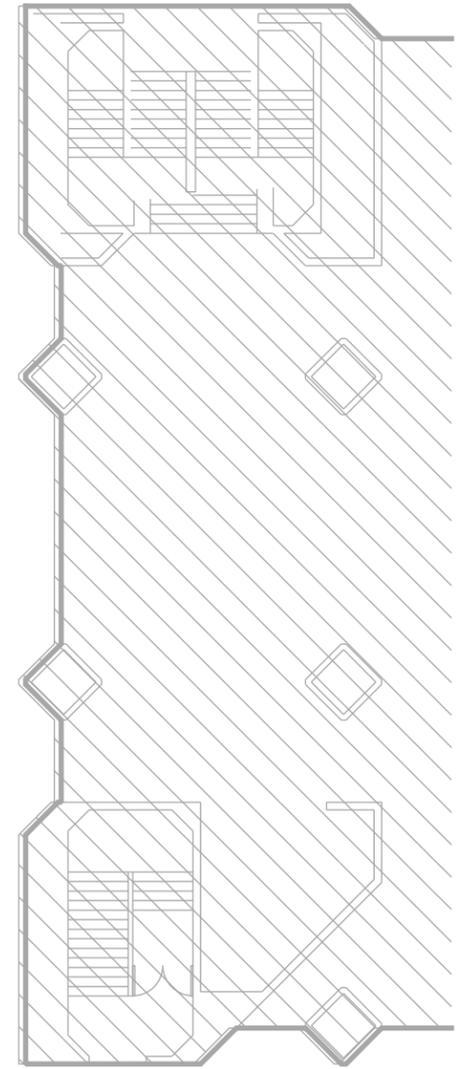
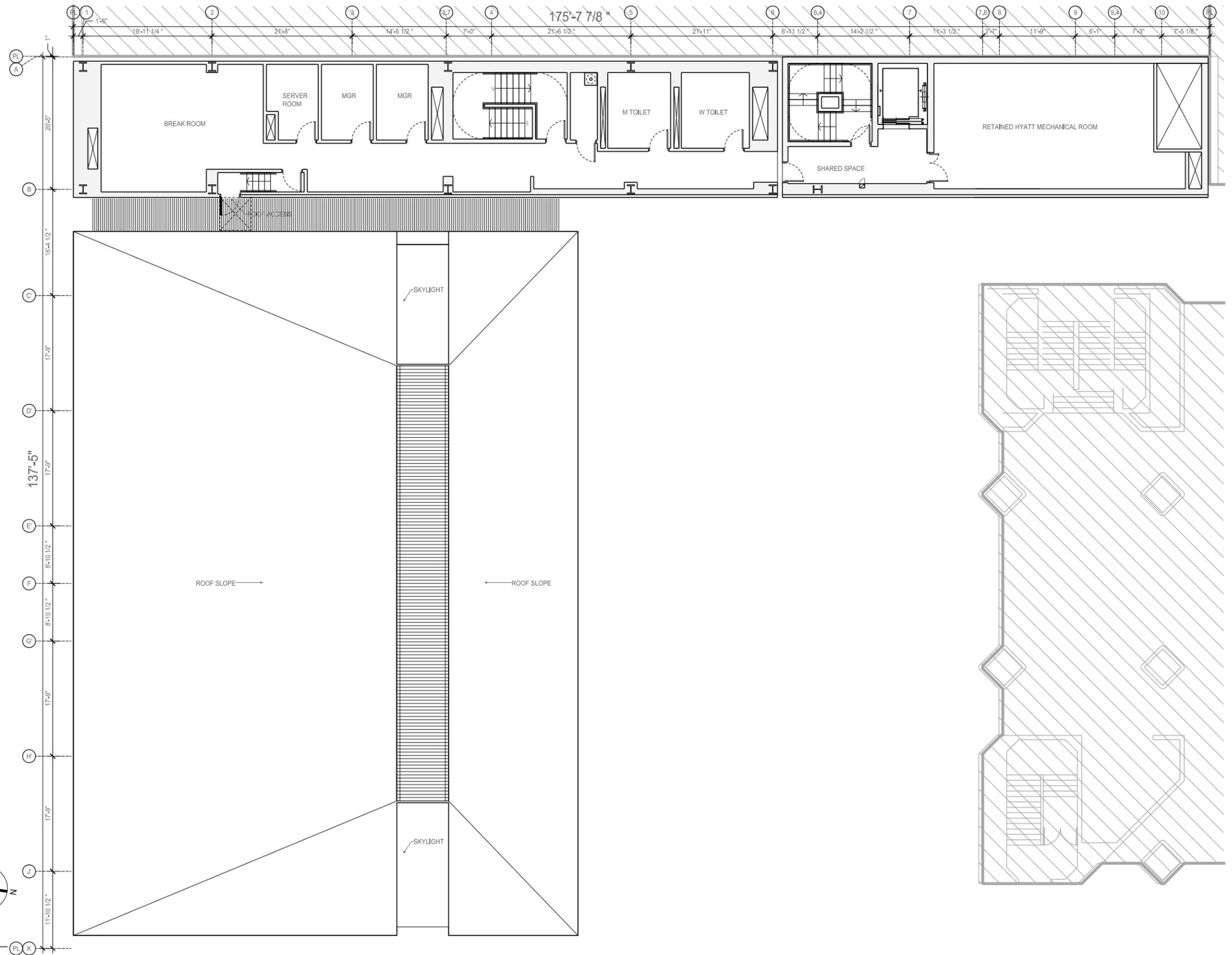




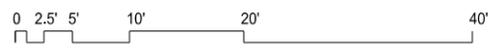
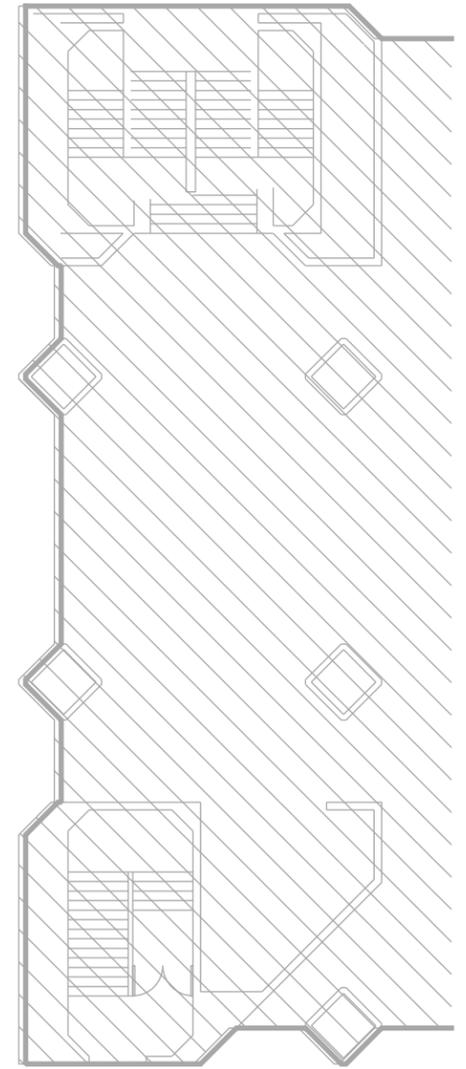
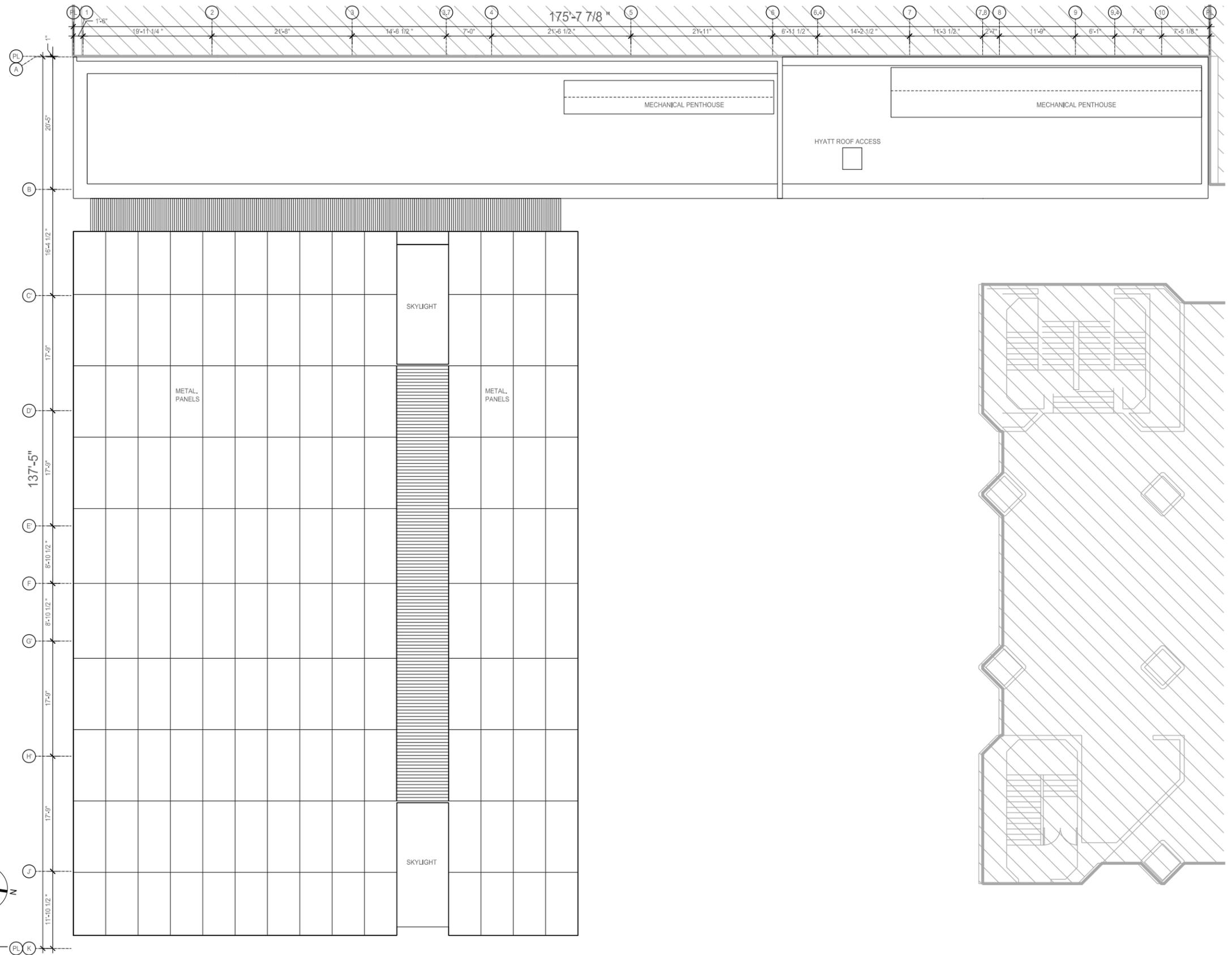
SECOND FLOOR PLAN
1/16" = 1'-0"



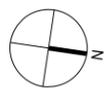
THIRD FLOOR PLAN
1/16" = 1'-0"

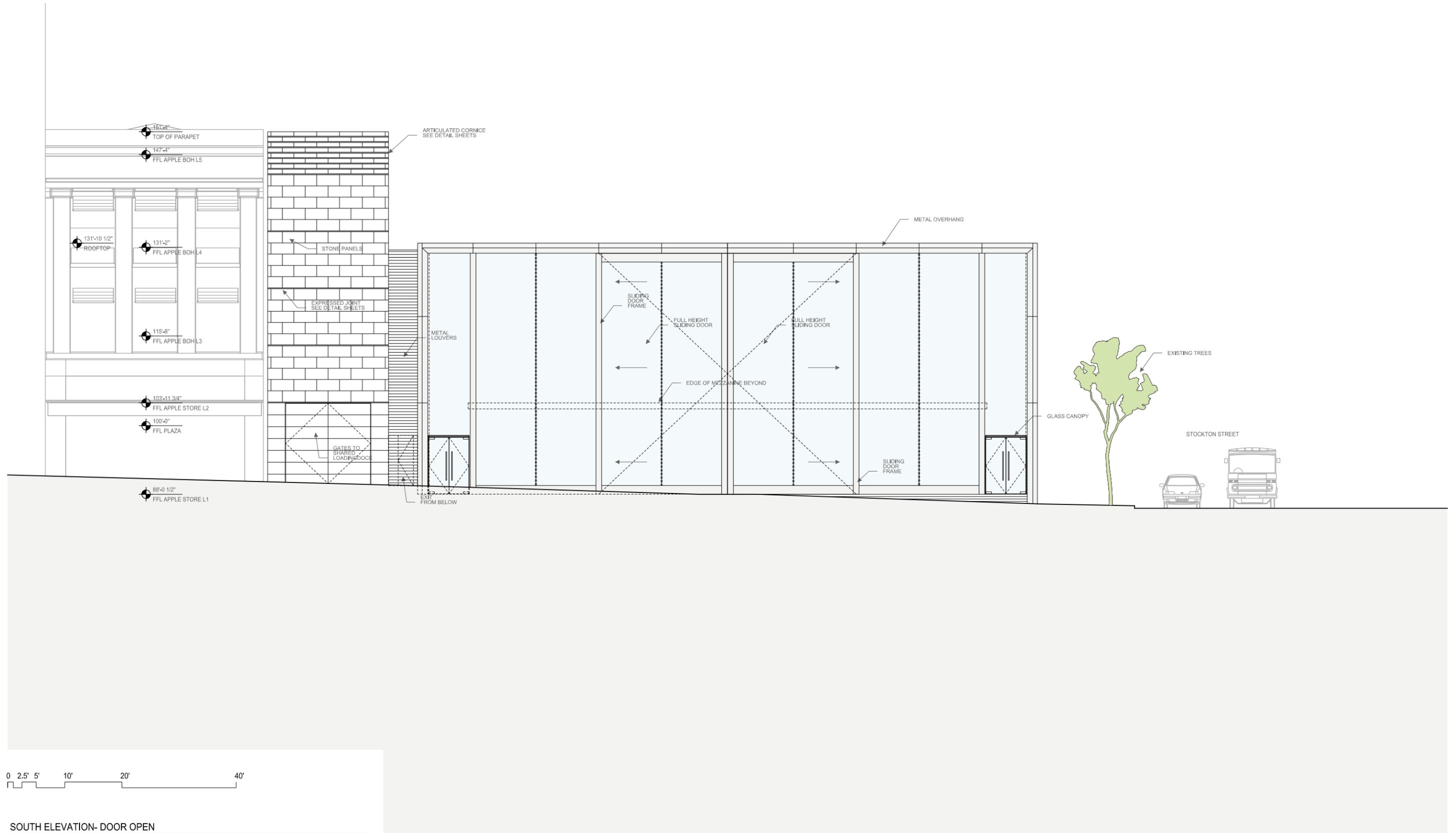


FOURTH FLOOR PLAN
1/16" = 1'-0"



ROOF LEVEL PLAN
1/16" = 1'-0"







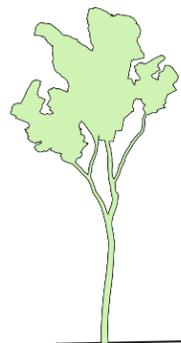
EAST ELEVATION
1/16" = 1'-0"

