



# SAN FRANCISCO PLANNING DEPARTMENT

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## Executive Summary Planning Code Text Change HEARING DATE: NOVEMBER 17, 2016

**Project Name:** Fees in Lieu of Open Space in the Downtown Support Special Use District

**Case Number:** 2014.1267T [Board File No. 140877-2]

**Initiated by:** Supervisor Kim/ V1 Introduced on July 29, 2014  
V2 Introduced on July 29, 2016

**Reviewed by:** AnMarie Rodgers, Senior Policy Advisor  
anmarie.rodgers@sfgov.org, 415-558-6395

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

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### PLANNING CODE AMENDMENT

Supervisor Kim introduced the first version of this proposed Ordinance in 2014. This case report focuses primary on the current draft, Version 2 which was introduced on July 29, 2016. This Version 2 of the proposed Ordinance would amend the Downtown Support Special Use District to authorize a monetary contribution (in lieu fee) to the requirements for Privately-Owned Public Open Space (POPOS), exclude certain features from floor area ratio and gross floor area calculations, and dedicate the monetary contribution for lighting and safety improvements at Victoria Manolo Draves Park. This ordinance would also make the standard affirmations of the Planning Department's California Environmental Quality Act determination; and findings of consistency with the General Plan and the eight priority policies of Planning Code as described in Section 101.1.

#### The Way It Is Now:

1. The Downtown Support Special Use District (DS-SUD), Planning Code Section 247, was established in order to allow a certain area within the C-3-S (Downtown, Support) District to be able to be developed for hotel use with an increased basic floor area ratio of 7.5 to 1 (see Exhibit C for map). The standard FAR in C-3-S is 5.0 to 1.
2. Section 138 establishes requirements for Privately-Owned Public Open Space (POPOS). The DSSUD does not currently allow property owners to pay a fee in lieu of the open space required in Section 138.
3. Per Section 102.9(b)(9) of the Planning Code, balconies, porches, roof decks, terraces, courts and similar features are exempt from FAR calculations provided that they are open to the sky.

#### The Way It Would Be:

The proposed legislation would:

1. Rename the Downtown Support Special Use District (DS-SUD) to the Downtown Support Open Space Demonstration Special Use District (DSOSD-SUD).

2. Allow the project sponsor of 888 Howard Street to make a payment of \$2.5 million in lieu of providing terraces on the 4<sup>th</sup> and 6<sup>th</sup> floors that were required POPOS as part of the 2002 entitlement of the hotel.
3. Allow balconies, porches, roof decks, terraces, courts and similar features to still be exempt from FAR calculations even if this space is covered by a retractable canopy and support structures. This space would still be used to calculate Gross Floor Area where fees are concerned.

## **ISSUES AND CONSIDERATIONS**

### **Intercontinental Hotel**

This Ordinance is being proposed because of the difficulty that the Intercontinental Hotel has experienced in maintaining its requirements for Privately-Owned Public Open Space (POPOS), consistent with the project's conditions of approval. Located at 888 Howard Street, the Intercontinental Hotel was approved by the Planning Commission on June 6, 2002. The proposal approved by the Commission was to remove the existing 100-space parking lot and construct a 31-story hotel building, approximately 320 feet tall, with approximately 430,000 gross square feet, and 572 guest rooms. The project included up to 30,000 square feet of below-grade parking (space for 73 cars or approximately 115 if operated on a valet basis) and a second below-grade level for mechanical equipment and storage. The proposed project provided approximately 12,600 square feet of publicly-accessible open space in the form of two terraces, one on the 3rd floor and one on the 5th floor, located between the 31-story hotel tower and the adjacent 7-story building. The 3rd floor terrace contains approximately 7,430 square feet and the 5th floor terrace contains approximately 5,170 square feet. At the time of approval, the newly-formed DS-SUD enabled in lieu payments to satisfy requirements of public art and open space. A public art fee payment was made to San Francisco Museum and Historical Society for approximately \$1.2 M to go toward the payment of the preservation of a Landmark Building in the C-3 and an additional payment to supplement the project's open space provision was made to Friends of Mint Plaza with a \$194,000 payment, which helped enable the creation of Mint Plaza.

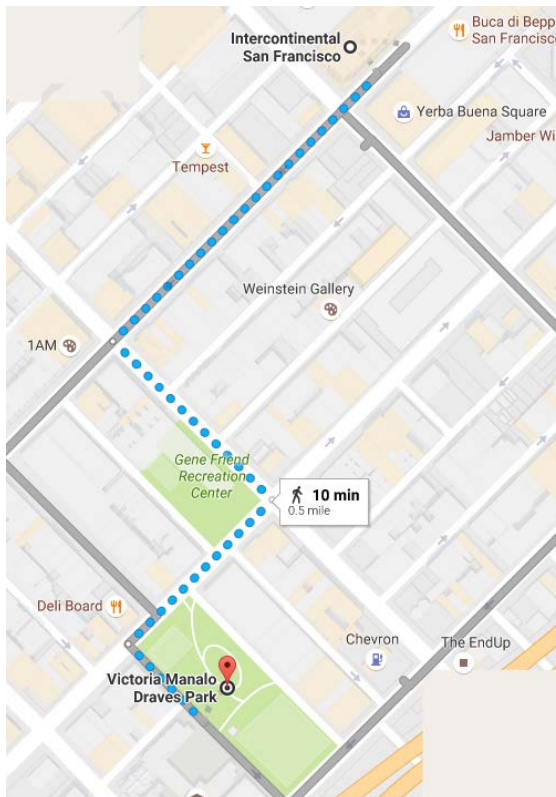
According to the motion, the Planning Code requirements for the hotel's POPOS equaled approximately 8,600 square feet. That said, the Commission's resolution (Motion No. 16421) recorded that "although the area proposed (12,6000 square feet total) is approximately 4000 square feet greater than the minimum required (8600 square feet)" the Commission had considerable "concerns about the utility and quality of the terraces" adding that "in San Francisco's climate, shaded open spaces are much less desirable than those that receive direct sunlight". For this reason the Motion continued,

"The Commission therefore requires, as a condition of approval, that the Project Sponsor provide, in addition to the 12,600 square feet of space on the two terraces, an additional 4,000 square feet of open space pursuant to Section 138 and the Guidelines for Downtown Open Space." See Conditions of Approval 5.B and 6.A in this Motion. With this additional 4000 square fee of open space the Commission finds that, on balance, the proposed publicly-accessible open spaces, including the terraces on the 3<sup>rd</sup> and 5<sup>th</sup> floors of the hotel, comply with Section 138 of the Planning Code and the *Guidelines for Downtown Open Space* in the Downtown Area Plan."

The additional 4000 sf referenced in this motion was the creation of Mint Plaza, funded by a \$194,000 payment by the hotel's project sponsor.



*Existing Terraces on the Intercontinental Hotel at 888 Howard Street. The proposed Ordinance would surrender the POPOS requirement in exchange for a payment to the Recreation & Parks Department for improvements at Victoria Manolo Draves Park.*



*Victoria Manalo Draves Park. This park, newly opened in 2006, lies between Folsom, Harrison, 6<sup>th</sup> and 7<sup>th</sup> Streets. The park offers a playground, softball field, basketball court, community garden, open lawn and picnic areas and is about a 10 minute walk from the Intercontinental Hotel.*

### **Review & Required Findings**

The 2014 version of the proposed legislation would have only authorized in-lieu payments and exempted the enclosure of the terraces from FAR limits after findings were made by the Planning Commission. This second 2016 version of the proposed Ordinance authorizes the payment through the legislation without specific approval of the Planning Commission. In the 2014 version of the proposed Ordinance, the Commission may make this determination if the project meets one or more of the following reasons:

- a) the development site has physical constraints;
- b) an existing open space has proven to be little-used;
- c) the project cannot provide safe, convenient access to the public;
- d) the square footage of open space is not sufficient to provide a usable open space; or
- e) such additional reasons as the Commission may determine.

In the revised 2016 version of the proposed Ordinance, the Planning Commission would *not* review the project after enactment of the proposed Ordinance. This Second Version of the Ordinance does require the Board of Supervisors to make the following findings:

- a) the existing open space is cold and shadowed and will have increased shadow when the 5M project across the street is constructed;
- b) the terraces are physically constrained; and
- c) the terraces have been proven to be little used as open space and present s a safety concern for hotel management and guests.

### **The Amount of Fees and the Amount of Open Space**

The first version of the proposed Ordinance established a payment of “\$87.84 for each square foot of gross floor area required by Section 138”. This first version would have equaled \$87.84 x 8600sf of POPOS space for a total payment of \$755,424 into a new Controller’s fund for recreation and open space in the SoMa Area.

This current, second version of the proposed Ordinance would establish a significantly higher square footage fee of \$290.70 per square foot. This per square foot fee multiplied by 8600sf Code requirement for POPOS space equals a total payment of \$2.5 million to the Recreation and Parks Department.

### **Alternative Analysis**

Alternative analysis of a “in lieu fee for POPOS” could suggest that a fee amount should be set at a rate that would enable both acquisition and construction of new open space, equivalent in size to the POPOS requirement. Staff would estimate this fee to be closer to \$500, assuming a \$250/sf acquisition cost in this neighborhood and assuming a \$250/sf improvement costs to the City. A \$500/sf fee applied to the Code Required POPOS (8600sf) would equal \$4.3 million. A further alternative would be to apply the fee amount not only to the Code required open space of 8600sf but also to the total square footage of 12,600sf required by the Commission’s motion. A \$500/sf fee applied to all of the square footage of on-site POPOS space required by the Commission (12,600sf) would equal \$6.3 million.

### **Privately-owned public open spaces or “POPOS”**

Privately-owned public open spaces (POPOS) are publicly accessible spaces in forms of plazas, terraces, atriums, small parks, and even snippets which are provided and maintained by private developers. In San

Francisco, POPOS mostly appear in the Downtown office district area. Prior to 1985, developers provided POPOS under three general circumstances: voluntarily, in exchange for a density bonus, or as a condition of approval. The 1985 [Downtown Plan](#) created the first systemic requirements for developers to provide publicly accessible open space as a part of projects in C-3 Districts. The goal was to “provide in the downtown quality open space in sufficient quantity and variety to meet the needs of downtown workers, residents and visitors.” ([See Planning Code Section 138](#)). Since then, project sponsors for residential projects may provide POPOS instead of their required open spaces in the Downtown Residential (DTR) and Eastern Neighborhoods ([See Planning Code Section 135](#)).