151'-4"
TOP OF PARAPET
147'-4"
FFL APPLE BOH L5

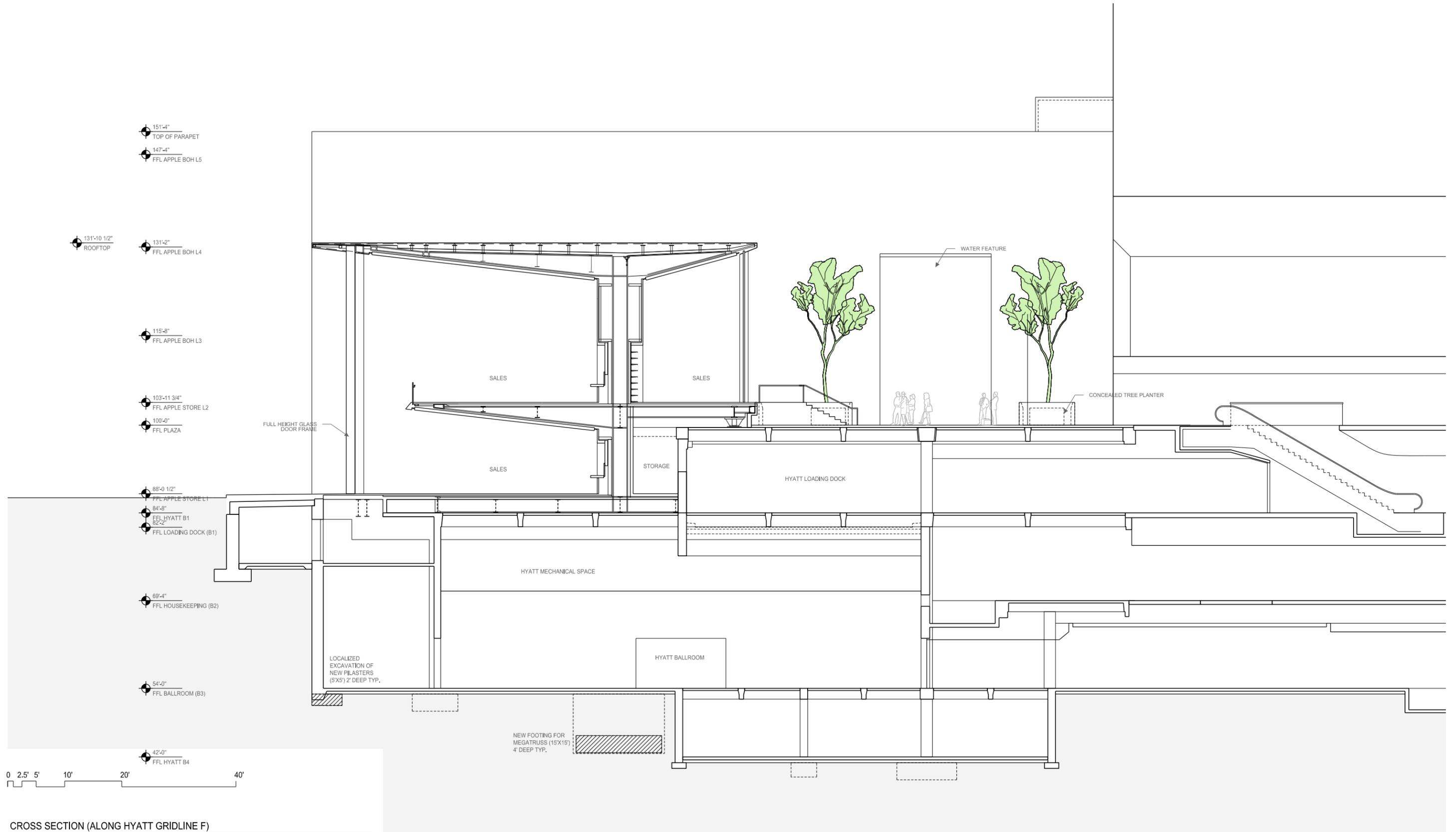
131'-10 1/2"
ROOFTOP
131'-2"
FFL APPLE BOH L4

115'-8"
FFL APPLE BOH L3

103'-11 3/4"
FFL APPLE STORE L2
100'-0"
FFL PLAZA

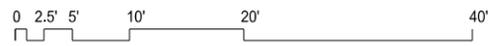
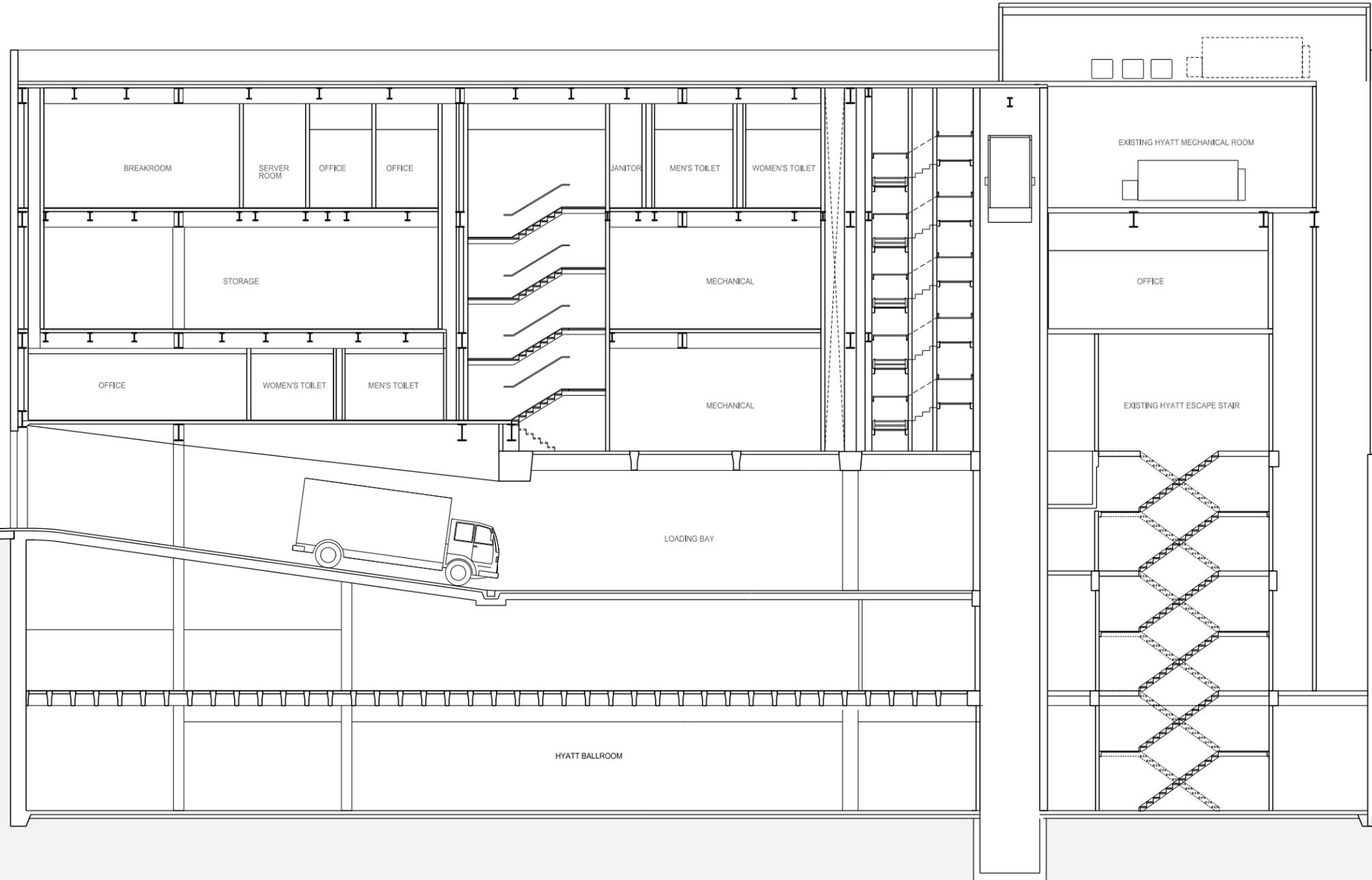


NORTH ELEVATION
1/16" = 1'-0"

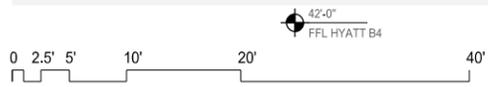
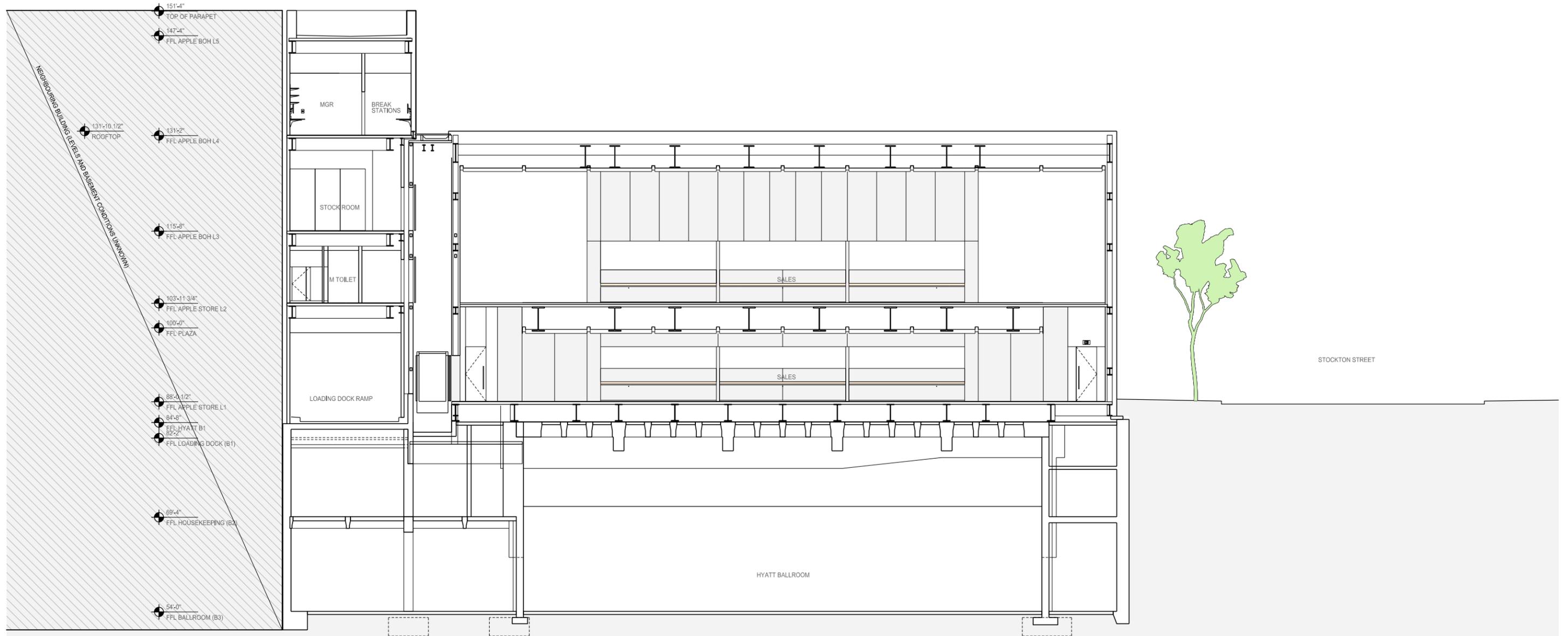
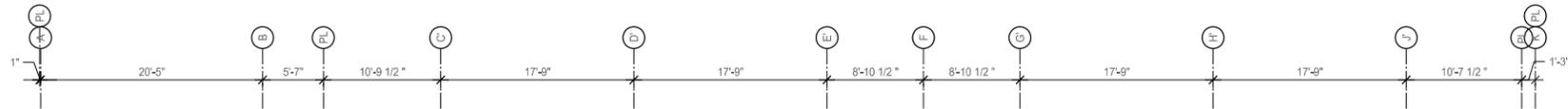


CROSS SECTION (ALONG HYATT GRIDLINE F)
 1/16" = 1'-0"

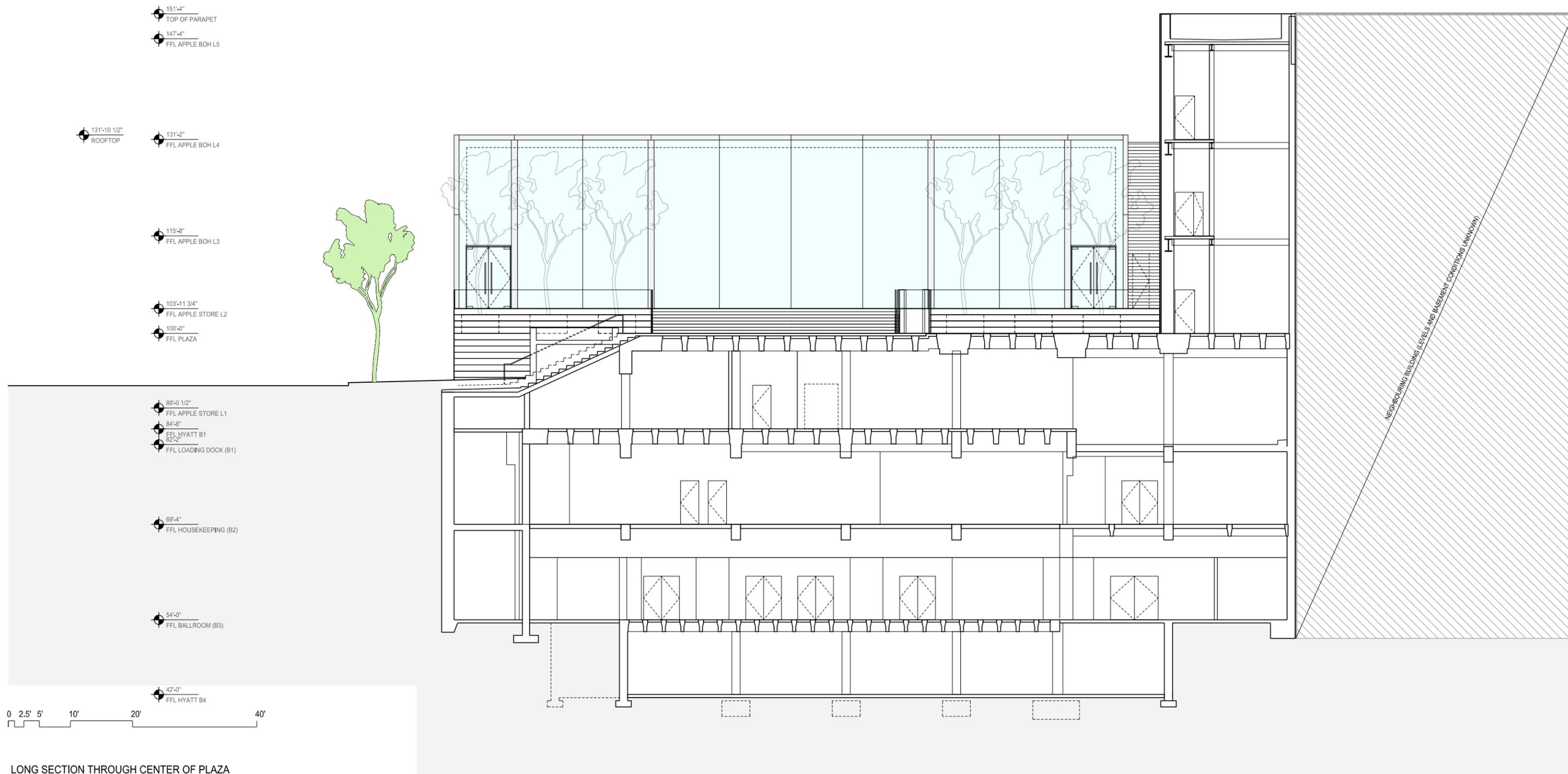
- 151'-4" TOP OF PARAPET
- 147'-4" FFL APPLE BOH L5
- 131'-2" FFL APPLE BOH L4
- 115'-8" FFL APPLE BOH L3
- 103'-11 3/4" FFL APPLE STORE L2
- 100'-0" FFL PLAZA
- 88'-0 1/2" FFL APPLE STORE L1
- 84'-8" FFL HYATT B1
- 82'-2" FFL LOADING DOCK (B1)
- 69'-4" FFL HOUSEKEEPING (B2)
- 54'-0" FFL BALLROOM (B3)
- 42'-0" FFL HYATT B4



LONG SECTION THROUGH BAR BUILDING
1/16" = 1'-0"



LONG SECTION (ALONG HYATT GRIDLINE 3)
1/16" = 1'-0"



LONG SECTION THROUGH CENTER OF PLAZA
1/16" = 1'-0"

5.1 Comparisons
Elevations





SONOMA
1177

I ♥ 24/7

5.2 Comparisons

Existing and Proposed Massing





TIFFANY & CO.