### **Impact Fees Related to the Addition of New Floor Area Ratio**

Under the version 2 of the proposed Ordinance it is unclear if the project sponsor would need to pay impact fees for the additional FAR. Planning Code Section 124 establishes Basic Floor Area Ratio (FAR) limits and Maximum Floor Area Ratio (FAR) Limits. In certain instances, the addition of new FAR to an existing building (such as the increase in FAR through the proposed enclosure of terraces) will trigger application of certain development impact fees, as regulated by Article Four of the Planning Code. The fees in Article Four support the delivery of essential services such as transit, open space, and childcare in a proportional manner related to the new demand created by the new FAR.

### **Improvements to Victoria Manolo Draves Park**

According to the Recreation and Parks Department, “this brand new, 2-acre park is a welcome addition to the SOMA neighborhood, next to Bessie Carmichael School. With a softball field, basketball court, dual-level playground, picnic area, community garden and large, grassy field, there’s enough space for everyone to come out and play. The park is named for local diving champion Vicki Manalo Draves, the first Filipina-American to compete in the Olympic games. In 1948, she won two gold medals, in springboard and platform diving.” According to the Recreation and Parks Department website, this park is open 5am to Midnight.

## **REQUIRED COMMISSION ACTION**

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

## **RECOMMENDATION**

Recommend Approval with two modifications:

1. Clarify that all development impact fees typically due in relation to increased FAR should be paid by the project sponsor.
2. Replace the proposed findings authorizing the in lieu fee payment with more limited findings to discourage additional property owners from proposing privatization of additional, existing POPOS.



## BASIS FOR RECOMMENDATION

The Department's strong preference is to not allow a project sponsor to opt out of providing onsite usable open space by paying an in-lieu fee. This preference to uphold and space and POPOS requirements is held both during the original approvals and is maintained against retroactive in-lieu payments. The open space requirement in Planning Code Section 138 helps ensure that there is suffice open space for people who live and work in the downtown area. This concept was pioneered by the Downtown Plan and remains critical to a functional high-density district. Ensuring that POPOS or "POPS" as these spaces are often called outside of San Francisco, remain open to the public has been a struggle since their creation in the mid-1980s<sup>1 2 3</sup>. Locally, the San Francisco Chronicle's John King writes about the virtues and the challenges of such spaces<sup>4 5 6</sup>.

The elevated terraces within the Intercontinental Hotel that were created to satisfy the POPOS requirement were noted by the Commission to be subpar at the approval hearing. To be sure, the Intercontinental Hotel has complicated the matter by closing the POPOS to hold private events from time to time. The Planning Department has an active enforcement complaint dating back to 3/13/2008 for "Failure to abide by Conditions of Approval per Motion No. #16421 for the following: Open Space, Pedestrian Streetscape Improvements, Childcare Requirement, G. First Source Hiring: Occupancy Program". Still, it remains true that elevated POPOS are discouraged by the Department today.

At the same time, the Victoria Manalo Draves Park provides the community with accessible amenities for both active and passive recreation. Given that the park is open from 5am to midnight, lighting and safety improvements at this park could offer the community a more usable resource than the maintenance of the elevated terraces as open spaces. Supervisor Kim's Office reports that although this park is popular for residents there is a strong desire for longer hours and enhanced safety. For more than two years, the

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<sup>1</sup> Garrett, Bardley. "The privatisation of cities' public spaces is escalating," *The Guardian*. August 4, 2015. Retrieved from: <https://www.theguardian.com/cities/2015/aug/04/pops-privately-owned-public-space-cities-direct-action> on November 8, 2016.

<sup>2</sup> Kayden, S. Jerold. "Meet Me at the Plaza", *The New York Times*. October 19, 2011. Retrieved from: <http://www.nytimes.com/2011/10/20/opinion/zuccotti-park-and-the-private-plaza-problem.html> on November 8, 2016.

<sup>3</sup> Badger, Emily. "How to Make Privately Owned Public Spaces Truly Open to the Public," *The Atlantic Citylab*. December 17, 2012. Retrieved from: <http://www.citylab.com/politics/2012/12/how-make-privately-owned-public-spaces-truly-open-public/4168/> on November 8, 2016.

<sup>4</sup> King, John. "S.F. making sure high-rise owners ID hidden public spaces," *San Francisco Chronicle*. February 8, 2015. Retrieved from: <http://www.sfchronicle.com/bayarea/article/S-F-making-sure-high-rise-owners-ID-hidden-6070126.php> on November 8, 2016.

<sup>5</sup> Mitchell, David. "What Makes a Great Privately Owned Public Space: a review of John King's Lecture", *ASLA*. January 14, 2013. Retrieved from: <http://www.asla-ncc.org/four-nights-with-three-lectures-part-2/> on November 8, 2016.

<sup>6</sup> King, John. "Privately owned public spaces: Guidance needed" *San Francisco Chronicle*. April 9, 2014. Retrieved from: <http://www.sfgate.com/bayarea/place/article/Privately-owned-public-spaces-Guidance-needed-3342258.php> on November 8, 2016.

project sponsor worked with the Supervisors office and Planning Department staff to find space for the creation of a new park. Unfortunately, no suitable space could be found.

For these reasons, the Department recommends support of the proposed Ordinance with two modifications.

1. **Clarify that all development impact fees due in relation to increased FAR should be paid by the project sponsor.** While it is appropriate to allow the enclosure of the terraces to increase functionality, there is no reason that this additional floor area should be exempted from applicable impact fees. The fees have been established by nexus to be related to new demand from the project and therefore should be paid by the project sponsor.
2. **Replace the proposed findings authorizing the in lieu fee payment with more limited findings to discourage additional property owners from proposing privatization of additional, existing POPOS.** This particular case is unusual. Care should be taken that approval of this proposed Ordinance does not encourage other property owners to “fee out” of the POPOS requirement via an in lieu fee. The draft Board findings in the proposed Ordinance cite concern of additional shadows from proposed development; constrained space; light usage by the public; and safety concerns of hotel management and guests. These concerns could be raised by or even manufactured by owners of many POPOS within San Francisco. For this reason, the Department recommends that the Commission suggest additional limiting findings for the Board of Supervisors to make within the proposed Ordinance. Recommended findings include specific conditions that are unlikely to be replicated in the existing conditions of other San Francisco POPOS. Specifically, the Department recommends that the Commission recommend the following findings to the Board of Supervisors:

“That while the Board holds that maintaining the public nature of POPOS spaces are the responsibility of the property owner, in this case the Board finds and determines the following:

- a. that the Commission’s original approval noted the poor quality of the open space;
- b. that alternative, suitable open space sites cannot be acquired within the neighborhood of the project; and
- c. that improvements to the quality of the existing open space are neither feasible nor appropriate; and
- d. that while the City should always strive to maintain requirements associated with development approvals, in this instance the alternative in-lieu payment provides greater public benefit than the original open space requirement.”

## **ENVIRONMENTAL REVIEW**

The proposal ordinance would result in no physical impact on the environment. The Project was determined to be not defined as a project under California Environmental Quality Act (“CEQA”) Guidelines Section 15378 and 15080(c)(2) because it does not result in a physical change in the environment as described in the determination contained in the Planning Department files for this Project.

## **PUBLIC COMMENT**

As of the date of this report, the Planning Department has not received any comments about Version 2 of the proposed Ordinance.

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

- Exhibit A:      Draft Planning Commission Resolution
- Exhibit B:      Board of Supervisors File No. 140877, Version 2
- Exhibit C:      Planning Commission Motion No. 16421 (2002 entitlement for hotel)





# SAN FRANCISCO PLANNING DEPARTMENT

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## Planning Commission Draft Resolution

HEARING DATE: NOVEMBER 17, 2016

**Project Name:** Fees in Lieu of Open Space in the Downtown  
Support Special Use District

**Case Number:** 2014.1267T [Board File No. 140877-2]

**Initiated by:** Supervisor Kim/ V1 Introduced on July 29, 2014  
V2 Introduced on July 29, 2016

**Reviewed by:** AnMarie Rodgers, Senior Policy Advisor  
anmarie.rodgers@sfgov.org, 415-558-6395

**Recommendation:** Recommend Approval, with Modifications

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**RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE THAT WOULD AMEND THE PLANNING CODE TO AMEND THE DOWNTOWN SUPPORT SPECIAL USE DISTRICT TO AUTHORIZE A MONETARY CONTRIBUTION (IN LIEU FEE) TO THE REQUIREMENTS FOR PRIVATELY-OWNED PUBLIC OPEN SPACE (POPOS), EXCLUDE CERTAIN FEATURES FROM FLOOR AREA RATIO AND GROSS FLOOR AREA CALCULATIONS, AND DEDICATE THE MONETARY CONTRIBUTION FOR LIGHTING AND SAFETY IMPROVEMENTS AT VICTORIA MANOLO DRAVES PARK; AFFIRM THE PLANNING DEPARTMENT'S DETERMINATION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; AND MAKE FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND THE EIGHT PRIORITY POLICIES OF PLANNING CODE SECTION 101.1, AND FINDINGS OF PUBLIC NECESSITY, CONVENIENCE, AND WELFARE UNDER PLANNING CODE SECTION 302.**

WHEREAS, on July 29, 2014 and July 29, 2016 Supervisor Kim introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 140877, amend the Downtown Support Special Use District to authorize a monetary contribution (in lieu fee) to the requirements for Privately-Owned Public Open Space (POPOS), exclude certain features from floor area ratio and gross floor area calculations, and dedicate the monetary contribution for lighting and safety improvements at Victoria Manolo Draves Park; and

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on November 17, 2016; and

WHEREAS, the proposed Ordinance has been determined to be not defined as a project under California Environmental Quality Act ("CEQA") Guidelines Section 15378 and 15080(c)(2) because it does not result in a physical change in the environment; and

WHEREAS, the Planning 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

Department staff and other interested parties; and

WHEREAS, all pertinent documents may be found in the files of the Department, as the custodian of records, at 1650 Mission Street, Suite 400, San Francisco; and

WHEREAS, the Planning Commission has reviewed the proposed Ordinance; and

MOVED, that the Planning Commission hereby recommends that the Board of Supervisors **approve with modifications** the proposed ordinance. Specifically, the Commission recommends the following modifications:

1. Clarify that all development impact fees typically due in relation to increased Floor Area Ratio (FAR) should be paid by the project sponsor.
2. Replace the proposed findings authorizing the in lieu fee payment with more limited findings to discourage additional property owners from proposing privatization of additional, existing POPOS. Specifically, the Commission recommends the following findings:  
“While the Board holds that maintaining the public nature of POPOS spaces are the responsibility of the property owner, in this case the Board finds and determines the following:
  - a. that the Commission’s original approval noted the poor quality of the open space;
  - b. that alternative, suitable open space sites cannot be acquired within the neighborhood of the project; and
  - c. that improvements to the quality of the existing open space are neither feasible nor appropriate; and
  - d. that while the City should always strive to maintain requirements associated with development approvals, in this instance the alternative in-lieu payment provides greater public benefit than the original open space requirement.”

## **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 Commission’s strong preference is to not allow a project sponsor to opt out of providing onsite usable open space by paying an in-lieu fee. This preference to uphold open space and POPOS requirements is held both during the original approvals and is maintained against retroactive in-lieu payments.
2. The open space requirement in Planning Code Section 138 helps ensure that there is suffice open space for people who live and work in the downtown area. This concept was pioneered by the Downtown Plan and remains critical to a functional high-density district.
3. These specific elevated terraces within the Intercontinental Hotel that were created to satisfy the POPOS requirement were noted by the Commission to be subpar at the approval hearing. The Intercontinental Hotel has complicated the matter by closing the POPOS to hold private events from time to time. The Planning Department has an active enforcement complaint dating back to

3/13/2008 for “Failure to abide by Conditions of Approval per Motion No. #16421 for the following: Open Space, Pedestrian Streetscape Improvements, Childcare Requirement, G. First Source Hiring: Occupancy Program”.

4. That said, the Victoria Manalo Draves Park provides the community with accessible amenities for both active and passive recreation. Given that the park is open from 5am to midnight, lighting and safety improvements at this park could offer the community a more usable resource than the maintenance of the elevated terraces as open spaces.
5. Supervisor Kim’s Office reports that although this park is popular for residents there is a strong desire for longer hours and enhanced safety. For more than two years, the project sponsor worked with the Supervisors office and Planning Department staff to find space for the creation of a new park. Unfortunately, no suitable space could be found.
6. **General Plan Compliance.** The proposed Ordinance and the Commission’s recommended modifications are consistent with the following Objectives and Policies of the General Plan:

## **DOWNTOWN AREA PLAN**

### **OBJECTIVE 9**

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

#### **Policy 9.1**

Require usable indoor and outdoor open space, accessible to the public, as part of new downtown development.

#### **Policy 9.2**

Provide different kinds of open space downtown.

#### **Policy 9.3**

Give priority to development of two categories of highly valued open space; sunlit plazas and parks.

#### **Policy 9.5**

Improve the usefulness of publicly owned rights-of-way as open space.

#### **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.

#### **Policy 10.5**

Address the need for human comfort in the design of open spaces by minimizing wind and maximizing sunshine.

*The proposed Ordinance will exchange an ill-designed Privately-Owned Public Open Space for improvements to a highly valued and sunlit park. The Department, the District Board Member, and the Project Sponsor searched unsuccessfully for two years for an opportunity to purchase land for a new park and/or improve a publically owned right-of-way. After much deliberation, the Commission has determined that the in lieu payment has been determined to provide more public benefit than non-visible, aboveground terraces.*

## **RECREATION & OPEN SPACE ELEMENT**

### **Policy 1.4**

Maintain and repair recreational facilities and open spaces to modern maintenance standards.

### **Policy 1.10**

Ensure that open space is safe and secure for the City's entire population.

### **Policy 1.11**

Encourage private recreational facilities on private land that provide a community benefit, particularly to low and moderate-income residents.

*The proposed Ordinance will result in a net loss of open space and a loss of open space on private land. That said, the Commission has determined that more public benefit will result from safety and upkeep improvements to a park well-loved by residents, particularly low and moderate-income residents.*

7. **Planning Code Section 101 Findings.** The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

*The proposed Ordinance would not have a negative effect on neighborhood serving retail uses and will not have a negative effect on opportunities for resident employment in and ownership of neighborhood-serving retail.*

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

*The proposed Ordinance would not have a negative effect on housing or neighborhood character.*

3. That the City's supply of affordable housing be preserved and enhanced;

*The proposed Ordinance would not have an adverse effect on the City's supply of affordable housing.*

4. That commuter traffic not impede MUNI transit service or overburden our streets or

neighborhood parking;

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

5. 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 proposed Ordinance would not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired.*

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

*The proposed Ordinance would not have an adverse effect on City's preparedness against injury and loss of life in an earthquake.*

7. That the landmarks and historic buildings be preserved;

*The proposed Ordinance would not have an adverse effect on the City's Landmarks and historic buildings.*

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

*The proposed Ordinance would not have an adverse effect on the City's parks and open space and their access to sunlight and vistas. The proposed Ordinance will exchange an ill-designed Privately-Owned Public Open Space for improvements to a highly valued and sunlit park. The Department, the District Board Member, and the Project Sponsor searched unsuccessfully for two years for an opportunity to purchase land for a new park and/or improve a publically owned right-of-way. After much deliberation, the Commission has determined that the in lieu payment has been determined to provide more public benefit than non-visible, aboveground terraces. The proposed Ordinance will result in a net loss of open space and a loss of open space on private land. That said, the Commission has determined that more public benefit will result from safety and upkeep improvements to a park well-loved by residents, particularly low and moderate-income residents.*

8. **Planning Code Section 302 Findings.** The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

NOW THEREFORE BE IT RESOLVED that the Commission hereby recommends that the Board ADOPT the proposed Ordinance, with modifications as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on November 17, 2016

Jonas P. Ionin  
Commission Secretary

AYES:

NOES:

ABSENT:

ADOPTED:



BOARD of SUPERVISORS



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San Francisco 94102-4689  
Tel. No. 554-5184  
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October 13, 2016

Planning Commission  
Attn: Jonas Ionin  
1650 Mission Street, Ste. 400  
San Francisco, CA 94103

Dear Commissioners:

On July 29, 2014, Supervisor Kim introduced the following substitute legislation:

**File No. 140877**

**Ordinance amending the Downtown Support Special Use District to authorize a monetary contribution (in lieu fee) to satisfy required on-site open space requirements, exclude certain features from floor area ratio and gross floor area calculations, and dedicate the monetary contribution for lighting and safety improvements at Victoria Manolo Draves Park; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.**

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

Angela Calvillo, Clerk of the Board

A handwritten signature in blue ink, appearing to read "Alisa Somera".

By: Alisa Somera, Legislative Deputy Director  
Land Use and Transportation Committee

c: John Rahaim, Director of Planning  
Aaron Starr, Acting Manager of Legislative Affairs  
Scott Sanchez, Zoning Administrator  
Lisa Gibson, Acting Environmental Review Officer  
AnMarie Rodgers, Senior Policy Advisor

Jeanie Poling, Environmental Planning  
Joy Navarrete, Environmental Planning

[Planning Code - Downtown Support Special Use District; Fees in Lieu of On-Site Open Space]

**Ordinance amending the Downtown Support Special Use District to authorize a monetary contribution to satisfy required on-site open space requirements, exclude certain features from floor area ratio and gross floor area calculations, and dedicate the monetary contribution for lighting and safety improvements at Victoria Manolo Draves Park; affirming the Planning Department's California Environmental Act determination and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.**

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

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

Section 1. Findings.

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

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



1 adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the  
2 Board of Supervisors in File No. \_\_\_\_\_, and is incorporated herein by reference.

3  
4 Section 2. The Planning Code is hereby amended by revising Section 247, to read as  
5 follows:

6 **SEC. 247. DOWNTOWN SUPPORT OPEN SPACE DEMONSTRATION SPECIAL USE**  
7 **DISTRICT.**

8 (a) **Purpose.** In order to provide that a certain area within the C-3-S District be able  
9 to be developed for hotel use with an increased basic floor area ratio of 7.5 to 1, there shall be  
10 a "Downtown Support Special Use District" (also referred to as the "C-3-S (SU) District") as  
11 designated on Zoning Sectional Map 4 SU01 of the Zoning Map. ~~Development at densities above the~~  
12 ~~basic floor area ratio of 7.5:1 in this special use district will not be permitted.~~

13 (b) **Requirements.**

14 (1) **Floor Area Ratio.** The basic and maximum floor area ratio of the C-3-S  
15 (SU) District, after purchase of all market-rate, available TDR within the C-3-S District, shall  
16 be 7.5:1. Development at densities above the basic floor area ratio of 7.5:1 in this special use district  
17 will not be permitted. Roof eaves, cornices, or belt courses that project no more than two feet from the  
18 face of the building wall shall be excluded from the FAR calculation.

19 Where there are fewer square feet of TDR within the C-3-S District available than the  
20 Planning Commission determines is required for a project, the Planning Commission may, as  
21 part of a Section 309 review, authorize a project sponsor to make a monetary contribution  
22 towards the preservation of a Landmark building within the C-3 area in an amount to be  
23 determined by the Commission. For purposes of this Section 247, the C-3 area shall include  
24 any C-3 District and any P District adjacent thereto. All other provisions of this Code  
25 applicable to the C-3-S District shall apply in the C-3-S (SU) District.

1                   (2) **Gross Floor Area Calculation.** Notwithstanding the definition of Gross Floor  
2 Area in Section 102 of this Code, balconies, porches, roof decks, terraces, courts, and similar features  
3 shall be excluded from the calculation of Gross Floor Area if they are fully open to the sky, even if  
4 covered by retractable canopies and associated support structures; however, the features listed in  
5 subsection (b) of said definition, shall be used to calculate the in lieu fee authorized pursuant to  
6 subsection (b)(3) below.

7                   (3) **Privately-Owned Public Open Space Requirements; Payment of In-lieu Fee.**  
8 The Board of Supervisors hereby authorizes the payment of a fee of \$2,500,000 in lieu of the project  
9 sponsor's provision of the 4th and 6th floor terraces at 888 Howard Street as required on-site open  
10 space for the project constructed pursuant to this Section 247. The amount of the in-lieu fee represents  
11 a construction cost of \$290.70 per square foot of Gross Floor Area multiplied by the 8,600 square foot  
12 of open space required by Section 138 of this Code.

13                   In authorizing the payment of an in-lieu fee, the Board finds and determines that:

14                   (i) the existing open space is cold and shadowed, and will have increased  
15 shadow when the 5M project across the street is constructed;

16                   (ii) the terraces are physically constrained; and

17                   (iii) the terraces have been proven to be little used as open space and presents  
18 a safety concern for hotel management and guests.

19                   (c) **Authorized Use of the In-Lieu Fee.** The in-lieu fee shall be dedicated to the Recreation  
20 and Parks Department and used to improve the lighting and safety features of Victoria Manolo Draves  
21 Park, including any increased funding required to staff evening hours.