STANLEY WHITNEY

Levi's

REVENUE IS OUR TIME

FOURTH

Gold & Service by Western
SYNERGY

5.2 Comparisons

Existing and Proposed Massing



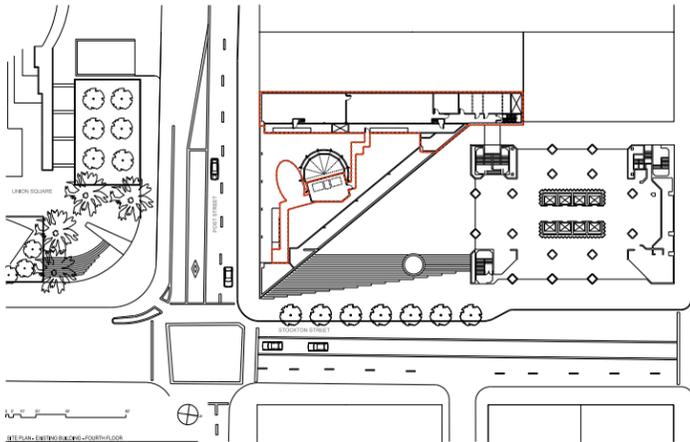


6.3 Comparisons

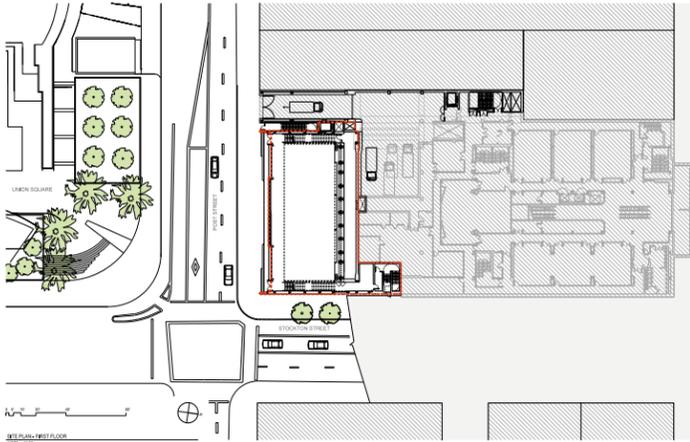
FAR Studies



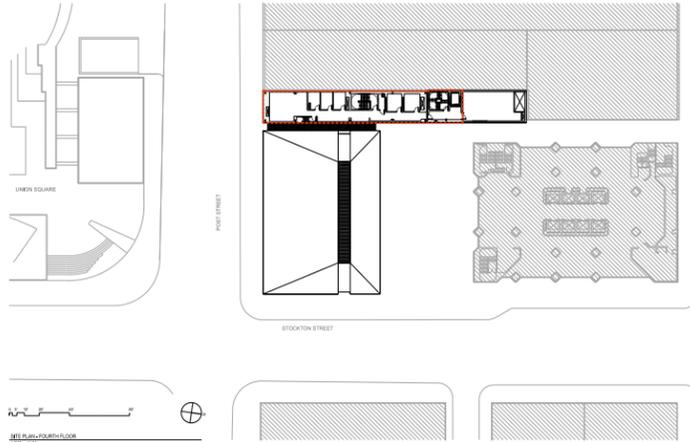
1st Floor Gross Area = 8,796 SF



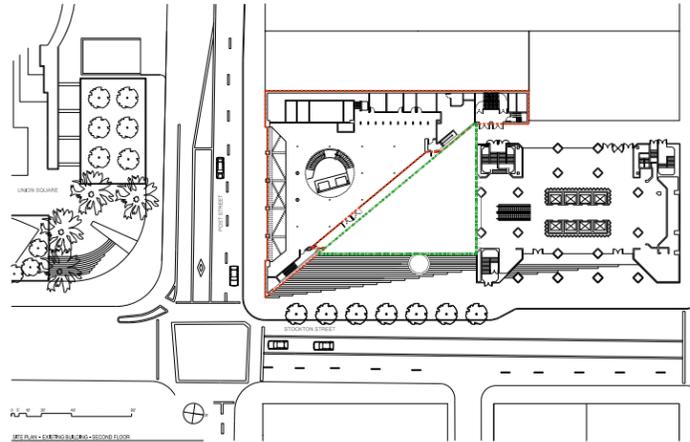
4th Floor Gross Area = 6,140 SF



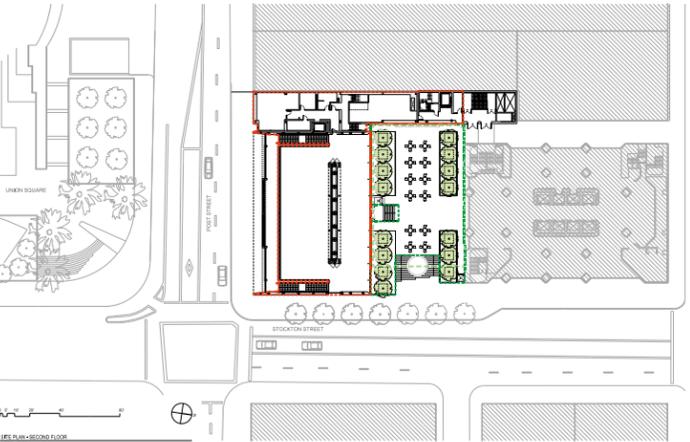
1st Floor Gross Area = 7,124 SF



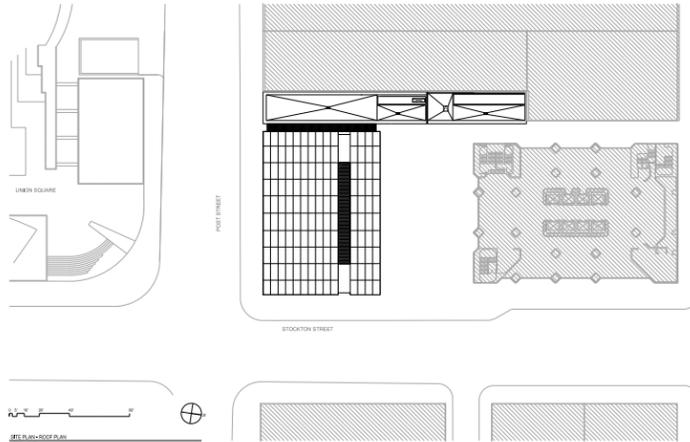
4th Floor Gross Area = 2,809 SF



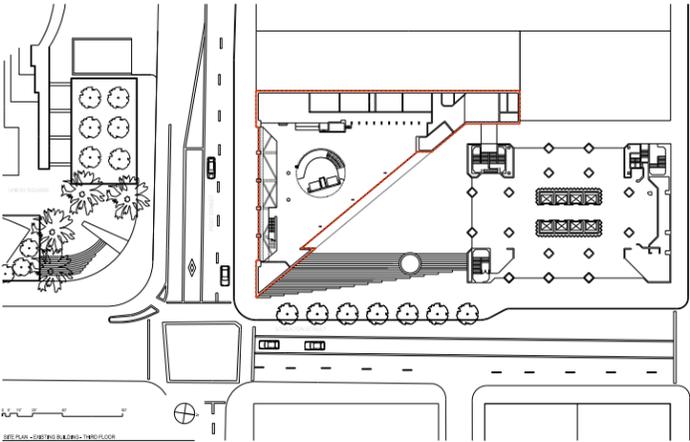
2nd Floor Gross Area = 11,151 SF



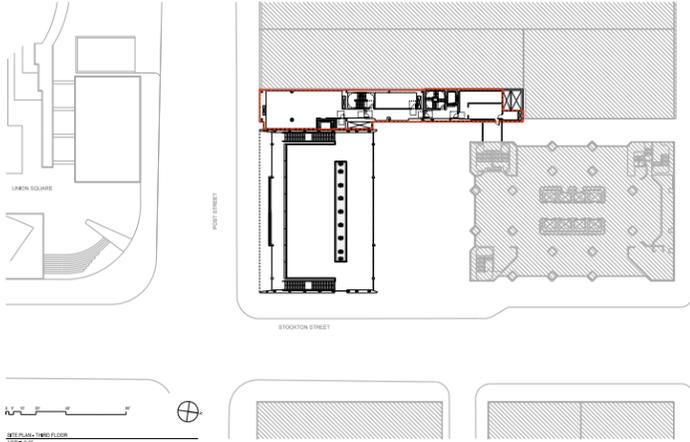
2nd Floor Gross Area = 9,981 SF



Roof Level Plan



3rd Floor Gross Area = 11,147 SF



3rd Floor Gross Area = 3,898 SF



Apple Store and Support Areas = 23,812 SF

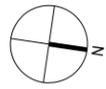
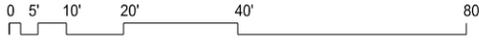
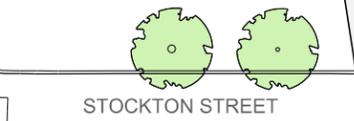
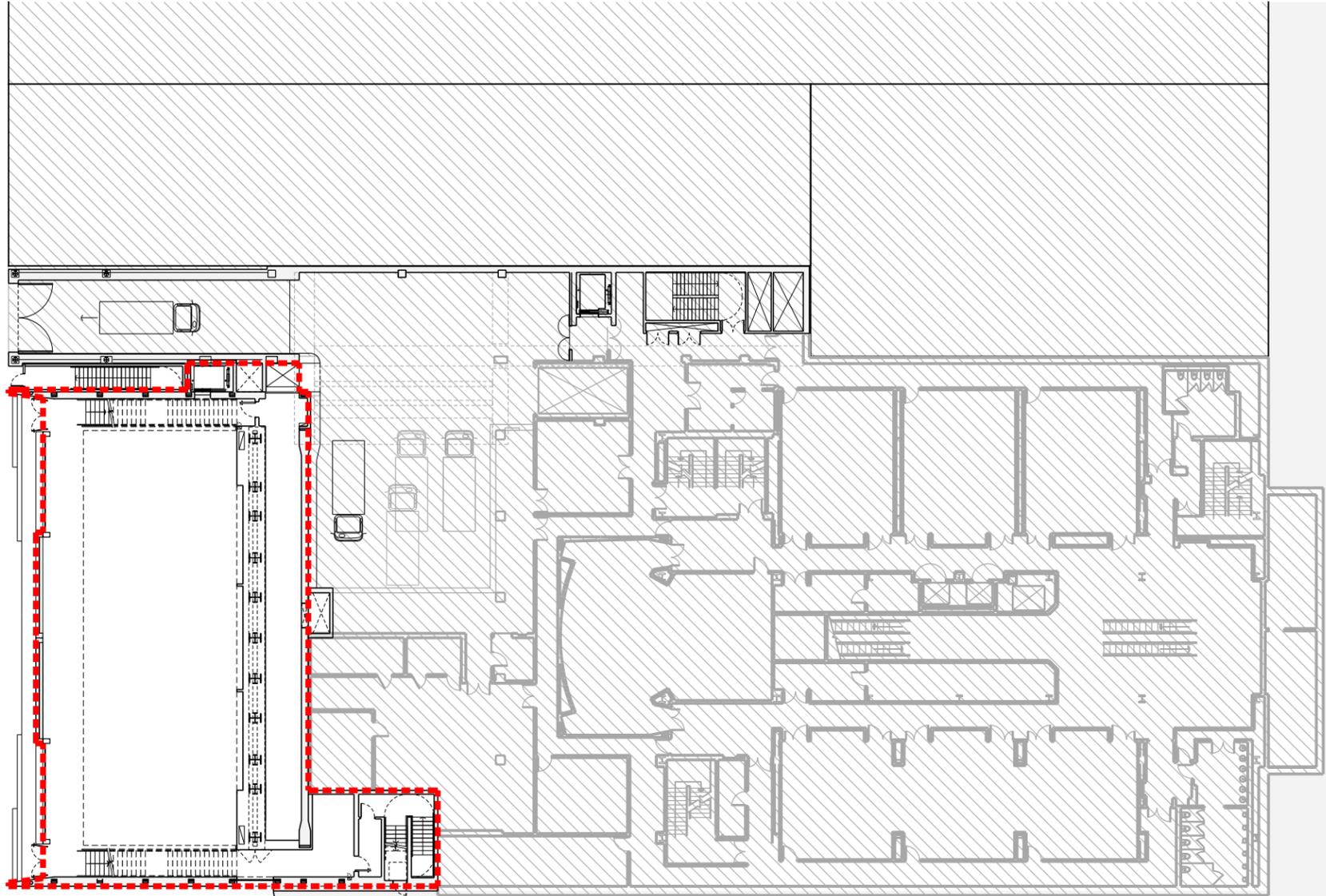
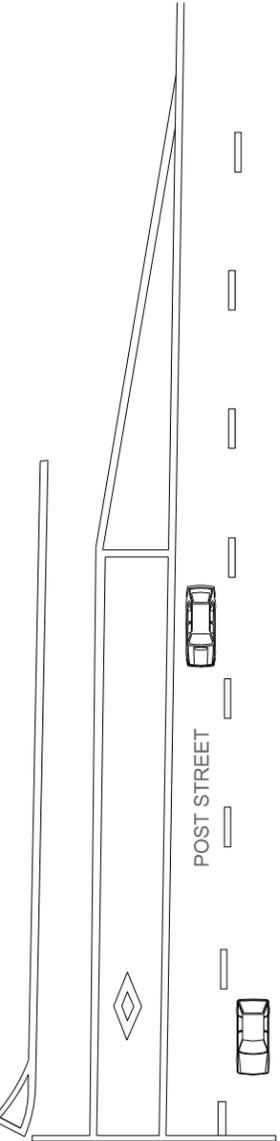
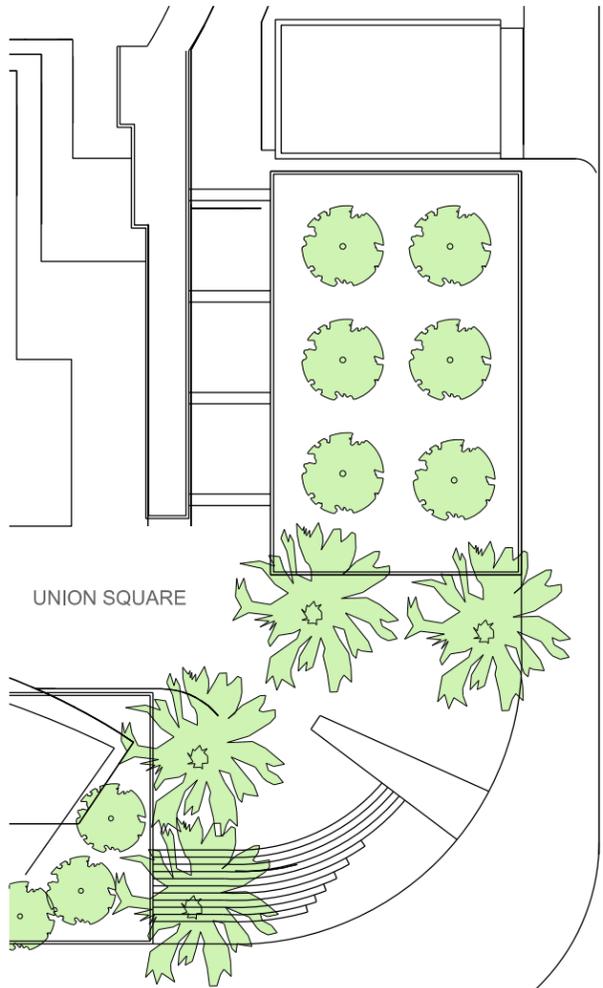
Existing Plaza Area = 4,586 SF