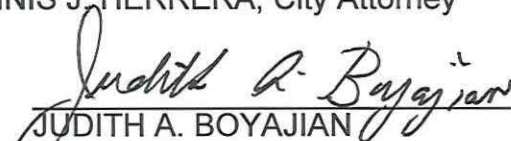
22  
23                   Section 3. Effective Date. This ordinance shall become effective 30 days after  
24 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
25

1 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
2 of Supervisors overrides the Mayor's veto of the ordinance.

3  
4 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
5 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
6 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
7 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
8 additions, and Board amendment deletions in accordance with the "Note" that appears under  
9 the official title of the ordinance.

10  
11 APPROVED AS TO FORM:  
12 DENNIS J. HERRERA, City Attorney

13 By:

  
14 JUDITH A. BOYAJIAN  
15 Deputy City Attorney  
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FILE NO. 140877

**REVISED LEGISLATIVE DIGEST**  
(Substituted 10/04/2016)

[Planning Code - Downtown Support Special Use District; Fees in Lieu of On-Site Open Space]

**Ordinance amending the Downtown Support Special Use District to authorize a monetary contribution to satisfy required on-site open space requirements, exclude certain features from floor area ratio and gross floor area calculations, and dedicate the monetary contribution for lighting and safety improvements at Victoria Manolo Draves Park; affirming the Planning Department's California Environmental Act determination and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.**

Existing Law

Planning Code Section 247 established the Downtown Support Special Use District (SUD) for property on 5th Street between Mission and Howard Streets. The purpose of the SUD was to allow a certain area within the C-3-S District to be developed for a hotel use. Within the SUD area, the basic and maximum floor area ratio, after purchase of all market-rate, available Transferable Development Rights (TDR) within the District, is 7.5:1. Where there are fewer square feet of TDR available than the Planning Commission determines is required, the Commission may authorize a project sponsor to make a monetary contribution towards the preservation of a Landmark building within the C-3 area in an amount to be determined by the Commission. All other provisions of the Planning Code apply within the SUD.

Amendments to Current Law

The SUD is proposed to be renamed the "Downtown Support Open Space Demonstration Special Use District" and will authorize the project sponsor of an existing project to make a monetary contribution of \$2,500,000 in lieu of providing terraces on the 4th and 6th floors at 888 Howard Street as required on-site open space. The amount of the in-lieu fee represents a construction cost of \$290.70 per square foot of Gross Floor Area multiplied by the 8,600 square feet of open space required by Planning Code Section 138. The in-lieu fee is dedicated to the Recreation and Parks Department and shall be used to improve the lighting and safety features of Victoria Manolo Draves Park.

In the SUD, development at densities above the basic floor area ratio of 7.5:1 will not be permitted within the SUD but roof eaves, cornices, or belt courses which project no more than two feet from the face of the building will be excluded from the floor area ratio calculations. Balconies, porches, roof decks, terraces, courts, and similar features are excluded from the calculation of Gross Floor Area, as defined in Section 102 of the Planning Code, if they are fully open to the sky even if covered by retractable canopies and associated support structures; however, these elements are included in the calculation of the in-lieu fee.

FILE NO. 140877

### Background Information

An existing hotel project that was developed pursuant to the SUD established in Planning Code Section 247 has been unable to satisfy the requirement of on-site open space due to physical constraints and other factors. Despite efforts by the hotel to increase access and visibility to the existing open space, it largely remains unused and presents a safety concern for hotel management and guests. Members of the South of Market community have expressed a desire for enhanced safety and expanded hours at the popular neighborhood park, Victoria Manolo Draves Park. The Recreation and Parks Department has researched the installation of lighting at the entrance, the perimeter and over the playing fields and basketball courts in order to increase safety as well as expand the number of hours at which the community can access the park after dusk.

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**SAN FRANCISCO**  
**PLANNING COMMISSION**  
**MOTION NO. 16421**

**ADOPTING FINDINGS RELATED TO APPROVAL BY THE PLANNING COMMISSION PURSUANT TO SECTION 309, INCLUDING DETERMINATIONS OF COMPLIANCE AND THE GRANTING OF CERTAIN EXCEPTIONS (FROM THE REQUIREMENTS SET FORTH IN PLANNING CODE SECTIONS 148, 270(d)(2), AND 270(d)(3)) FOR A PROPOSED HOTEL LOCATED AT 888 HOWARD STREET ON ASSESSOR'S BLOCK 3724, LOT 66 IN A C-3-S (DOWNTOWN COMMERCIAL SUPPORT) DISTRICT AND WITHIN A 160-F HEIGHT AND BULK DISTRICT.<sup>1</sup>**

**RECITALS**

On July 31, 2000, John Buss, of Continental 155 – 5<sup>th</sup> Corporation, on behalf of 888 Howard Street Associates, LLC (“Project Sponsor”), filed with the City and County of San Francisco Planning Department (“Department”) an application for environmental review of a proposal to construct a 400-foot tall, 39-story hotel and 60-70 unit residential building of approximately 561,000 sq.ft. with ancillary retail/restaurant/support space and two levels of below-grade parking on the northeast corner of Fifth and Howard Streets (“Project”).

On September 6, 2000, John Buss, of Continental 155 – 5<sup>th</sup> Corporation, on behalf of 888 Howard Street Associates, LLC (“Project Sponsor”), filed with the Department Applications for Conditional Use Authorization pursuant to Section 303 of the Planning Code, for Downtown Review pursuant to Section 309 of the Planning Code, for Amendments to the text of the Planning Code and to two Zoning Maps pursuant to Section 302 of the Planning Code, and for Amendments to certain Maps of the General Plan pursuant to Section 340 of the Planning Code, for the Project.

On January 20, 2001 the Department determined that an Environmental Impact Report was required and provided public notice of that determination.

On August 4, 2001 the Department published a Draft Environmental Impact Report (“DEIR”).

On September 6, 2001 the San Francisco Planning Commission held a public hearing to solicit testimony on the DEIR.

From August 4, 2001 to September 18, 2001 the Department received written comments on the DEIR.

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<sup>1</sup> The Project Sponsor also proposes to reclassify the Project site from 160-F to 320-S and from C-3-S to C-3-S (SU). These reclassifications are subject to approval by the Board of Supervisors. See Commission Resolution Nos. 16410 and 16420 for Case No. 2000.790.EKXCTMZ.

On November 21, 2001 the Department published a Summary of Comments and Responses with Section B describing a revised proposal to construct a 33-story, 340-foot tall building of approximately 487,900 square feet with approximately 600 hotel rooms, ancillary retail and support uses such as meeting rooms, and one level of below-grade parking (the 60-70 residential units were eliminated).

On January 10, 2002, the Commission certified the Project's Final Environmental Impact Report ("FEIR") in Motion No. 16323, which findings are incorporated herein by this reference thereto as if fully set forth in this Resolution.

On February 1, 2002 the Department certified an Addendum to the FEIR for a revised proposal for a 320-foot tall building with 572 hotel rooms.

On July 26, 2001, December 21, 2001 and February 3, 2002, the Project applications were amended to reflect the Project Sponsor's current requests for a reclassification of the project site from a 160-F Height and Bulk District to a 320-S Height and Bulk District, from a C-3-S Zoning District to a newly-created C-3-S (SU) Zoning District, for Amendments to several sections of Planning Code text related to the creation of the C-3-S (SU) Special Use District, Amendments to Zoning Maps 1 and 1H related to the reclassification of the project site, for Amendments to Maps 1 and 5 of the Downtown Area Plan related to the reclassification of the project site, and for exceptions to Section 309 of the Code related to wind and bulk limits in order to construct an approximately 430,000 square foot (including 9,200 square feet of restaurant and bar/lounge space with 43,000 square feet of meeting/conference room space and 12,600 square feet of public open space), 320-foot tall, 31-story hotel building at 888 Howard Street, with 572 hotel rooms and one level of below-grade parking and a second below grade level for mechanical equipment and storage ("Project").

On February 22, 2002 notice of a March 14, 2002 hearing on the above applications was mailed and posted. The hearing was continued at regular meetings on March 14, April 25 and May 16, 2002.

On May 23, 2002, the Commission conducted a duly noticed public hearing on the proposed Project and, following public testimony, closed the public hearing and approved a Motion of Intent<sup>2</sup> to approve the Section 309 application with two additional conditions; one to provide 4,000 square feet of publicly-accessible open space pursuant to Code Section 138, and a second to contribute at least \$1.145 million towards the preservation of a Landmark building in the downtown C-3 area as well as purchasing all remaining available TDR in the C-3-S District. On May 23, 2002 the Commission also took four other actions: 1) Motion No. 16436 approving the conditional use authorization; 2) Resolution No. 16435 approving the CEQA findings; 3) Motion No. 16437 approving the rezoning of the project site to a 320-S height and bulk district and associated Zoning Map and General Plan amendments; and 4) Motion of Intent to approve the creation of a new special use district known as C-3-S (SU) and rezoning of the project site from C-3-S to C-3-S (SU) along with associated Planning Code and General Plan amendments.

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<sup>2</sup> By a vote of +4 to -2, with Commissioners Fay and Baltimore voting against the Motion and Commissioners Theoharis, Salinas, Joe and Lim voting for the Motion.

On June 6, 2002 the Commission took two actions regarding the Project: 1) this Motion No. 16421 approving determinations of compliance and granting of exceptions pursuant to Section 309; and 2) Resolution No. 16420 approving the creation of a new special use district known as C-3-S (SU) and the rezoning of the project site from C-3-S to C-3-S (SU) along with associated Planning Code and General Plan amendments.

The Commission has had available for its review and consideration the Case Report, studies, letters, plans and other materials pertaining to the Department's case files, has reviewed and heard testimony and has received materials from interested parties during the public hearings on the Project.

### **FINDINGS**

Having reviewed and considered all the evidence in the Record, including all the materials identified in the Recitals above, and having heard oral testimony and arguments, this Commission finds, concludes and determines as follows:

1. **Recitals.** The above Recitals are accurate and also constitute findings of this Commission.
2. **Project Site/Present Use.** The Project Site is located on a portion of Lot 066 in Block 3724, on the east side of 5<sup>th</sup> Street between Mission and Howard Streets. Lot 066 currently contains a 7-story office building leased by Wells Fargo Bank, and a surface parking lot for approximately 100 cars. The surface parking lot, which is a rectangular-shaped area on the northeast corner of 5th and Howard Streets, is the Project Site (Site). The Site is approximately 275 feet long on the Howard Street frontage and north property line and approximately 137.7 feet long on the 5<sup>th</sup> Street and east property lines. It is flat with a slight (two feet) upward slope to the east. The employees of the Wells Fargo Data Center currently use the surface parking lot. The site is located in a C-3-S (Downtown Commercial Support) District and a 160-F Height and Bulk District.