Levi's Store and Support Areas = 37,234 SF

Proposed Plaza Area = 6,059 SF

First Floor Plan

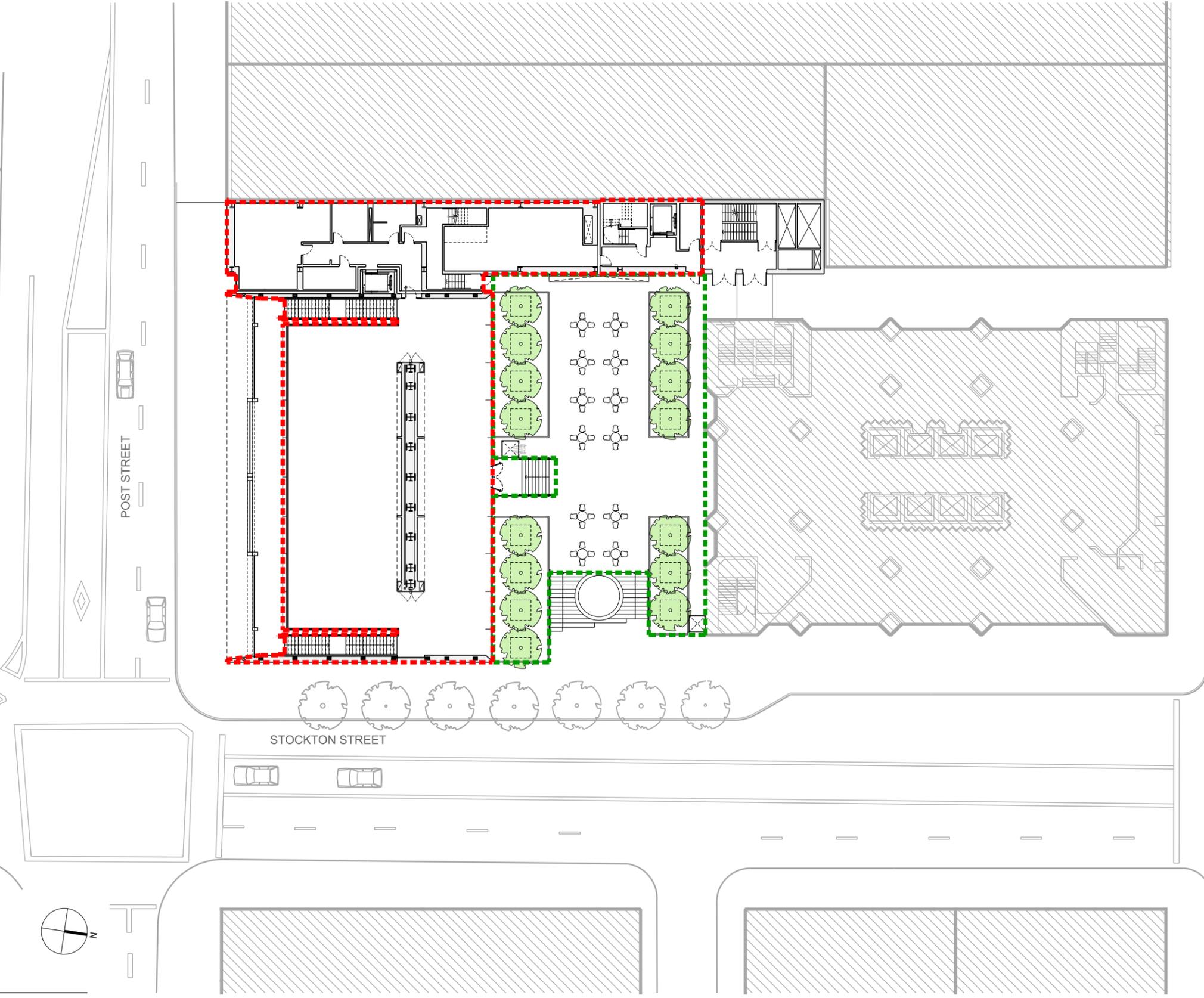
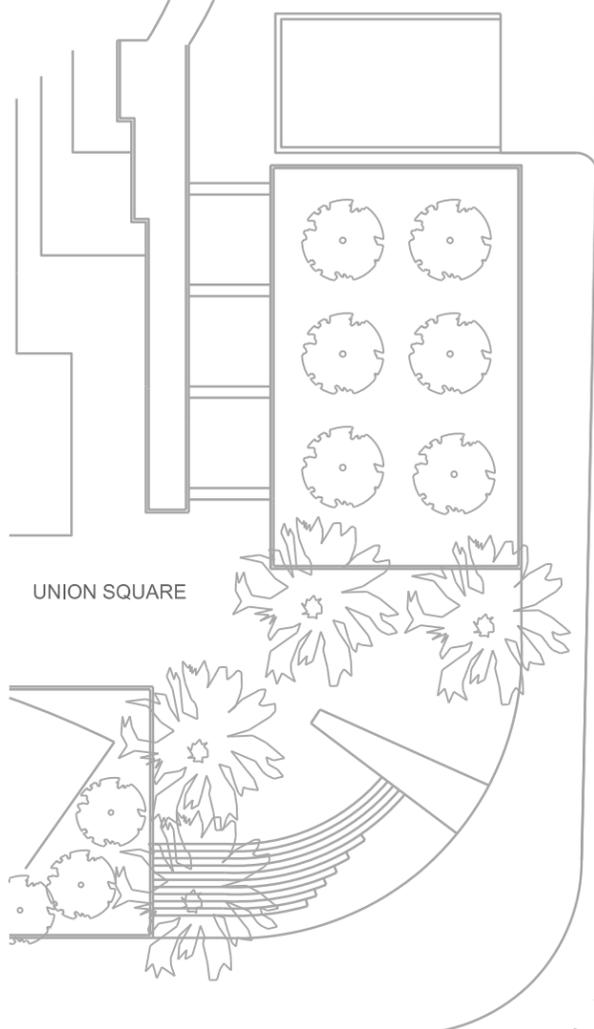
Gross Area = 7,124 SF



SITE PLAN - FIRST FLOOR
1/32" = 1'-0"

Second Floor Plan

Gross Area = 9,981 SF



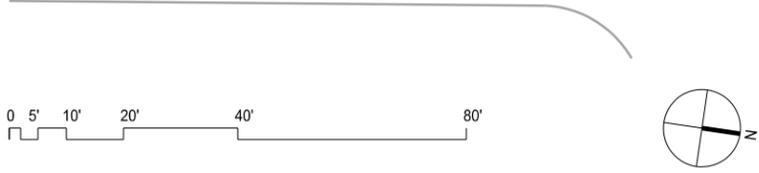
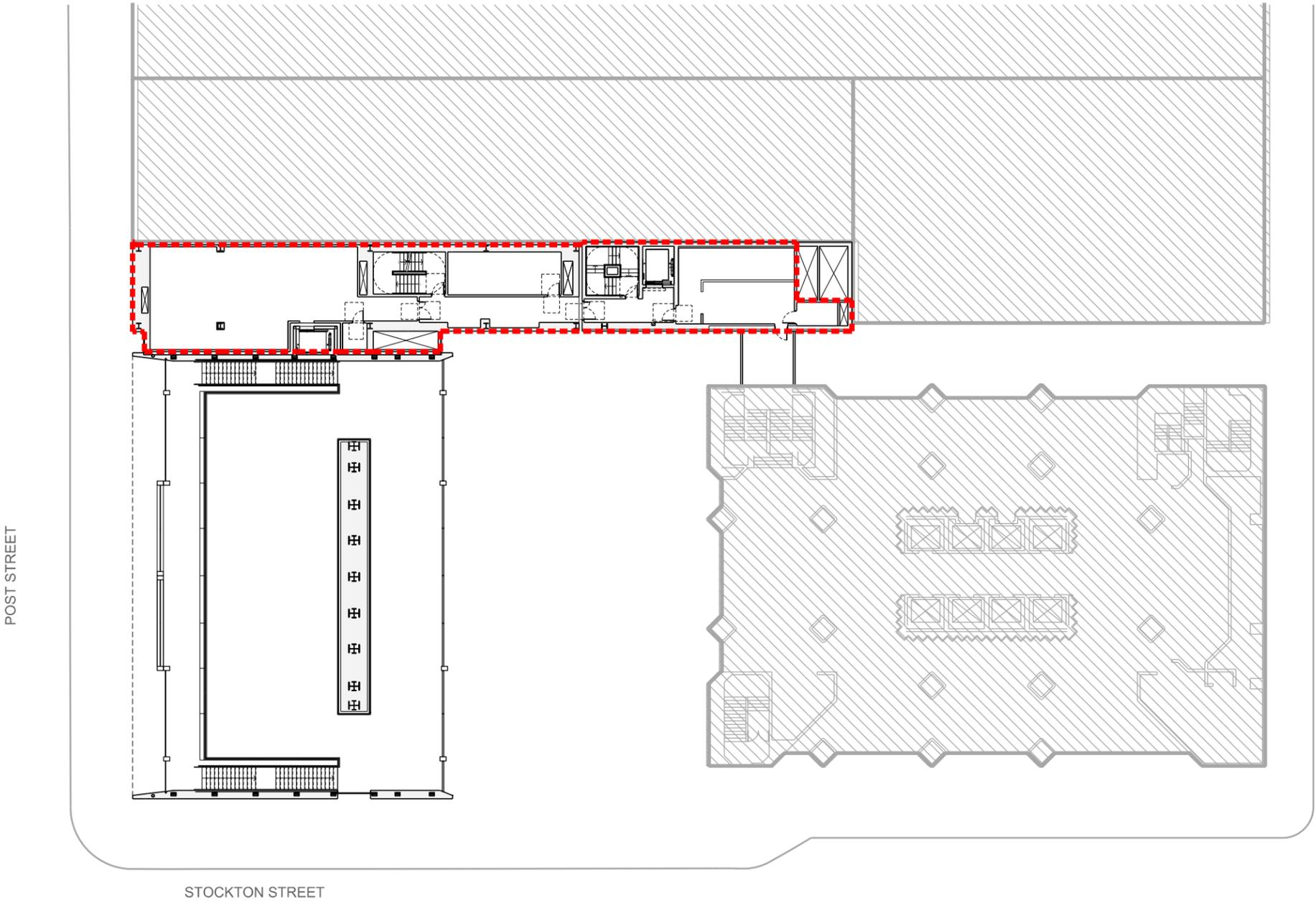
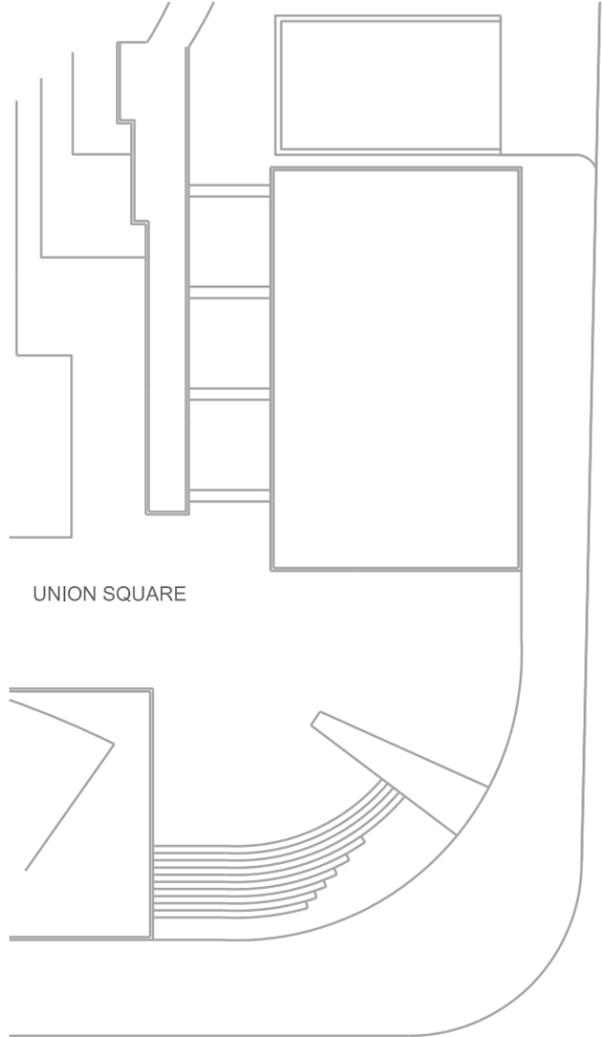
0 5' 10' 20' 40' 80'



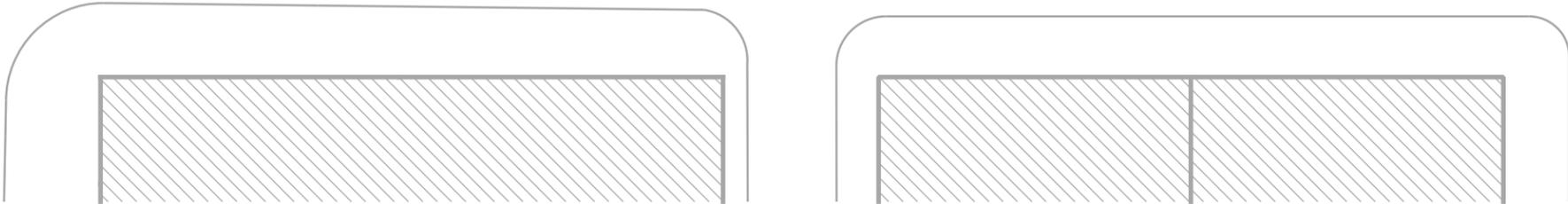
SITE PLAN - SECOND FLOOR
1/32" = 1'-0"