Use Districts in the surrounding area include P (Public Use) immediately to the north (the 5<sup>th</sup> and Mission City-owned parking garage), RSD (Residential Service District) to the south and west, and C-3-S (Downtown Support Commercial) to the east (including Moscone Convention Center and Yerba Buena Gardens). Height and Bulk Districts in the area around the Project Site include 160-F to the north, 340-I to the east, 130-F to the south, and 40-X/85-B to the west.

The Project Site is in the South of Market area, near the western border of the Yerba Buena Center (YBC) Redevelopment Area. The South of Market area east of the site and the YBC Redevelopment Area are occupied by office, commercial, hotel, museum, and performing arts uses. The Moscone West convention center, which is currently under construction, lies immediately east of the Project Site. Further north of the Site is the Financial District with high-rise office buildings up to 400 feet or more in height, many of relatively recent construction. The portion of the South of Market area to the south and west of the site is occupied primarily by two to five-story buildings, some dating

from the early part of the twentieth century, housing a mix of residential, hotel, retail, office, commercial, and light industrial uses.

The area east of the Site, bordering the YBC, contains several projects which have been recently completed or are under construction. The W Hotel at 3<sup>rd</sup> and Howard Streets is 29 stories and approximately 300 feet tall. The Starwood St. Regis hotel, currently under construction on the southeast corner of 3<sup>rd</sup> and Mission Streets, will be 40 stories and approximately 430 feet tall. The Related Company's high-rise apartment building (called The Paramount) on the northeast corner of 3<sup>rd</sup> and Mission Streets was recently completed, and is 41 stories or approximately 420 feet tall. The recently-completed Four Seasons hotel and residential tower is 37 stories and 400 feet tall and the adjacent Marriott Hotel is 39 stories and 400 feet tall. Closer to the Project Site, on Mission Street between 4<sup>th</sup> and 5<sup>th</sup> Streets, is the approved but un-built Emporium Hotel project, which is proposed to be 32 stories and approximately 400 feet tall. The expanded Moscone West convention center building, which is currently under construction immediately east of the Project Site, will be approximately 100-130 feet tall.

3. **Project Description.** The current proposal is to remove the existing 100-space parking lot and construct a 31-story hotel building, approximately 320 feet tall (plus mechanical), with approximately 430,000 gross square feet. The proposal includes up to 30,000 square feet of below-grade parking (space for 73 cars or approximately 115 if operated on a valet basis) and a second below-grade level for mechanical equipment and storage.

The hotel would contain approximately 572 guest rooms, a restaurant and a bar/lounge with a total of approximately 9,200 square feet on the ground floor fronting 5th and Howard Streets, and approximately 43,800 square feet of meeting and pre-function space (including a grand ballroom with approximately 7,800 square feet and three junior ball rooms.) The fifth floor of the hotel would include a full-service health club and spa, with a 25-yard swimming pool. A porte cochere off Howard Street on the east side of the building would accommodate space for two tourist buses, serve as the main entry for hotel guests, and offer access to the below-grade parking garage. Freight handling would be accommodated in three off-street loading docks located on the 5th Street side of the building.

The Project would include approximately 12,600 square feet of publicly-accessible open space in the form of two terraces, one on the 3<sup>rd</sup> floor and one on the 5<sup>th</sup> floor, located between the 31-story hotel tower and the adjacent 7-story Wells Fargo Bank building. The 3<sup>rd</sup> floor terrace would contain approximately 7,430 square feet and the 5<sup>th</sup> floor terrace would contain approximately 5,170 square feet. The Project is only required to provide approximately 8,600 square feet of publicly-accessible open space; however, most of the proposed terrace areas would be in shade for significant portions of the day throughout the year, and would potentially be windy as well, making them less desirable as public open space. The terraces would meet most of the other requirements for a "Sun Terrace" in the *Guidelines for Downtown Open Space* defined in the Downtown Area Plan, including containing landscaping and seating. The Project's required public art



would be located on one of these two terraces or in some other location that would meet the requirements of Section 149 and the *Fine Art Guidelines*. (See pages 7-10 of this Motion for a more detailed description of the proposed open spaces).

#### FAR and TDR:

The Project, in combination with the Wells Fargo office building on the other portion of Lot 066, would have a Floor Area Ratio (FAR) of 7.5:1, but does not propose to purchase Transferable Development Rights (TDR) to allow an increase above the base FAR of 5:1, as required in the C-3-S zoning district. Instead, the Project Sponsor proposes to establish a special use district, known as C-3-S (SU), which would allow an FAR of 7.5:1 for hotel uses without the purchase of TDR.<sup>3</sup> If the request to increase the base FAR is not granted, the Project Sponsor would be required to purchase approximately 253,160 square feet of TDR.<sup>4</sup>

The Project Sponsor also proposes to rezone the property from a 160-F to a 320-S Height and Bulk District.

#### DESIGN:

The location of the Project Site presented a challenge for the Project designers. The intersection of 5th and Howard Streets marks a distinct transition from the lower-scale South of Market area, with its building heights of 20 to 100 feet tall, to the medium-scale Yerba Buena Center area with heights of 100 to 130 feet tall, and subsequently to the southern edge of the downtown central business district with high-rise development from 300-600 feet tall. In recognition of its unique setting, the Project designers attempted to design a building that would be appropriate in urban form, scale and materials.

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3 The Wells Fargo office building is located on approximately 63,418 square feet of Lot 066 and contains approximately 329,453 square feet of floor area (which equals an FAR of 5.2:1). The surface parking lot occupies the remaining 37,860 square feet of the lot, which has a total area of approximately 101,278 square feet. Under its current zoning, Lot 066 has a base floor area ratio of 5.0:1 and 7.5:1 if Transferable Development Rights (TDR) are purchased. With a base FAR of 5.0:1, Lot 066 can support a total floor area of approximately 506,393 square feet as of right. With the purchase of TDR, Lot 066 can support a total floor area of approximately 759,657 square feet. Based on the maximum FAR of 7.5:1, the size of Lot 066 and the floor area of the existing office building, Lot 066 can support an additional 430,132 square feet of floor area with approximately 253,195 square feet of that floor area required to be purchased as TDR. The Project proposes to add approximately 430,000 square feet of floor area, but without purchasing TDR. (The Project Sponsor proposes to split Lot 066 in two, and would transfer the unused development rights from the Wells Fargo building to the Project Site. The transfer of development rights from one part of Lot 066 to the other would be accomplished through a deed restriction that would prohibit any further development on the lot containing the office building. Once the lot was split in two, the Wells Fargo site would have an FAR of 5.2:1, and the hotel site would have an FAR of 11.3:1).

4 The Project Sponsor indicates that to require the purchase of TDR would further increase development costs by about \$7.5 million. The Project Sponsor contends this requirement would make the Project economically unfeasible and virtually impossible, as it does not appear the TDR can be obtained at this time. Department staff have been informed via several sources that TDR typically sell for between \$15 and \$20 per square foot, which would result in a cost of \$3.8 - \$5.0 million. Staff is aware that there are only approximately 12,000 square feet of TDR available (for sale) in the C-3-S district, but the Department has told the Project Sponsor that staff would support a request to amend the Planning Code to allow TDR to be purchased for the Project from outside the C-3-S district.

Of various design approaches studied, a single building along the edges of the Project site, placed closest to the bounding streets, seemed the most sensitive to the surroundings. By placing the building on the edge of the property, light and air all around the Project is maximized.

The Project Sponsor and its architects set forth the following goals. The first goal was to create a building design that would compliment the expansion of the Moscone Convention Center. The second goal was to create a slender elevation, and the third goal was to design a building that would complete the definition of the perimeter of the Yerba Buena Gardens/Moscone Center area while distinguishing itself as being of its own time.

The design includes the following features:

- Port Cochere, Ballrooms and Spa Complex. A transparent low-rise complex, built over the porte-cochere, and accommodating the grand ballroom on the second level, a junior ballroom on the fourth level, and the health spa on the fifth level, creates an important visual and architectural tie between Moscone West and the primary hotel tower.
- Hotel Tower. The hotel tower is separated into two basic elements – the base of the tower, which is made up of the first through fifth floors, and the shaft of the tower, which is made up of the sixth through the thirty-second floors<sup>5</sup>. The top of the building is a direct expression of the structural frame, with the main elements rounded at the top to soften the silhouette and provide a distinguished profile.
- Terraces. On the northwest side of the building, the third floor and fifth floor terraces separate the tower from the existing Wells Fargo Office building and create open space for the public and hotel guests while simultaneously reducing the visual mass of the lower portions of the hotel and adding interest to the north and west facades.
- Materials. The primary building materials will be a glass curtain wall system, with a tinted blue glass, and white metal mullions, spandrels and column covers. Stone veneer accents will provide the finish to the entrances and architectural portals developed along the lower portions of the Howard Street façade. These materials will provide continuity with the hotel's most immediate neighbor, Moscone West, as well as the Metreon and Moscone Convention Center to the east.

4. Environmental Review. The Project Sponsor applied for environmental review on July 31, 2000. The Department determined that an Environmental Impact Report was required and provided public notice of that determination on January 20, 2001. The

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<sup>5</sup> The hotel is 31 stories tall with floors numbering 1 – 32 because there is no 13<sup>th</sup> floor.

Department published a Draft Environmental Impact Report ("DEIR") on August 4, 2001. The San Francisco Planning Commission held a public hearing to solicit testimony on the DEIR on September 6, 2001. The Department received written comments on the DEIR from August 4, 2001 to September 18, 2001. Notices of availability of the DEIR and the date and time of the public hearing were posted near the Project site by staff and a Notice of Completion was filed with the State Secretary of Resources on August 6, 2001. The Summary of Comments and Responses was published in November 2001. The Commission certified the Final Environmental Impact Report on January 10, 2002 in Motion No. 16323 ("FEIR"). The current Project description was devised after the Summary and Response to Comments published in November, 2001. Therefore, the City's Environmental Review Officer analyzed the Project, and prepared and certified an Addendum to Environmental Impact Report on February 1, 2002 ("Addendum") finding that the project size was reduced by 20 feet, that no other or different significant impacts would occur due to the project revision, and that conclusions reached in the FEIR certified on January 10, 2002 remain valid. The FEIR and Addendum identify an unavoidable significant cumulative environmental impact on traffic circulation at the intersections of Howard/Fifth and Harrison/Fifth Streets. Mitigation measures that are recommended for implementation by the Project Sponsor would reduce but not eliminate this impact to a level of insignificance. In Resolution No. 16435, approved on May 23, 2002 the Commission makes the following Statement of Overriding Considerations: Notwithstanding the significant unavoidable effect(s) noted above, pursuant to CEQA Section 21081(b), the CEQA Guidelines, and Chapter 31 of the Administrative Code, the Commission finds, after considering the FEIR and Addendum, that specific overriding economic, legal, social and other considerations outweigh the identified significant effect on the environment.

**5. Determinations of Compliance Pursuant to Section 309.** Planning Code Section 309 requires building and site permits for the construction of structures in C-3 districts to be reviewed to assure compliance with the requirements of the Planning Code. Through the Section 309 process a project may also request certain enumerated exceptions to Code requirements. Such applications are brought to the Commission for hearing, at which time the Commission may approve a project, grant exceptions from certain requirements and/or impose conditions on an approval.

Project specifics are in *italics*:

**A. Section 138 - Open Space**

The Project Sponsor may satisfy the requirements of Section 138 (one square foot of open space for each 50 square feet of new space) by providing one or more of the following types of open space: a plaza, an urban park, an urban garden, a view terrace, a sun terrace, a greenhouse, a small sitting area (a snippet), an atrium, an indoor park, or a public sitting area in a galleria, in an arcade, or in a pedestrian mall or walkway, provided that the open space meets the following minimum standards. The open space shall:

- (1) Be of adequate size;

- (2) Be situated in such location and provide such ingress and egress as will make the area easily accessible to the general public;
- (3) Be well-designed, and where appropriate, be landscaped;
- (4) Be protected from uncomfortable wind;
- (5) Incorporate various features, including ample seating and, if appropriate, access to food service, which will enhance public use of the area;
- (6) Have adequate access to sunlight if sunlight access is appropriate to the type of area;
- (7) Be well-lighted if the area is of the type requiring artificial illumination;
- (8) Be open to the public at times when it is reasonable to expect substantial public use;
- (9) Be designated to enhance user safety and security;
- (10) If the open space is on private property, provide toilet facilities open to the public;
- (11) Have at least 75 percent of the total open space approved be open to the public during all daylight hours.

To determine whether the open space proposed at a given project meets the Code, the proposed space is evaluated under the “Guidelines for Downtown Open Space,” which are found in Table 1 of the Downtown Plan.

*The Project consists of approximately 430,000 square feet of gross floor area as calculated in accordance with Planning Code Section 102.9. Thus, pursuant to Planning Code Section 138(b), the Project is required to have a minimum of 8,600 square feet of publicly-accessible open space. The Project Sponsor proposes to meet the open space requirement by providing two upper-level terraces. The first terrace would be on the third floor with an area of approximately 7,430 square feet. The second terrace would be located on the fifth floor and be approximately 5,170 square feet in area. The total open space provided on these two terraces would be approximately 12,600 square feet.*

***At the public hearing on May 23, 2002 the Commission, due to concerns regarding wind and shadow on the proposed terraces, imposed a condition of approval requiring the Project Sponsor to provide an additional 4,000 square feet of open space (pursuant to Section 138 requirements). See conditions of approval 5.B. and 6.A. in this Motion.***

The “Guidelines for Downtown Open Space” require that a project classify each proposed open space as a certain type, which must then meet specific criteria. The

Project's proposed open spaces best meet the definition of "sun terraces," which have the following criteria:

Description:	Wind-sheltered area on upper level.
Size:	Minimum of 800 square feet in size.
Location:	Second floor or above. <sup>6</sup>
Access:	Accessible directly from the sidewalk or public corridors. Must provide signage about location and public accessibility at street level, in hallways and elevators.
Seating, Tables, Etc.:	One seating space for every 25 sq.ft. of terrace area.
Landscaping, Design:	Terrace may take one of the following forms: complex architectural setting which may include art works; flower garden; space with trees and other planting.
Commercial Services, Food:	Provide food service on or adjacent to terrace.
Sunlight and Wind:	Sunlight to most of the occupied area of terrace at lunch time. Shelter from wind.
Public Availability:	10 AM to 5 PM, Monday through Friday.
Other:	In wind exposed locations provide glass enclosure to create comfortable environment.

*The Commission finds that proposed terraces would meet the criteria for Size, Location, Access,<sup>7</sup> Seating, Landscaping and Design, Food Service and Public Availability. The terraces would be accessible via elevators located in the hotel lobby. Signage at street level, in the elevators and in the hallways leading to the terraces would direct the public to the open spaces. The terrace would provide the required amount of seating in a mix of types including benches, tables and chairs.<sup>8</sup> The terraces would be landscaped with a variety of trees and other plant types. Both terraces would be served by food service in the form of a juice bar located on the 5<sup>th</sup> floor, adjacent to the terrace and the health club. A ground floor restaurant would also offer food service. Both terraces would meet the Public Availability requirement by being open to the public, at a minimum, from 10AM to 5PM seven days a week.*

***The Commission finds that, with a condition of approval requiring mitigation of winds greater than 7 mph in the public seating areas on the terraces, the terraces would meet***

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<sup>6</sup> "View" terrace is also a type of open space, but "should be located only in places which have spectacular views." Because of their location on the 3<sup>rd</sup> and 5<sup>th</sup> floors between the hotel tower and the adjacent office building, the proposed Project's terraces do not meet the definition of "view" terrace.

<sup>7</sup> The 3<sup>rd</sup> floor terrace would only be accessible through a "Pre-Function" area of the hotel. However, the Project Sponsor has stated that although this area is used to support adjacent meeting rooms, the area would not be leased for events and would remain open to the public during the minimum required times of 10AM to 5PM, Monday through Friday.

<sup>8</sup> Because only 8,600 square feet of open space is required, the Sponsor will be required to provide at least 344 seats. However, because portions of the open spaces will often be in shade, the seats should be either movable and/or located in areas that receive the most sunlight and are protected from wind. See condition of approval in the Section 309 Motion requiring that a final open space design be presented to the Director for approval prior to the Project receiving its final addendum to the site plan permit.

*the criteria requiring “shelter from wind.” As stated in the discussion of the Project Sponsor’s request for an exception to wind current requirements (limits) on pages 36-38 of this Report, the wind tunnel analysis conducted for the Project tested two locations within each terrace. The study indicates that wind speeds on the terraces would range from 11-13 mph, which is greater than the 7 mph limit for public seating areas set forth in Planning Code Section 148. The wind consultant believes that, based on the height of the Project, the arrangement of surrounding buildings and wind conditions in the Project area, it might not be possible to landscape or screen the terraces so as to limit wind speeds to a comfortable range of 7 mph or below. A condition of approval is included in Exhibit A to this Motion requiring that, should the Project be constructed, the 3<sup>rd</sup> and 5<sup>th</sup> floor seating areas on the terraces be tested for wind speeds in excess of the 7 mph criterion. If the 7 mph criterion is exceeded, screening or landscaping (and perhaps some form of enclosure) would be installed so as to reduce the wind speeds to the maximum extent possible.*

*However, the Commission finds that neither of the two proposed terraces would meet the criterion for sunlight. The Guidelines state that a sun terrace should have sunlight to most of the occupied area at lunch time. Because of the terraces’ location on the north side of the Project Site, between the 31-story hotel tower and the adjacent 7-story office building, never, at any time of year, or any time of day, does either of the terraces receive sunlight to greater than 50% of the occupied area during the “lunch time” period of 11:30am to 1:30pm, and the available sunlight is actually at its lowest point at lunchtime throughout the year. Averaged on a daily basis, the 5<sup>th</sup> floor terrace never gets more than 40% of the total daily sunlight available, and the 3<sup>rd</sup> floor terrace never gets more than 25%.*

Because of the limited amount of sunlight, although the terraces meet all of the other criteria in the Guidelines for Downtown Open Space and Section 138 of the Planning Code, and although the area proposed (12,600 square feet total) is approximately 4,000 square feet greater than the minimum required (8,600 square feet), **the Commission has concerns about the utility and quality of the terraces.** In San Francisco’s climate, shaded open spaces are much less desirable than those that receive direct sunlight.

**The Commission therefore requires, as a condition of approval, that the Project Sponsor provide, in addition to the 12,600 square feet of space on the two terraces, an additional 4,000 square feet of open space pursuant to Section 138 and the Guidelines for Downtown Open Space.”** See conditions of approval 5.B. and 6.A. in this Motion.

With this additional 4,000 square feet of open space the Commission finds that, on balance, the proposed publicly-accessible open spaces, including the terraces on the 3<sup>rd</sup> and 5<sup>th</sup> floors of the hotel, comply with Section 138 of the Planning Code and the Guidelines for Downtown Open Space in the Downtown Area Plan.



**B. Section 138.1 – Pedestrian Streetscape Improvements**

Section 138.1(b) requires a new building in a C-3 District to install street trees and sidewalk paving as set forth in the Downtown Streetscape Plan. 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 Sponsor would comply with Section 138.1 by making streetscape improvements, including the installation of street trees, along the 5th and Howard Street frontages.<sup>9</sup>*

This Section 309 “X” Motion includes a Condition of Approval which provides that, prior to issuance of the final addendum to the site permit, “[a] final pedestrian streetscape improvement plan including landscaping and paving materials and patterns shall be submitted for review by, and shall be satisfactory to the Director of The Director, in consultation with the Director of The Director of Public Works.”

As so conditioned the Commission finds that the Project complies with the requirements of Section 138.1.

**C. Section 149 - Type and Location of Artwork**

Section 149 requires the Proposed Project to include works of art costing an amount equal to one percent of the construction cost of the building, currently estimated to be \$88,000,000. The Commission, in accordance with the provisions of Section 309, must approve the type and location of the artwork, but not the artistic merits of the specific artwork proposed.

*The Project Sponsor would meet the requirements of Section 149 by providing works of art with a value equal to 1% of the construction cost of the building. The artworks would be located within the publicly-accessible open spaces. Each artist would be identified, as required, by a plaque near the artwork.*

This Section 309 Motion includes a Condition of Approval that requires the Project Sponsor to continue to consult with the Department on the type and location of the artwork, and to return to the Commission with a report on the art program within 6 months of the project approvals.

As so conditioned the Commission finds that the Project complies with Section 149.

**D. Section 146 - Sunlight Access to Public Sidewalks**

Section 146(c)<sup>10</sup> provides that new buildings in C-3 Districts shall be shaped, if it can be

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<sup>9</sup> At least some of the trees will be mature trees, to satisfy a mitigation requirement of the wind analysis conducted for the Project EIR.

done without creating an unattractive design and without unduly restricting the development potential of the site in question, so as to reduce substantial shadow impacts on public sidewalks.