Third Floor Plan

Gross Area = 3,898 SF

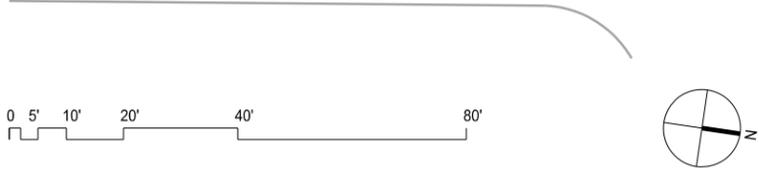
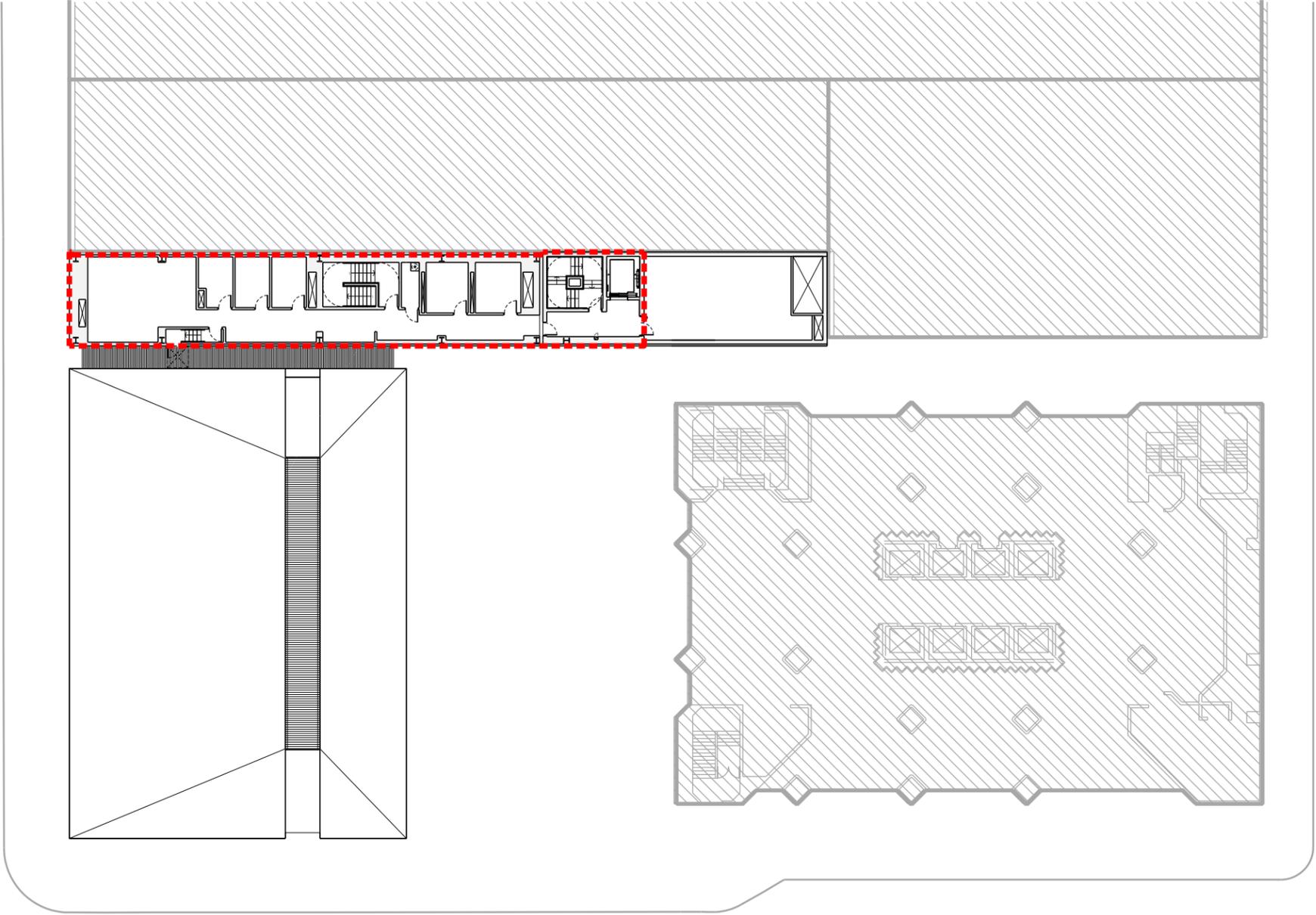
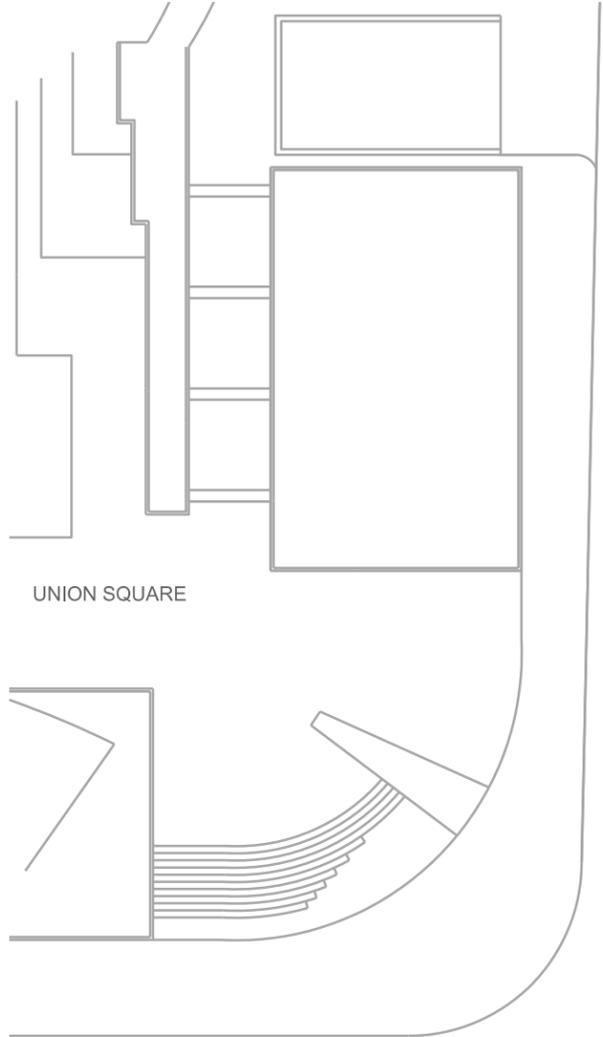


SITE PLAN - THIRD FLOOR
1/32" = 1'-0"

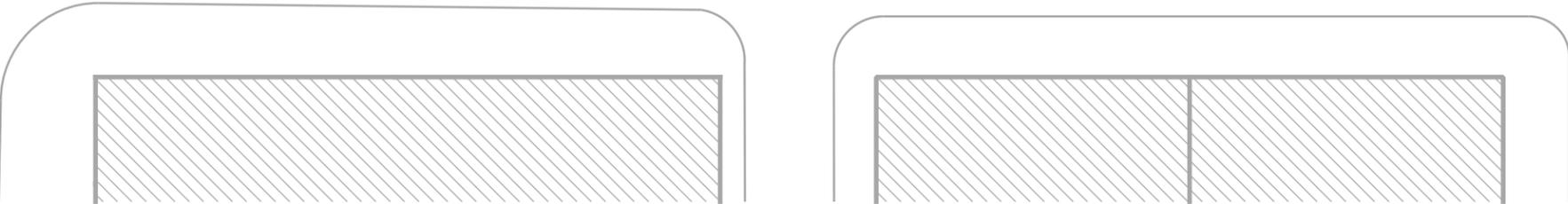


Fourth Floor Plan

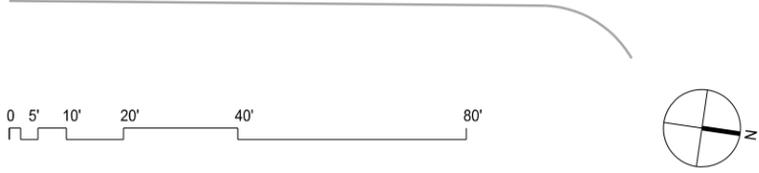
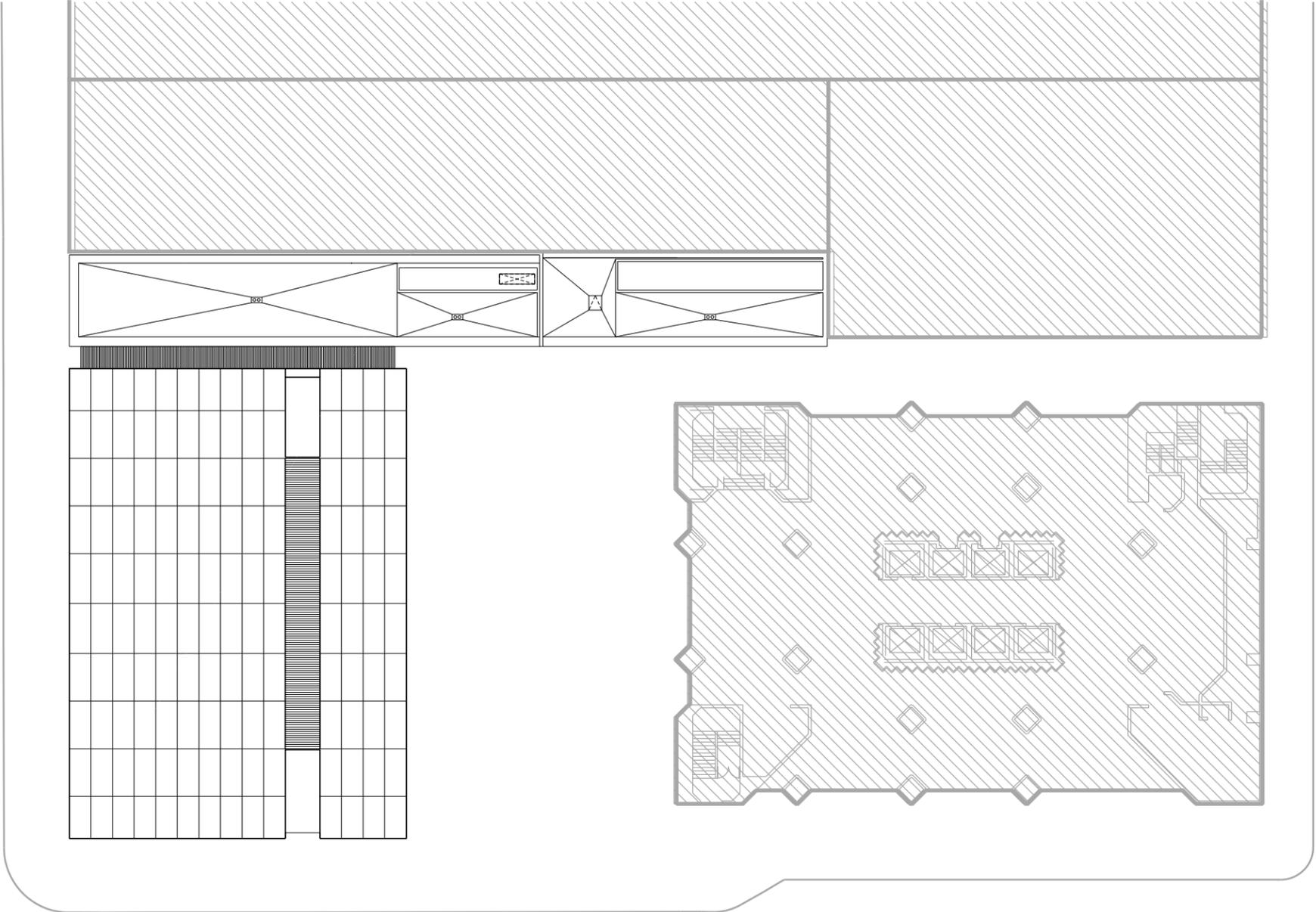
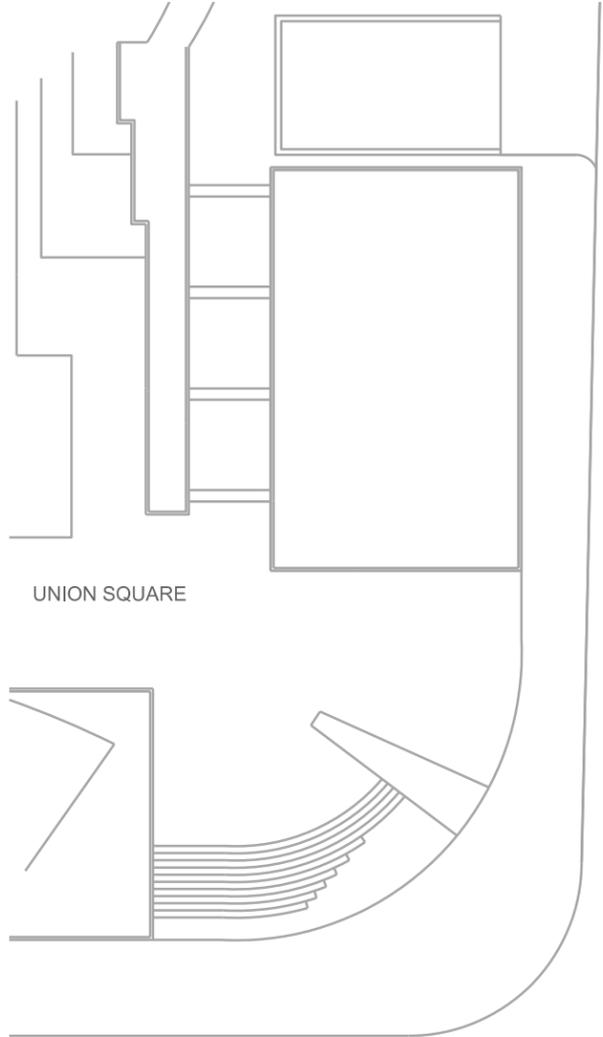
Gross Area = 2,809 SF



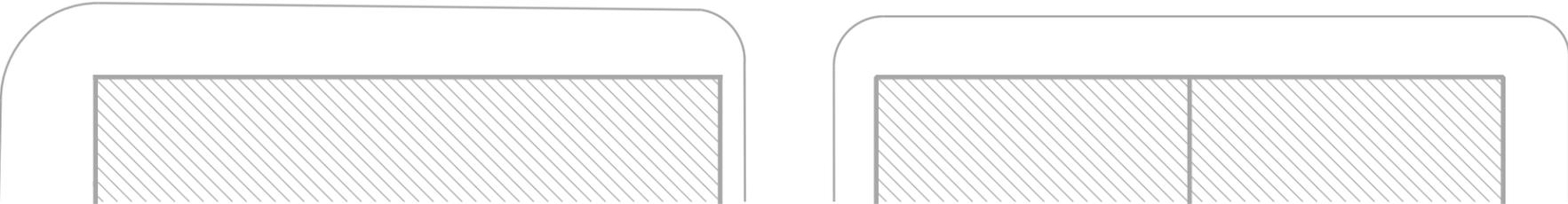
SITE PLAN - FOURTH FLOOR
1/32" = 1'-0"



Roof Level Plan



SITE PLAN - ROOF PLAN
1/32" = 1'-0"



6.1 Renderings

Aerial View



Renderings
Front Views 6-Bay





MONONOMA

GAME BEER

RESTAURANT

Renderings
Front Views 6-Bay





Renderings
Oblique Views 6-Bay





TIFFANY & CO.

HYATT

Renderings
Oblique Views 6-Bay





TIFFANY & CO.

HYATT

Renderings

Rear Views





Renderings
Plaza Views





REUBEN, JUNIUS & ROSE, LLP

January 27, 2014

By Messenger

President Rodney Fong
San Francisco Planning Commission
1650 Mission Street, Suite 400
San Francisco, CA 94103

**Re: 300 Post Street/345 Stockton Street (Apple Store & Plaza)
Case No. 2013.0628EHUVX
Hearing Date: February 6, 2014**

Dear President Fong,

Our office represents Apple, Inc. (“Apple”) in connection with its proposed new store (“Project”) at the Grand Hyatt property at 300 Post Street/345 Stockton Street (Assessor’s Block: 0295, Lot: 016; the “Property”). Apple seeks the Planning Commission’s approval for a Planning Code § 309 Downtown Project Authorization, and a variance from the Zoning Administrator for fenestration on Stockton Street. In addition, The Mayor and Supervisor Chiu have introduced legislation necessary for the Project: an amendment to Planning Code § 188 to allow the reconstruction of noncomplying floor area. We respectfully request that you recommend approval of the Ordinance and approve the Downtown Project Authorization for the following reasons:

- **Innovative Architecture.** The Project replaces a dated, unsightly, and incompatible four-story Levi’s building with a two-story building of a more innovative and sustainable design. The Project will be the first in San Francisco by the renowned architectural firm of Foster + Partners, the same firm designing Apple’s iconic new campus in Cupertino.
- **Ruth Asawa Fountain and Open Space Renovation.** The triangular plaza to the north would be expanded and reconfigured with the preserved *Hyatt on Union Square Fountain* by Ruth Asawa remaining as its focal point.
- **A Pedestrian-Friendly Stockton Street Frontage.** Considered as a whole, the Project’s Stockton Street frontage uses a number of architectural features to break up the façade plane and appeal to retail shoppers. The Apple store’s insulated glass panel and three-part metal fenestration combine with the Plaza’s vertical water element, stairs, and Ruth Asawa fountain to provide a richly textured pedestrian experience.