*The location of the site and the orientation of the tower favors the sun penetration to the sidewalks adjacent to the site itself as well as all the sidewalks in the vicinity. The Howard Street sidewalk would have sun exposure from early morning through 1:00PM most of the year. The Fifth Street sidewalk would have sun exposure from 11:00AM through late afternoon most of the year. The southeast side of the Howard Street sidewalk and the southwest side of the Fifth Street sidewalk would have the opposite sun conditions described above.*

*Beyond the site: The tower portion of the building would have a minimal impact on the northwest sidewalk at Mission Street during the early morning or late afternoon.*

*Although the Project would construct a hotel tower significantly taller than most nearby buildings, the blocks adjacent to the Project are fully developed with low to mid-rise buildings (approximately two to eight stories) which already cast significant shadow on adjacent sidewalks. The blocks to the northwest of the Project, where the Project would cast some of its longest shadows, are developed with mid-to-high rise buildings that already cast significant shadows on surrounding sidewalks. Therefore, net new shadows cast by the Project would be minimal. During winter months, the building would cast a very thin shadow to the north and east, depending on the time of day. At 10:00 a.m., the shadow would extend northwest across Mission, Jessie, Stevenson, Market, and First Streets. At noon, the shadow would extend almost due north across Mission, Shaw, and First Streets. At 3:00 p.m., the shadow would extend across Shaw, First, Fremont, and Beale Streets. During spring months, the building would cast a shorter shadow. At 10:00 a.m., the shadow would extend northwest across Mission, Jessie, and Stevenson Streets. At noon, the shadow would extend almost due north across Mission and Shaw Streets. At 3:00 p.m., the shadow would extend across Shaw, Minna, First, and a portion of the Transbay Bus Terminal.<sup>11</sup>*

The Project's shadow impacts on public sidewalks could be significantly reduced only by unduly restricting the development potential of the site. Based on the above, the Commission finds that the Project meets the standards set forth in **Section 146(c)**.

#### **E. Section 147 - Shadows on Public or Publicly Accessible Open Spaces**

Section 147 requires that new buildings in the C-3 Districts shall be shaped, consistent with the dictates of good design and without unduly restricting the development potential

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<sup>10</sup> The Project is not located on any Street described in Table 146 and therefore the requirements of Section 146(a) and (b) do not apply.

<sup>11</sup> See Shadow Diagrams and explanation on pages 52-62 of the Project's FEIR, attached. Note that the shadow analysis considered projects at 554 Mission Street, 535 Mission Street, and the Century tower on Minna Street, which are approved but not yet constructed, as part of the existing environment .

of the site in question, to reduce substantial shadow impacts on public plazas and other publicly accessible spaces other than those protected under Section 295.

*Shadows from the Project on the Yerba Buena Gardens open space would be masked in large part by the Moscone West development. Analysis of the Project's shadow impacts was conducted for the environmental review process and is described in the Project's EIR (pages 50-59) and the Summary of Comments and Responses (pages 31-33). The analysis was based on a Project height of 400 feet, so at the Project's current proposed height of 320 feet, any shadow impacts would be less than those considered in the EIR. The Original Proposed Project (400 feet tall) would shade the southernmost portions of Yerba Buena Gardens along Howard Street during winter afternoons. No other significant public open spaces not protected by Section 295 would be impacted by shadows from the Project.*

Based on the above, the Project's shadow impacts on the Yerba Buena Gardens open space would not be considered substantial, and the Commission finds that the proposed Project meets the standards set forth in Section 147.

**F. Section 148 - Reduction of Ground-Level Wind Currents in C-3 Districts**

Section 148 requires that 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 m.p.h. equivalent wind speed in areas of substantial pedestrian use and 7 m.p.h. equivalent wind speed in public seating areas.

*Wind tunnel testing of the Project design indicates that the Project would create ground level wind currents that exceed the comfort levels set forth in Section 148. The Project Sponsor has therefore requested an exception pursuant to Section 148(a) from the ground level wind current requirements. That request for exception is addressed below.*

**G. Sections 151-155 - Parking and Loading Requirements in C-3 Districts**

**SHORT-TERM PUBLIC PARKING:** There is no parking required for the Project. Pursuant to Section 204.5 an area equal to a maximum of 7% of the gross floor area of the project may be used for parking without requiring conditional use authorization. Seven percent of the gross floor area of the project is approximately 30,000 square feet (this is enough area for about 73 independently-accessible parking spaces, or 115 cars if operated valet-style). *The Project would provide up to 30,000 square feet of parking, based on the building's gross floor area as shown on drawings in the Building Permit Application.*

**LOADING:** Table 152.1 requires three off-street loading spaces for a project with 430,000 square feet of hotel space. *The Project would comply with this requirement by*

*providing three full-size loading spaces at the street level on the 5th Street side of the building.*

**BICYCLE PARKING:** The Project would include bicycle parking pursuant to Section 155(j) and the recently-added Section 155.4 of the Planning Code, which requires 12 bicycle spaces for a building with more than 100,000 gross square feet. *The Project would provide the required twelve bicycle spaces in the parking garage on level B1 of the parking garage.*

Based on the above, the Commission finds that the Project is in compliance with the parking and loading requirements of Sections 151-155.

#### **H. Section 313 - Housing Requirements for Hotel Development Projects**

Section 313.3 requires projects creating 25,000 square feet or more of hotel space to meet a housing requirement to mitigate the impact on the availability of housing which would be caused by the employment facilitated by the office project.

*The Project Sponsor has elected to pay the in-lieu fee per square foot of new hotel space pursuant to Section 313. Based on a net addition of 430,000 square feet of office space, using the current rate of \$11.21 per square foot, the Project would contribute \$4,820,300 to the Jobs-Housing Linkage Program. The fee must be paid prior to issuance of the first site or building permit, and the exact amount will be based on the Building Permit Application drawings.*

Based on the above, the Commission finds that the Project is in compliance with the requirements of Section 313.

#### **I. Section 314 - Child-Care Requirements for Hotel Development Projects**

Section 314.3 of the Planning Code requires office projects creating 50,000 square feet or more of additional hotel space to meet a child-care requirement (to mitigate the impact on the availability of child-care facilities, which would be caused by the employees attracted to the proposed development project). Applicants may: (1) construct a child care facility with a minimum size of 2,000 square feet, or larger if the hotel development exceeds 200,000 square feet, or (2) pay an in-lieu fee of \$1.00 for each additional square foot of hotel space.

*The Project Sponsor proposes to pay the in-lieu fee of \$1.00 per square foot of new hotel space. Based on a net addition of up to 430,000 square feet of hotel space, the Project would contribute up to \$430,000. The exact fee would be determined based on drawings submitted with the Building Permit Application. The fee must be paid prior to issuance of the temporary or permanent certificate of occupancy.*

Based on the above, the Commission finds that the Project is in compliance with the requirements of Section 314.

**6. Exceptions Requested Pursuant to Section 309.**

Section 309(a) allows the Commission to grant certain enumerated exceptions from Code requirements upon the proper showing. As configured the Project needs to request exceptions to the Section 148 requirement for the reduction of ground level wind currents and the Section 270 Bulk Limits.

**A. Section 148 - Reduction of Ground Level Wind Currents**

**The Project requires an exception to the reduction of ground level wind currents requirement because** the Project would cause ground level wind currents to exceed permitted speeds (11 mph for more than 10% of the time year round) at several locations around the Project site.

Section 309 (a)(2) of the Code provides that the Commission may grant exceptions to the ground level wind current requirements, as regulated under Section 148(a) of the Code. Section 148(a) states that:

In C-3 Districts, buildings or additions to buildings shall be shaped, or other wind baffling measures shall be adopted, so that the development 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 m.p.h. equivalent wind speed in areas of substantial pedestrian use and seven m.p.h. 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.

A wind tunnel analysis was performed to analyze the impacts from the Project.<sup>12</sup> Existing wind conditions around the Project site were examined using 29 measurement points, plus two points on each of the 3<sup>rd</sup> and 5<sup>th</sup> floor terraces.

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<sup>12</sup> For details of the wind tunnel analysis see the Project EIR, Appendix B.

The results of the wind tunnel analysis are summarized below:

Existing Conditions:

*9 of the 29 locations tested exceed the 11 mph pedestrian comfort criterion*

With Project Conditions:

*12 of the 29 locations tested would exceed the 11 mph pedestrian comfort criterion*

*None of the scenarios tested showed wind speeds greater than 26 mph for more than 1 hour per year, except as described in the footnote below.<sup>13</sup>*

Existing Conditions:

*The existing conditions are considered moderately windy; the average wind speed for all 29 test points is less than 11 mph. Wind speeds of 14 mph or more occur at 3 of the 29 locations. The highest wind speeds in the vicinity (14 mph) occur at three locations: two on the east sidewalk of Fifth Street (#24 and #17 on the Test Point Map) and at location #28, on top of the 5<sup>th</sup> and Mission parking garage.*

With Project Conditions:

*With the Project, wind conditions would be considered moderately windy; the average wind speed for all 29 test points would increase by nearly  $\frac{3}{4}$  mph, to just over 11 mph. Wind speeds in pedestrian areas would range from 7 mph to 20 mph. Wind speeds of 14 mph or more would occur at seven locations: #5, #6, #10, #14, #15, #16, and #28. Locations #6 (on the southwest corner of the Project site) and #10 (on the south sidewalk of Howard Street) would have the highest wind speeds of 20 mph and 17 mph, respectively.*

*Overall the Project would eliminate 4 of the existing exceedances (of the 11mph pedestrian comfort criterion), add 7 new ones, and cause 5 of the existing exceedances to continue.*

*Also with the Project, one location, #6, would exceed the hazard criterion of 26 mph for more than 1 hour per year. However, the Project would plant mature street trees along Fifth and Howard Streets to eliminate this exceedance.*

*The wind tunnel study showed wind speeds between 11 and 13 mph in the proposed public open space terraces on the 3<sup>rd</sup> and 5<sup>th</sup> floors of the hotel. As stated above, Section 148(a) sets a wind speed limit of 7 mph in public seating areas. Because the terraces would contain public seating, the Project Sponsor has agreed to a condition of approval requiring that, once the Project is constructed, the 3<sup>rd</sup> and 5<sup>th</sup> floor seating areas on the terraces be tested for wind speeds in excess of the 7 mph criterion. If the 7 mph criterion*

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<sup>13</sup> The wind tunnel analysis showed that with the Project, wind conditions would exceed the 26 mph wind hazard criterion at one location, the southwest corner of the Project site at the corner of 5<sup>th</sup> and Howard Streets. However, the wind analysis states that with landscaping proposed by the Project, namely the placement of mature street trees along the 5<sup>th</sup> and Howard Street sidewalks, wind speeds would be lessened to the point where the 26 mph hazard criterion would not be exceeded. The provision of these mature street trees is included as a condition of approval in Exhibit A of this Section 309 Motion.