James A. Reuben | Andrew J. Junius | Kevin H. Rose | Daniel A. Frattin
Sheryl Reuben¹ | David Silverman | Thomas Tunny | Jay F. Drake | John Kevin
Lindsay M. Petrone | Melinda A. Sarjapur | Kenda H. McIntosh | Jared Eigerman^{2,3} | John McInerney III³

1. Also admitted in New York 2. Of Counsel 3. Also admitted in Massachusetts

One Bush Street, Suite 600
San Francisco, CA 94104

tel: 415-567-9000
fax: 415-399-9480

www.reubenlaw.com

- **Collaborative Design Process.** The Project's design reflects comments and suggestions from the Architectural Review Committee ("ARC"), San Francisco Architectural Heritage ("Heritage"), Page & Turnbull Architects, and Planning Department staff. Since it was presented to the ARC, the Project has been revised to incorporate defined vertical. The result of this collaborative process is a contemporary design that is well adapted to the historic context and consistent with Article 11 standards for construction on non-historic sites. The plans included with your submittal package show six-bay façade. Attached to this letter, we have attached for your consideration Apple's preferred alternative: a four-bay façade that omits two non-structural columns. This alternative was not fully developed in time for staff evaluation. The plans are attached as Exhibit A and the reasons for the proposed change are explained in Part A below.
- **Replacement of Dated Building and Plaza.** Union Square deserves architecture and retailers befitting its reputation as an international retail destination. The dated architecture of the current store and poorldings exceeding existing FAR limits recognizes that the Project would address existing urban design problems and enhance the retail character of the Union Square shopping district while reducing the Property's non-compliance with the current FAR limit.
- **Retail Positions for San Francisco Residents.** Apple anticipates staffing approximately 425 employees at the store. About 70 percent of employees at its existing store are San Francisco residents.
- **Union Construction.** The Project will utilize a skilled union workforce throughout the construction process, including members of the carpentry, ironworkers, plumbing, electrical, sheet metal, equipment operators and masonry trades, as well as the teamsters.

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

A. Project Description & the Four-Bay Alternative

The Project is the development and construction of a new and significant Apple store on San Francisco's Union Square. The new store would be located at the site of an existing large-scale retail establishment (formerly the Levi's store) at 300 Post Street. The existing retail space

One Bush Street, Suite 600
San Francisco, CA 94104

tel: 415-567-9000
fax: 415-399-9480

REUBEN, JUNIUS & ROSE, LLP

www.reubenlaw.com

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

After consideration, the project sponsor and the design team believe that the scale and composition of the four bay façade arrangement submitted as a supplement to the original application is both compatible with that of neighboring buildings and it is the preferred resolution. The preferred proposal omits two columns from the previously submitted alternate which, the design team feels, will not affect the character of the proposed building while strengthening the idea of the large central opening.

Having studied multiple iterations of the south façade that included various combinations of expressed columns and beams , structural analysis showed that the two columns shown just east and west of the central sliding doors cannot be used as building columns, since footings cannot be established at these locations, due to the below grade Hyatt spaces.

Both Apple and Foster + Partners strive to create designs that are simple and elegant and are without superfluous ornamentation. Having two additional columns in the façade takes away from the dramatic appearance of the full height sliding doors. In the closed position, the doors appear to be the only strongly framed elements in the façade. They are clearly articulated as rectangular frames and while they do break up the façade into four distinct bays they also remain simple and do not add unnecessary and unneeded compositional elements. The width of the central doors and the resultant glass bay widths to the left and right are within the 20-30 foot bay articulation of the conservation district and convey the prevailing architectural patterns of composition.

The impact of adding two more columns to the façade is multifold. Architectural, structural and cost implications make the four bay façade configuration the preferred approach of the project sponsor.

B. Collaborative Architectural Design Process

Apple initially submitted a request for a preliminary project assessment in May 2013. Apple recognized that input from the Planning Department staff would be critical to the orderly implementation of a project that will be a showpiece of the City’s premier retail area. This collaboration included: a meeting with the Issues Committee of San Francisco Architectural Heritage; the Streetscape Committee of the Union Square Business Improvement District; a voluntary meeting with the Architectural Review Committee (“ARC”) on December 4, 2013;

One Bush Street, Suite 600
San Francisco, CA 94104

tel: 415-567-9000
fax: 415-399-9480

and several meetings with Planning Department staff. Through these communications, Apple was able to identify and respond to key concerns raised by the City and the community.

As a result, Apple made several modifications to the Project, including changing the current uninviting plaza to provide a much better public experience, altering plans for the Stockton Street frontage to include more window area, adding bay features to the Post Street façade, and finding a way to preserve and highlight the beloved Asawa fountain. This has been a transparent and inclusive process, and the result is a project of which both Apple and the City can be proud. It represents the best of modern, sustainable design, befitting its place in the center of a world-class city.

C. Related Approvals

In addition to a Planning Code Section 309 Review for a Downtown Project Authorization and the code change to allow the Project's reduced non-complying floor area, Apple has applied for an Article 11 Major Permit to Alter and a Variance from fenestration requirements on the retail building's Stockton Street façade. The Major Permit to Alter will be considered by the Historic Preservation Commission on February 5, 2014, and the Variance will be considered by the Zoning Administrator at the February 6 hearing.

D. Section 309 Downtown Project Authorization and the Stockton Street Frontage

The Project satisfies all applicable requirements of Planning Code Section 309 except ground floor transparency on the Stockton Street façade (Section 145.1), for which Apple is seeking a variance.

Considered as a whole, the Project's Stockton Street frontage uses a number of architectural features to break up the façade plane and appeal to retail shoppers. The Apple store's insulated glass panel and three-part metal fenestration combine with the Plaza's vertical water element, stairs, and Ruth Asawa fountain to provide a richly textured pedestrian experience. The inset glass panel will provide a glimpse into the building and divide the building into discrete bays. The fountain and surrounding stairs will also provide pedestrian interest, creating views into the plaza's landscaped seating areas and the water feature along its western edge. These elements, compatible with other elements on the block, will be clearly visible from Stockton Street.

The Stockton Street frontage will be far more open and pedestrian-friendly than the existing Levi's building and plaza. The Levi's building, which angles away from Stockton Street, is incompatible with the District's composition and massing requirements for buildings to be built to the street line.¹ It does not repeat the three-part vertical massing or provide any vertical elements meant to be a contemporary representation of the District's more traditional

¹ Planning Code Art. 11, Appx. E, § 7(b)(1).

bays. Instead, it pulls back from the street at a sharp angle into a wide, austere plaza that is underused and lacks landscaping.

E. The Project Complies with CEQA

As discussed above, the Project replaces the existing Levi's retail store with a smaller Apple store at the same location. The Planning Department correctly determined the Project qualifies for a Class 2 Categorical Exemption under the California Environmental Quality Act ("CEQA") for the:

Replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced.

Cal. Code Regs. tit. 14, § 15302.

The Project fits squarely within this exemption because it will be located on the same site and serves the exact same purpose as the Levi's building: a stand-alone retail store. Additionally, the Project reduces the Levi's building capacity by approximately 14,000 sq. ft.

The Service Employees International-Union – United Services Workers West ("SEIU") has submitted three letters questioning various CEQA-related aspects of the Project. The SEIU's opposition mischaracterizes the Project and misrepresents the law. Its objections are ultimately not about land use policy or CEQA, but about leveraging both for unrelated purposes. This misdirects the process. Though the SEIU's claims are groundless, Apple has responded to each in detail in the letter attached as Exhibit B.

F. Ordinance Amending Section 188 of Planning Code

The Project also requires an amendment of the Planning Code to permit reconstruction of secondary structures in the C-3-R District that are non-complying with respect to FAR ("Ordinance"). The Ordinance would give the Planning Commission authority to approve reconstruction where it finds that ten (10) public interest criteria are satisfied. These ensure that the project reduces the existing building size while still promoting and enhancing the site as a retail destination. Sponsored by the Mayor and Supervisor Chiu, the ordinance is necessary to remove the Levi's building—which is both unsightly and incompatible with the KMMS Conservation District.

1. The Need for the Planning Code Amendment

Under existing Planning Code Section 188, legally non-complying buildings cannot be voluntarily removed and rebuilt unless the rebuilt portion fully complies with the Planning Code. Because the Grand Hyatt property exceeds the floor area limit by approximately 6.3-to-1, floor

One Bush Street, Suite 600
San Francisco, CA 94104

tel: 415-567-9000
fax: 415-399-9480

area removed from the Levi's building cannot be replaced or rebuilt. In essence, the City is stuck with an unsightly and dated store that frames an oddly-shaped and inhospitable plaza. The Ordinance remedies this situation by permitting reconstruction in narrowly defined circumstances, discussed below.

2. *The City Has Not Engaged in Improper Piecemealing or Spot Zoning.*

In an attempt to derail the Project for an unrelated purpose, the SEIU has argued that the City failed to properly analyze the environmental impacts associated with Planning Code section 188. This statement is a misrepresentation of well-settled CEQA standards. The Planning Department has informed Apple that the proposed ordinance would apply only to the Project site. As explained in the letter attached as Exhibit A, all of the Project's possible adverse impacts have been adequately examined. The City has not broken up separate projects into different CEQA documents to mask any cumulative impact. Instead, the proposed ordinance and the project-specific approvals have the same effect: allowing the Apple store to be built. The City has not improperly piecemealed the Project's CEQA review.

Additionally, the proposed amendment to the Planning Code is not illegal "spot zoning." So-called spot zoning (singling out a parcel for greater or lesser zoning than surrounding properties) is proper in California so long as the City's zoning decision is found to be in the public interest. See Foothill Communities Coalition v. County of Orange, 2014 Cal. App. LEXIS 22 (4th Dist., January 13, 2014) As explained in more detail below, the Project would comply with all ten "public interest" criteria required by the proposed ordinance. The Project, which would lower the Property's floor area ratio while eliminating an unsightly and architecturally-incompatible building, is in the public interest.

3. *The Project Would Meet the Requirements of Proposed Planning Code Section 188*

The Project would meet all ten criteria for reconstructing secondary structures that do not comply with the existing maximum floor-area ratio ("FAR"), pursuant to Proposed Planning Code Section 188(f). See San Francisco Board of Supervisors, File No. 131509 (Planning Code – Allowing Certain Non-Conforming Structures to be Rebuilt Under Certain Conditions). Specifically, the proposed removal and reconstruction of the existing secondary structure at the Property shall:

- A. Be located within a C-3-R District. The Property is located within the C-3-R District.
- B. Promote and enhance the C-3-R District as a retail destination. The Project would promote and enhance the C-3-R District as a retail destination. For years Apple has been determined to bring to San Francisco an expanded store with a cutting-edge design vision. The Property presents the perfect opportunity to achieve this goal, and also give back to the community by energizing an underused public space and burnishing Union

One Bush Street, Suite 600
San Francisco, CA 94104

tel: 415-567-9000
fax: 415-399-9480

Square's reputation as a premier retail location. Apple proudly brands its products as "designed in California." It seeks to develop a store in its own backyard that will rival any other retail building in the City, as well as any of its other significant stores around the globe.

- C. Result in an increased benefit to the public and the adjacent properties. The Project will benefit the public and adjacent properties by anchoring retail activity on the north end of Union Square with a structure of the highest architectural quality. The renovated plaza will increase the amount of public space on the Property as well as its quality. The Ruth Asawa fountain will be preserved as the focal point of the renovated plaza, ensuring its enjoyment by another generation of San Franciscans and tourists alike.
- D. Enhance the aesthetic qualities and/or character of the lot. The Project enhances the aesthetic qualities and character of the lot. Currently, the Project site is improved by the Levi's building, which is aesthetically deficient and incompatible with the Kearny-Market-Mason-Sutter Conservation District due to its triangular shape. Its massing, orientation, and lack of landscaping have the additional effect of making the existing plaza less inviting for pedestrians, who also have limited seating options. The Ruth Asawa fountain deserves a better home than the existing plaza.

The proposed project is a flagship retail store designed by Foster + Partners. The main interior and exterior walls will be clad with bead blasted stainless steel panels which create muted reflections. The ancillary exterior surfaces will get limestone and granite cladding which echo the material palette of the conservation district. High-performance insulated glass facades, and speciality glass stairs are intended to allow light throughout the sales area, whilst an eight foot roof overhang shades the southern façade in the hotter months. Clear span and cantilevered structural systems are used to create column-free areas to facilitate a better shopping environment. To allow an even greater flow of patrons, large sliding doors open up a significant portion of the façade blurring the line between inside and outside space even further. The openness and transparency of the facades also reinforce the "gateway" nature of the project connecting Union Square with the small plaza on the north side. The plaza would be reconfigured and increased in size, as well as have additional landscaping features including a water element specifically designed to draw pedestrians into the open space.

- E. Result in a net decrease of gross floor area of all structures on the subject property. The Project would reduce the subject property's gross floor area by approximately 14,000 gross square feet.
- F. Result in a structure that more closely conforms to the floor area ratio ("FAR") limit. The Property is located within the C-3-R District, which limits FAR to 9:1. Combined, the structures on the 35,931 sq. ft. lot are 550,599 sq. ft. in size. By lowering the gross

floor area on the Property by approximately 14,000, the Project will result in a structure that more closely conforms to the 9:1 FAR limit.

- G. Not result in an adverse impact to an historic resource. The Project does not demolish or alter any of the historic buildings in the surrounding district. It replaces one building of modern vintage—that is classified by the Planning Code as “Category V – Unrated” building of no preservation merit whatsoever—with another, slightly smaller modern building. Preservation experts at Page & Turnbull and on staff at the Planning Department have concluded that no historic resources would be negatively impacted by the Project.
- H. Not cause significant shadows or wind impacts on public sidewalks or parks. The Project would reduce the subject property’s height by two stories and would lower any existing shadows cast on any public sidewalks or on Union Square. Tall buildings, particularly buildings that are much taller than their neighbors, can redirect and accelerate naturally occurring winds. This is not a concern here, where neighboring buildings to the north and west (the prevailing wind direction in San Francisco) are much taller than the Project will be. As such, the Project would not appreciably alter existing wind conditions in the vicinity.
- I. Not obstruct significant view corridors. The Project would not obstruct any significant view corridors. As noted above, the Project would actually lower the height of the existing retail building from four stories to two, opening up view corridors for all adjacent properties above the second floor. Additionally, the Post Street and Plaza-facing facades would be transparent, permitting view corridors for pedestrians both in Union Square and in the redesigned plaza.
- J. Not significantly impair light and air to abutting properties. Located on the corner of Stockton and Post, the Project site abuts only the Williams-Sonoma building to its west. The Project would have no impact on the amount of light or air that building would receive. As noted above, the Project would lower the retail building’s size by two stories, and would incorporate transparency features designed to provide as much natural light through the retail building and onto Union Square and the redesigned plaza as possible.

G. Conclusion.

For the reasons stated above, we respectfully request that the Planning Commission approve the Project’s applications for Section 309 compliance and proposed Section 188 reconstruction of certain non-complying secondary structures. The Project complies with all relevant sections of the Planning Code except for ground-floor transparency, and the redesigned Stockton Street frontage represents a major upgrade designed to appeal to the pedestrian environment. The limited exception under proposed Section 188 would allow projects such as the Apple store to reduce the size of secondary retail structures on lots where compliance with

President Rodney Fong
January 27, 2014
Page 9

the existing floor-area ratio limits would be practically impossible, and which address existing urban design problems and enhance the retail character of the Union Square shopping district.

Very truly yours,

REUBEN, JUNIUS & ROSE, LLP

A handwritten signature in blue ink, appearing to read "Daniel Frattin", with a horizontal line extending to the right.

Daniel Frattin

One Bush Street, Suite 600
San Francisco, CA 94104

tel: 415-567-9000
fax: 415-399-9480

REUBEN, JUNIUS & ROSE, LLP

www.reubenlaw.com

Exhibit A

300 Post Street - San Francisco

Historic Preservation Commission - 4 Bay Facade

February 5th, 2014

Renderings
Front Views 4-Bay





Renderings
Front Views 4-Bay





MONONOMA

GAME BEER

RESTAURANT

Renderings
Oblique Views 4-Bay





TIFFANY & CO.

HYATT

Renderings
Oblique Views 4-Bay



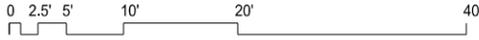
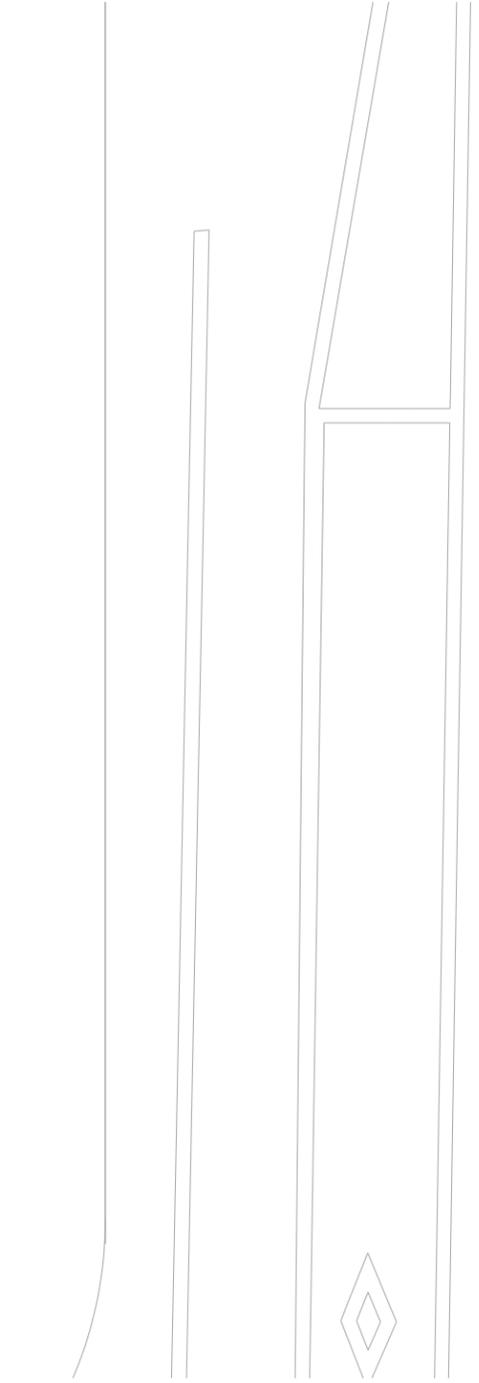


TIFFANY & CO.

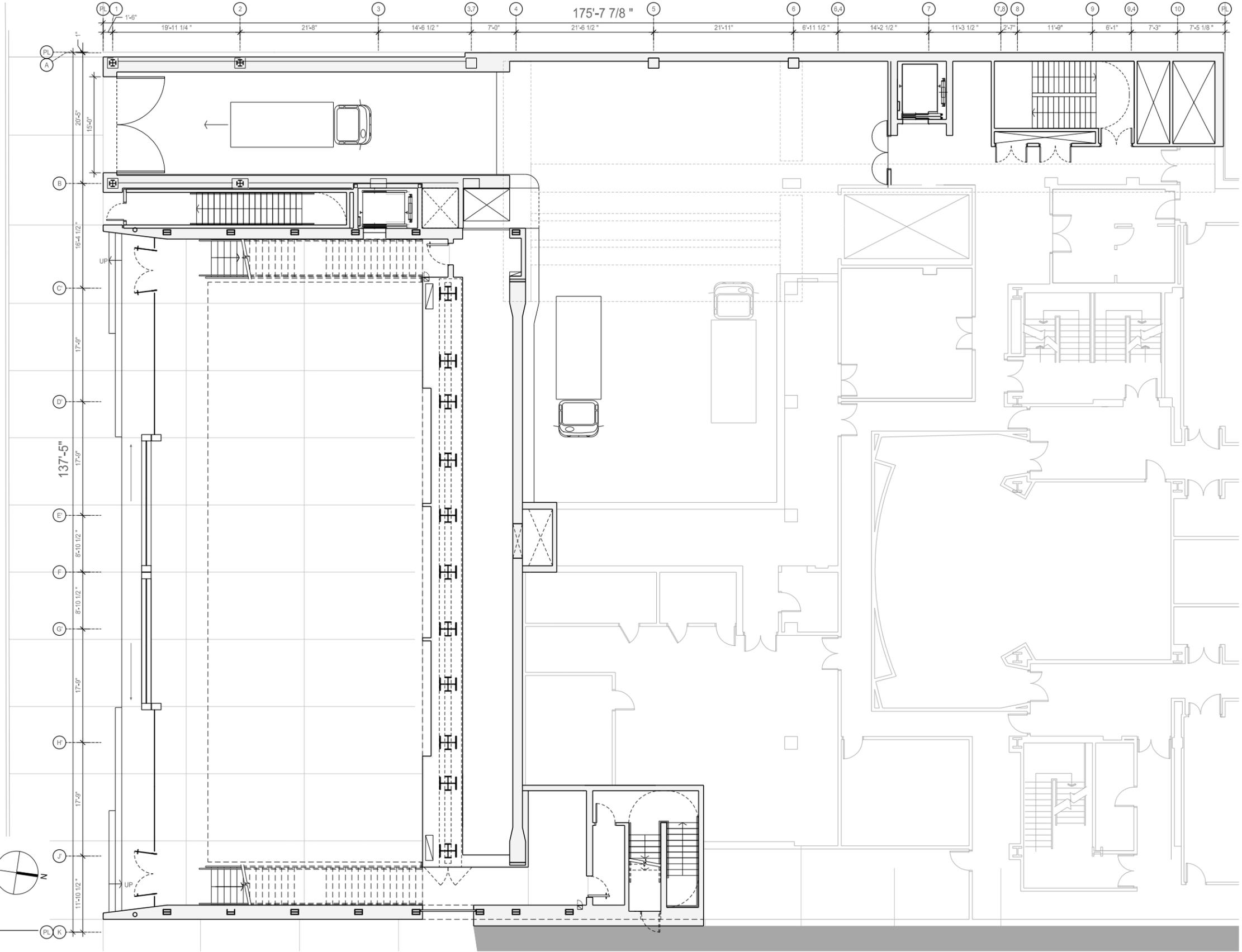
HYATT

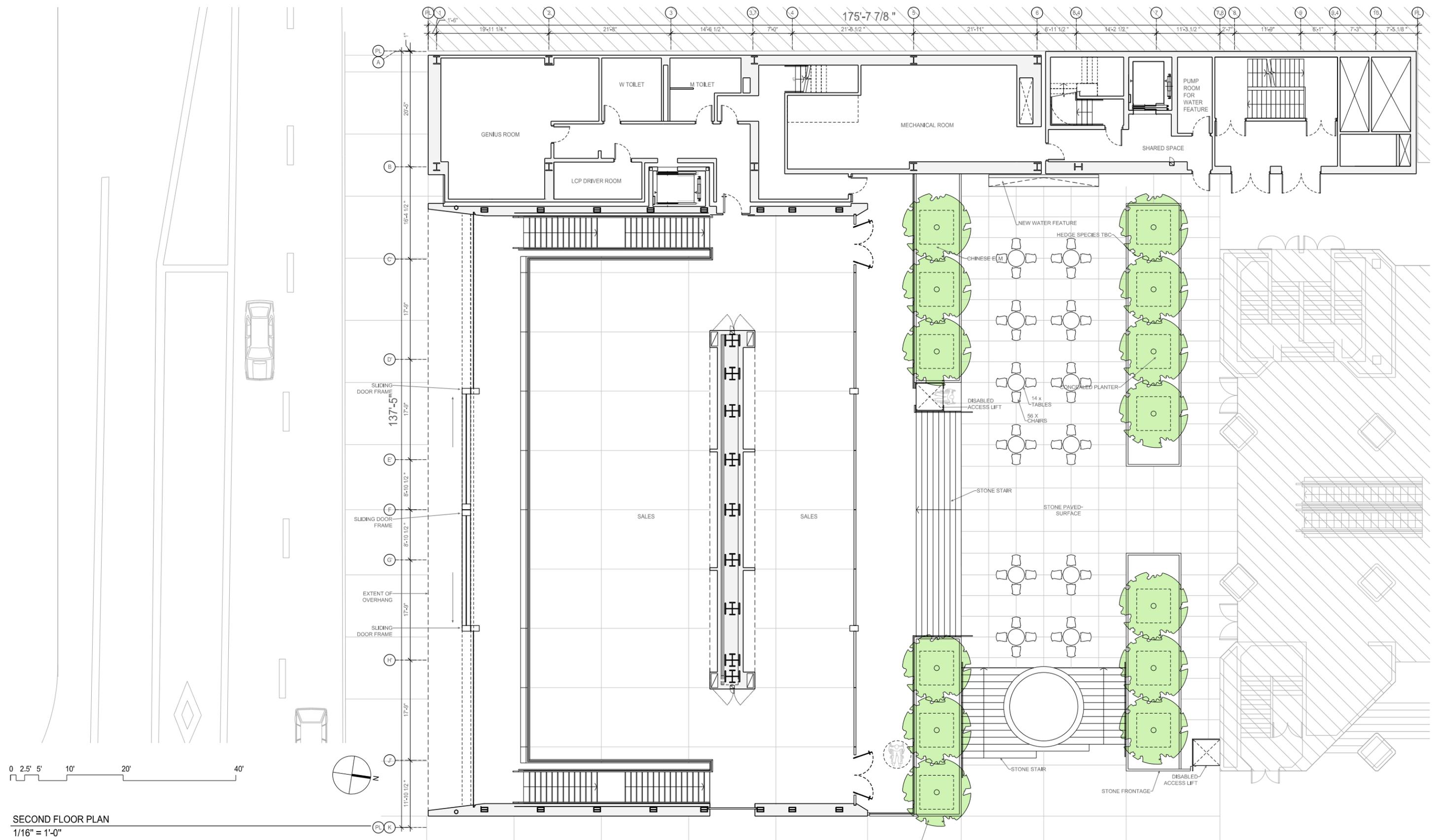
Proposed Design - 4 Bays

Drawings

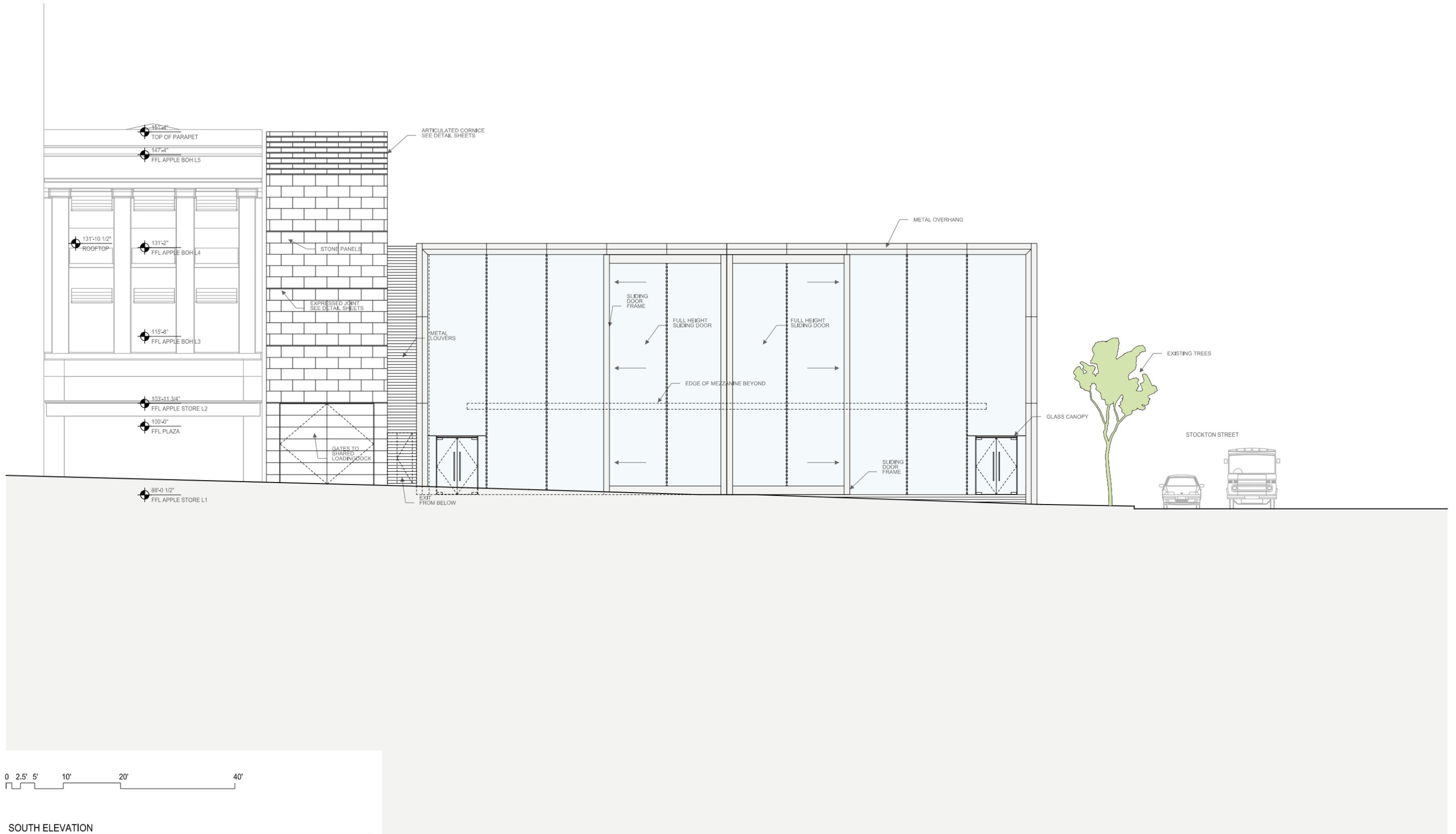


FIRST FLOOR PLAN
1/16" = 1'-0"





SECOND FLOOR PLAN
 1/16" = 1'-0"



SOUTH ELEVATION
1/16" = 1'-0"

151'-4"
TOP OF PARAPET
147'-4"
FFL APPLE BOH L5

131'-10 1/2"
ROOFTOP
131'-2"
FFL APPLE BOH L4

115'-8"
FFL APPLE BOH L3

103'-11 3/4"
FFL APPLE STORE L2
100'-0"
FFL PLAZA

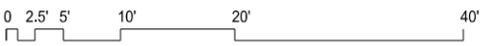
EXISTING TREES

GLASS CANOPY

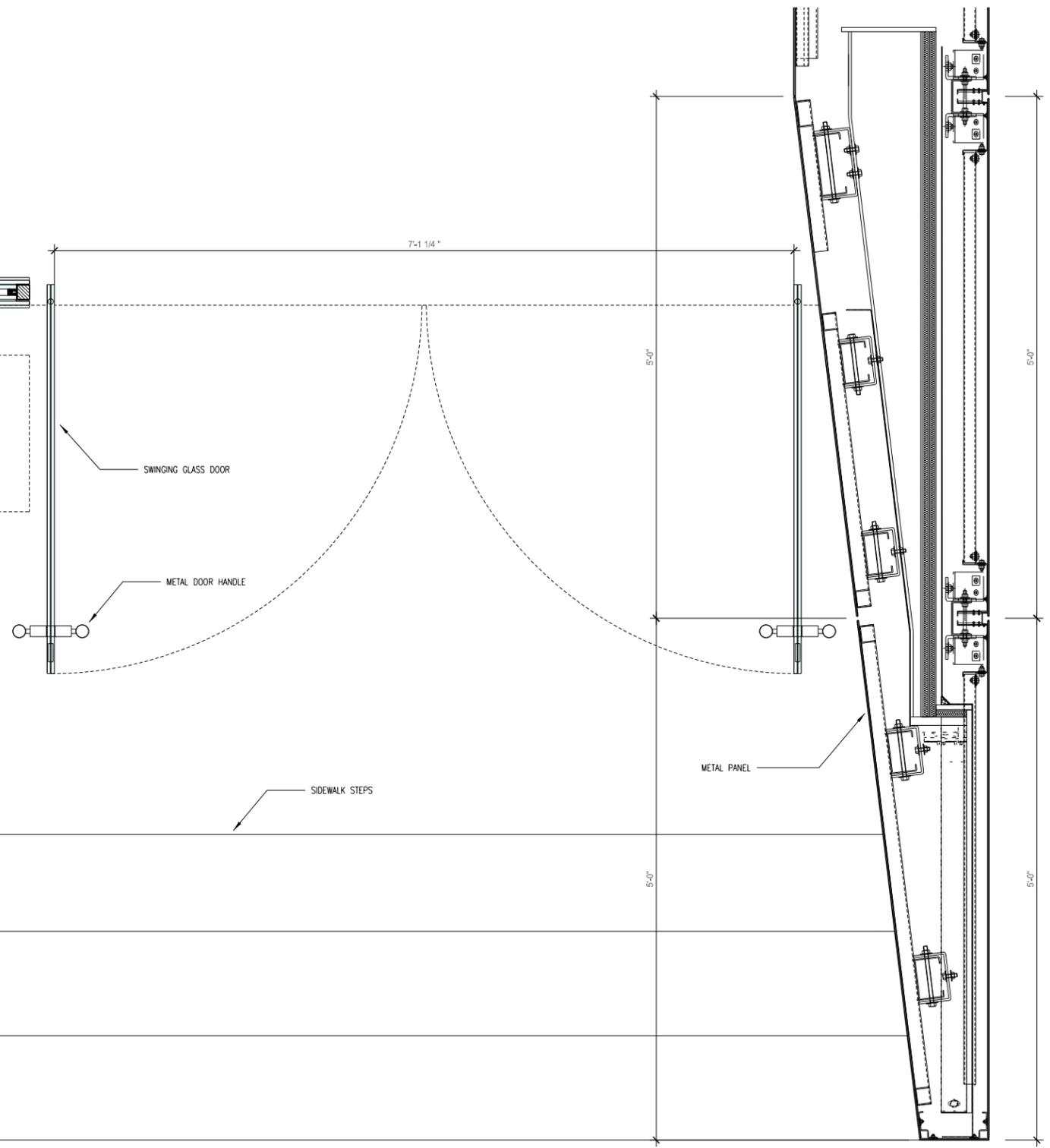
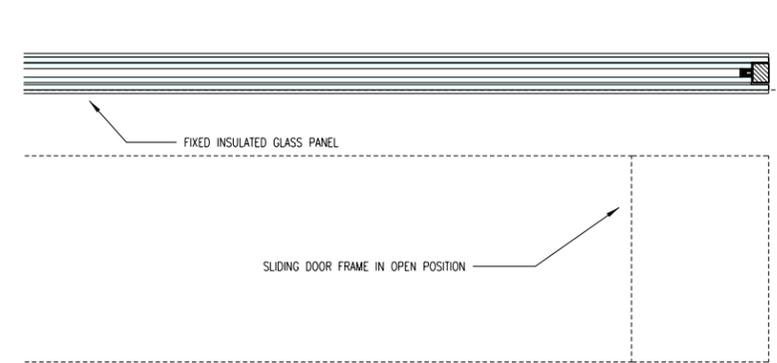
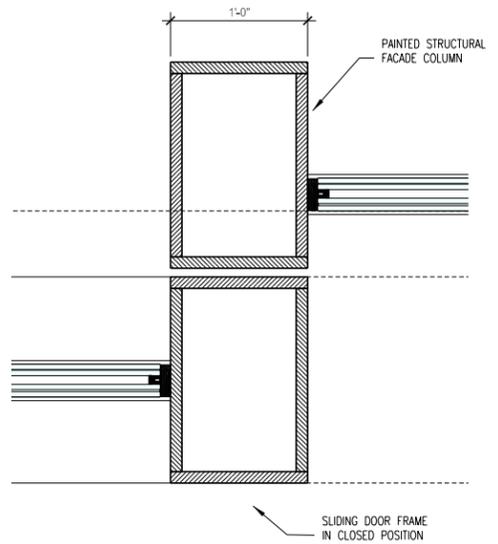
INSULATED GLASS PANEL

FIRE EXIT

STOCKTON STREET



NORTH ELEVATION
1/16" = 1'-0"



STOREFRONT DETAIL PLANS
 3/4" = 1' - 0"

01 EXTERIOR STOREFRONT PLAN DETAIL
 3/4" = 1' - 0"

Exhibit B

MORRISON | FOERSTER

425 MARKET STREET
SAN FRANCISCO
CALIFORNIA 94105-2482

TELEPHONE: 415.268.7000
FACSIMILE: 415.268.7522

WWW.MOFO.COM

MORRISON & FOERSTER LLP
NEW YORK, SAN FRANCISCO,
LOS ANGELES, PALO ALTO,
SAN DIEGO, WASHINGTON, D.C.
NORTHERN VIRGINIA, DENVER,
SACRAMENTO
TOKYO, LONDON, BRUSSELS,
BEIJING, SHANGHAI, HONG KONG

January 23, 2014

Writer's Direct Contact
+1 (415) 268.7246
CCarr@mofocom

Via E-Mail and U.S. Mail

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

Re: 300 Post Street (Case No. 2103.0628)

Dear Ms. Poling and Ms. Watty:

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

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

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

Jeannie Poling
Elizabeth Watty
January 23, 2014
Page Two

1. Summary

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

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

- There is absolutely no evidence of environmental impacts relating to soil contamination, greenhouse gas or air quality, and mere speculation that there may be is insufficient under CEQA (as the SEIU's attorneys and its consultant should know, since an appellate court specifically rejected the same arguments by them in a case last year).
- The Project complies with the Green Building Code. It is neither new construction nor a major alteration as defined in the City's Green Building Code, because it integrates much of the infrastructure of the existing Hyatt Complex, and is below the threshold criteria for a major alteration.
- Legislation effective January 1, 2014 exempts projects meeting certain criteria from analysis of aesthetic impacts under CEQA, and the Project meets those criteria.
- Concerns about the impact of the Project on historic resources do not reflect the Project's current design, or the Planning Department's recommendation that the Planning Code amendment be expressly limited to the Hyatt Complex. The Department's recommendation also disposes of any "piecemealing" claim.
- The SEIU's selective quotation of a portion of the Planning Department staff's discussion of an observation deck at the Hyatt deliberately omits the key conclusion – that the smaller project proposed by Apple eliminates the development bonuses that were the basis for requiring the observation deck.

Apple has developed stores throughout the world, including in some of the most challenging permitting regimes. By working with local governments and communities, Apple has been able to develop iconic stores in Paris, London, Berlin, Barcelona, Hong Kong, Shanghai, Sydney, New York, and other world-class cities. For years Apple has been

Jeannie Poling
Elizabeth Watty
January 23, 2014
Page Three

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

2. Project Background

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

Apple initially submitted a request for a preliminary project assessment in May 2013. Apple recognized that input from the Planning Department staff would be critical to the orderly implementation of a project that will be a showpiece of the City's premier retail area. By working closely and cooperatively with City staff and stakeholders, Apple was able to identify and respond to key concerns raised by the City and the community. As a result, Apple made several modifications to the Project, including changing the current, uninviting plaza to provide a much better public experience, altering plans for the Stockton Street frontage to include more window area, and finding a way to preserve and highlight the beloved Asawa folk art fountain. This has been a transparent and inclusive process, and the result is a project of which both Apple and the City can be proud. It represents the best of modern, sustainable design, befitting its place in the center of a world-class city.

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

Jeannie Poling
Elizabeth Watty
January 23, 2014
Page Four

3. The California Environmental Quality Act

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

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

As discussed above, the Project replaces the existing Levi's retail store at 300 Post Street with a smaller Apple retail store at the same location. Accordingly, the Project qualifies for a Categorical Exemption (Class II) for the "replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced." Cal. Code Regs. tit. 14 (known as CEQA Guidelines), § 15302. Here, it's indisputable that the Project will be located on the same site and will serve exactly the same purpose as the Levi's Store, a retail establishment. The Project's capacity is actually less than the Levi's store, by about 14,000 square feet, or 37%.

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

Jeannie Poling
Elizabeth Watty
January 23, 2014
Page Five

size as old structures” or in “exactly the same location.” 115 Cal. App. 3d at 839. The Planning Commission’s policies reflect this flexible standard, providing that the “same site” means the “same lot or lots as were occupied by the original structure(s).” Planning Commission Motion No. 14952, “Categorical Exemptions from the California Environmental Quality Act,” August 17, 2000.

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

B. The “Unusual Circumstances” Exception Does Not Apply to the Project

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

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

The SEIU’s Letter fails to recognize these dual elements, and the need for a causal relationship between them in order for the exception to apply. This is a critical and misleading omission. The exception would apply to the Project only if the proposal was so unusual that it would cause impacts outside the reasonable realm for a project otherwise

Jeannie Poling
Elizabeth Watty
January 23, 2014
Page Six

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

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

It is true that, like most replacement projects, the Project would require certain City approvals in order to be built, specifically a variance to allow for less storefront transparency on the Stockton Street façade than is currently permitted under Planning Code § 145.1(c)(6). The Planning Code requires street frontages to have no less than 60% transparency at ground level to allow for visibility into buildings. However, such an adjustment from the established standards does not create an “unusual circumstance” under CEQA. The requirement is not environmental, but rather reflects the City's policy determinations that an open storefront encourages customers and discourages crime (with more “eyes on the street”), reduces energy consumption through the use of natural light, and enhances curb appeal. See San Francisco Planning Department, *Guidelines for Storefront Transparency* (Nov. 2013). Those goals are realized here, where the entire front façade on Post Street is glass, as is the rear façade on the plaza. Apple has worked with the Planning staff to provide significant transparency on Stockton Street via a floor to ceiling glass panel. However, in the end, as discussed in more detail in Section E, below, these types of aesthetic issues are not considered CEQA impacts for infill developments such as the Project, and therefore cannot support application of the unusual circumstances exception. See *Ass'n for Prot. of Env'tl. Values in Ukiah*, 2 Cal. App. 4th 720 at 736 (alleged environmental impacts must be related to City's approval of a nonconforming use to be considered an “unusual circumstance”).

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

Jeannie Poling
 Elizabeth Watty
 January 23, 2014
 Page Seven

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

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

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

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

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

Jeannie Poling
Elizabeth Watty
January 23, 2014
Page Eight

micropiles and footings required to support the new structure. The use of micropiles eliminates the need for deep excavations. The design currently envisions two main column foundations that are approximately 19' x 10' x 6' deep, three additional wall footings and about twelve other minor footings that are approximately 5' x 5' x 3' deep.

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

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

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

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

Even if there were evidence of soil contamination—which there is not—it would be insufficient to raise a fair argument of an environmental impact. In *Parker Shattuck*, unlike here, Mr. Hagemann was able to demonstrate the presence of contamination. Nevertheless, the court specifically held that the mere presence of past contamination on a property is not evidence of a significant environmental impact, without evidence that it was at a level presenting a health risk to construction workers. The concern that the site may have contaminants that may affect construction workers is far too speculative, and falls outside of the scope of CEQA.

Jeannie Poling
Elizabeth Watty
January 23, 2014
Page Nine

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

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

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

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

i. No New Greenhouse Gas Emissions

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

http://images.apple.com/environment/reports/docs/Apple_Facilities_Report_2013.pdf

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

Jeannie Poling
Elizabeth Watty
January 23, 2014
Page Ten

ii. Construction Dust Will Not Be Significant

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

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

iii. There Are No Sensitive Receptors

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

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

Jeannie Poling
Elizabeth Watty
January 23, 2014
Page Eleven

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

iv. The Façade Glass Is Highly Efficient

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

v. The Project Complies with the Green Building Code

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

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

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

(1) Not "New Construction"

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

Jeannie Poling
Elizabeth Watty
January 23, 2014
Page Twelve

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

In pre-application meetings with the Department of Building Inspection (“DBI”) and Fire Department staff, the Project has been treated as an alteration to the existing Hyatt Complex, which is a single, integrated structure across the entire property. *See* Preapplication Meeting Minutes at 1 (December 24, 2013). Written summaries of these meetings were prepared and signed by DBI staff. Applicants are entitled to rely on these signed written summaries, which expressly state that such summaries “will be honored by the responsible plan reviewer during the plan review process and subsequently by field inspection staff.” The new Apple store will be built atop an existing Hyatt ballroom. It will share the Hyatt’s loading dock, chilled water supply, heating hot water supply, potable water supply, low voltage power supply, sanitary and rainwater, and drainage. Integrating the existing, large-scale Hyatt systems is more efficient than developing stand-alone systems for the Project.

Integrating new construction with older portions of the existing structure is part and parcel of building an infill project in an existing City block, particularly on top of an existing building. As a result, the Project is fundamentally different from new construction, where typically a builder would start anew. For these reasons, DBI, after carefully reviewing the Project, has accepted a building permit for alteration. *See* Building Permit Application No. 2013.1216.4258. It has not indicated that permits for demolition and new construction are required, or that the requirements for new construction apply.

(2) Not a “Major Alteration”

SF Green classifies as “Major Alterations” those “[a]lterations where interior finishes are removed and significant upgrades to structural and mechanical, electrical and/or plumbing systems are proposed where areas of such construction are 25,000 gross square feet or more.” San Francisco Green Building Code § 202. Because the Project is under this bright-line threshold, it is not a Major Alteration under SF Green.

The SEIU claims that the Planning Department’s Preliminary Project Assessment included the designation of the Project as a “Major Alteration by the San Francisco Department of Building Inspection.” Hagemann Report at 4. This is flatly false. The Preliminary Project Assessment addressed the principal Planning Code requirements for the Project. DBI was not involved in drafting the letter, which was on Planning Department letterhead. Nothing in the letter indicated that DBI had determined the Project to be a “Major Alteration” under SF Green.

Jeannie Poling
Elizabeth Watty
January 23, 2014
Page Thirteen

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

E. CEQA Does Not Require Analysis of the “Aesthetic Impacts” of the Project

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

Even if the aesthetics of the Project could properly be considered an impact under CEQA, the location of the Project on Union Square could not present “unusual circumstances” with respect to such alleged impacts. The existing retail establishment at the site—the Levi’s store—is a modern-era store, renovated in 1998, facing Union Square. Updating this retail location with a smaller store designed to modern, innovative, and sustainable standards, specifically for Apple’s retail operations, is a natural progression for a City at the forefront of urban design. Indeed, it arguably *would* be unusual if the Levi’s store were replaced by an antiquated and outdated design.

F. There is No Impact on Historic Resources

The claim in the SEIU’s Letter that there is a fair argument of historic resource impacts associated with the Apple Project is also wrong. To support this contention, SEIU cites two sources: the comments of the Architectural Review Committee (“ARC”) of the

Jeannie Poling
Elizabeth Watty
January 23, 2014
Page Fourteen

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

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

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

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

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

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

Jeannie Poling
Elizabeth Watty
January 23, 2014
Page Fifteen

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

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

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

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

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

ii. The Planning Code Amendment Would Not Cause a "Substantial Adverse Change" to the Conservation District

We understand the Planning Department will recommend that the Planning Code amendment allow the Planning Commission to approve, on a case-by-case basis, replacement construction of an existing secondary structure that exceeds the floor area ratio limit. This proposed amendment would be expressly limited to apply only to the Hyatt Complex, i.e., it could not possibly affect historic buildings elsewhere in the Conservation District. This change specifically addresses the contention of the SEIU's preservation consultant—that the amendment could facilitate demolition of historic buildings throughout the Conservation District.

Though it is now a moot point, the SEIU has never made a valid argument regarding historic resource impacts. Even if applied more broadly throughout the C-3-R District and Conservation District, the proposed legislation would allow the Planning Commission only

Jeannie Poling
Elizabeth Watty
January 23, 2014
Page Sixteen

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

iii. **There Is No Improper Piecemealing**

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

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

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

The SEIU’s Letter claims the City improperly failed to enforce a mitigation measure for an observation deck when the Hyatt was constructed in 1972. SEIU Letter at 20-21. Not only is this irrelevant to the Project and CEQA in general, but the SEIU’s Letter purposely misleads by quoting only a part of the staff’s discussion, and failing to disclose that the

Jeannie Poling
Elizabeth Watty
January 23, 2014
Page Seventeen

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

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

Sincerely,



Christopher J. Carr

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