*is exceeded, screening or landscaping (and perhaps some form of enclosure) would be installed so as to reduce the wind speeds to the maximum extent possible. This condition of approval is included in Exhibit A of this Motion.*

**Conclusion:**

The Project's wind tunnel study concludes that given the existing wind conditions of the site and vicinity and the changes in wind conditions that can reasonably be expected from a structure the size of this project, it may not be possible to design any structure that fully meets the goals of the project and that fully reduces ambient wind speeds to meet Section 148 criteria at all locations.

Considering the above information and in light of the criteria for an exception set forth in Section 148(a), the Commission hereby approves the requested exceptions to the ground level wind currents requirements.

**B. Sections 270 and 272 - Bulk Limits**

Should the Planning Commission and the Board of Supervisors approve the rezoning of the site, the Proposed Project would require the following six exceptions to the Bulk Limits for "S" Bulk Districts set forth in Section 270:

**Lower Tower Dimensions (floors 6-19)**

Length:	160 feet maximum	197 feet proposed
Diagonal:	190 feet maximum	206.5 feet proposed

**Upper Tower Dimensions (floors 20-32)**

Length:	130 feet maximum	197 feet proposed
Average Floor Size:	12,000 sq.ft.	12,317 sq.ft. proposed
Average Diagonal:	160 feet maximum	202 feet proposed

**Upper Tower: Volume Reduction**

Required:	Volume reduction of 12% (to 11,400 sq.ft. average floor size) based on 13,000 sq.ft. average lower tower floor size).
Proposed:	Volume reduction of 7% (to 12,317 sq.ft. average floor size).

The Proposed Project does NOT require exceptions to the following Bulk Limits set forth in Section 270:

**Lower Tower Dimensions (floors 6-19)**

Average Floor Size:	17,000 sq.ft. maximum	12,954 sq.ft. proposed
Maximum Floor Size:	20,000 sq.ft. maximum	13,255 sq.ft. proposed

**Upper Tower Dimensions (floors 20-32)**

Maximum Floor Size:	17,000 sq.ft. maximum	12,766 sq.ft. proposed
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*See bulk diagrams in the attached graphics booklet "Exhibit B."*

**Section 270(d)** sets forth the bulk limits for Projects within the “S” Bulk District.

- (1) **Base.** The base is the lowest portion of the building extending vertically to a street-wall height up to 1.25 times the width of the widest abutting street or 50 feet, whichever is more. There are no length or diagonal dimension limitations applicable to the base. The building base shall be delineated from the lower and upper towers and related to abutting buildings by a setback, cornice line or equivalent projection or other appropriate means.
- (2) **Lower Tower.** Dimensions. Bulk controls for the lower tower apply to that portion of the building height above the base as shown on Chart B. For buildings less than 160 feet in height, the lower tower controls are the only bulk controls above the base of the building. The bulk controls for the lower tower are a maximum length of 160 feet, a maximum floor size of 20,000 square feet, and a maximum diagonal dimension of 190 feet.
- (3) **Upper Tower.**

  - (A) **Dimensions.** Upper tower bulk controls apply to buildings taller than 160 feet. They apply to the upper tower portion of a building up to the height shown on Chart B, which height excludes the vertical attachment and other features exempted by Section 260 and excludes the extended upper tower height exceptions provided for in Section 263.7 of this Code. The bulk controls for the upper tower are: a maximum length of 130 feet; a maximum average floor size of 12,000 square feet; a maximum floor size for any floor of 17,000 square feet; and a maximum average diagonal measure of 160 feet. In determining the average floor size of the upper tower, areas with a cross-sectional area of less than 4,000 square feet may not be counted and sculptured architectural forms that contain large volumes of space but no usable floors shall be included in average floor size calculation by computing the cross section at 12.5-foot intervals.
  - (B) **Volume Reduction.** When the average floor size of the lower tower exceeds 5,000 square feet, the volume of the upper tower shall be reduced to a percentage of the volume that would occur if the average floor size of the lower tower were extended to the proposed building height. The percentage varies with the bulk of the lower tower and with whether or not a height extension is employed pursuant to Section 263.7, shown on Chart C. In achieving the required volume reduction, a setback or change in profile at a specific elevation is not required.
  - (C) **Extensions.** Extensions of the upper tower above the otherwise allowable height limits may be permitted as provided in Section 263.9.



**(D) Termination of the Tower.** The top of the tower shall be massed in a manner that will create a visually distinctive roof or other termination of the building façade. Modifications to a proposed project may be required, in the manner provided in Section 309, to achieve this purpose.

Section 272 states that the bulk limits prescribed by Section 270 have been carefully considered in relation to objectives and policies for conservation and change in C-3 Districts. However, there may be some exceptional cases in which these limits may properly be permitted to be exceeded to a certain degree, provided, however, that there are adequate compensating factors.

A project sponsor must first establish that the Project is an “exceptional case,” and then demonstrate that at least one of five criteria is met in order for the Commission to make the necessary findings and grant any requested exceptions to the Section 270 Bulk.

The five criteria are:

1. Achievement of a distinctly better design, in both a public or private sense.
2. Development of a building or structure with widespread public service benefits and significance to the community at large.
3. The added bulk does not significantly affect light and air to adjacent buildings.
4. The appearance of bulk in the building, structure or development is reduced to the extent feasible by specific design means.
5. The building, structure or development is made compatible with the character and development of the surrounding area by specific factors.

Exceptions to bulk limits shall not result in a building of greater total gross floor area than would be permitted if the bulk limits were met.

*The existence of design constraints related to the size of the buildable area of the Project Site, the proximity of the site to the Moscone Convention Center and the associated need for hotel rooms to support convention activities, and the benefits of the proposed design make the Project an exceptional case.*

The Project meets one of the five criteria set forth in Section 272 (a) (1-5). As described below, the Project meets criteria 272(a)(3):

- (3) The added bulk does not significantly affect light and air to adjacent buildings;

*Due to the distance between the Wells Fargo and Moscone West Expansion Buildings created by the porte cochere and the third and fifth floor terraces, and the narrow width of the Project's 5<sup>th</sup> Street façade, the added bulk of the*

*Howard Street façade will not significantly affect light and air to adjacent buildings.*

Exceptions to bulk limits shall not result in a building of greater total gross floor area than would be permitted if the bulk limits were met.

*The total gross floor area of the proposed Project, at approximately 460,000 square feet<sup>14</sup>, is less than 547,000 square feet, which is the amount of gross floor area allowed with a maximum building envelope using the 320-S Height and Bulk Limits. Therefore, the requested exceptions to the Bulk Limits would not result in a building of greater total gross floor area than would be permitted if the Bulk Limits were met.*

Considering the above justifications of the criteria for exceptions set forth in Code Section 272(a) the Commission approves the requested exceptions to Section 270(d). The Commission finds that the Project's bulk, adjacent to the Wells Fargo Bank building and the Moscone West Expansion building, is appropriate for its context. These findings are supported by several General Plan objectives and policies, including those listed below. (Project Specifics are in *italics*):

#### URBAN DESIGN ELEMENT

OBJECTIVE 3 – MODERATION OF MAJOR NEW DEVELOPMENT TO COMPLEMENT THE CITY PATTERN, THE RESOURCES TO BE CONSERVED, AND THE NEIGHBORHOOD ENVIRONMENT.

##### Height and Bulk

POLICY 6 - Relate the bulk of buildings to the prevailing scale of development to avoid an overwhelming or dominating appearance in new construction.

When buildings reach extreme bulk, by exceeding the prevailing height and prevailing horizontal dimensions of existing buildings in the area, especially at prominent and exposed locations, they can overwhelm other buildings, open spaces and the natural land forms, block views and disrupt the city's character. Such extremes in bulk should be avoided by establishment of maximum horizontal dimensions for new construction above the prevailing height of development in each area of the city.

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<sup>14</sup> For consideration of bulk, the gross square footage was calculated without using the exemptions allowed under Section 102.9 of the Planning Code. Per 102.9 the proposed Project has a gross floor area of approximately 430,000 gsf.

## DOWNTOWN AREA PLAN

### Urban Form

#### OBJECTIVE 13 - CREATE AN URBAN FORM FOR DOWNTOWN THAT ENHANCES SAN FRANCISCO'S STATURE

Fitting new development into this environment is, in a broad sense, a matter of scale. It requires a careful assessment of each building site, relating a potential new structure to the size and texture of its surroundings. It means making a very conscious effort to achieve balance and compatibility in the design for the new building. Good scale depends upon a height that is consistent with the total pattern of the land and of the skyline, a bulk that is not overwhelming, and an overall appearance that is complementary to the building forms and other elements of the city. Since the height, bulk and appearance of past development differs within the city, scale is relative.

The apparent bulk of a building depends primarily upon two factors: the amount of wall surface visible, and how far the structure extends above its surroundings. Accordingly, a plan seeking to avoid excessive bulkiness should consider the existing scale of development in each part of the city and the effects of topography in exposing building sites to widespread view.

*The Project's building envelope, including the length of the Howard Street façade (approximately 200 feet), is appropriate for the site, which is adjacent to the Moscone West Expansion building. The Moscone West building is approximately 110-130 feet tall, and extends for approximately 600 feet as a rectangular mass for the remainder of the subject block between 5<sup>th</sup> and 4<sup>th</sup> Streets. The Howard Street façade of the proposed Project therefore relates appropriately to the Howard Street façade of the Moscone West building, and the narrow 5<sup>th</sup> Street façade (the tower is approximately 70 feet wide) of the Project relates to the scale of other development in the area.*

#### **7. Compliance with section 101.1 of the Planning Code: Priority Policies**

Section 101.1 of the Code requires consistency with the eight priority policies listed therein. The Commission finds that the Project would be consistent with these policies as stated below:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

*The Proposed Project site is vacant, so there are no existing neighborhood-serving retail uses to be preserved. The Project would include a restaurant and lounge/bar, and would hire local residents to the extent possible, thereby enhancing opportunities for resident employment. Hotel guests will help to support surrounding retail uses.*

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

*The proposed Project would not affect existing housing because the Project site is currently vacant. The proposed hotel use would be in character with the Yerba Buena and Moscone Convention Center areas to the north and east, and the Project's visitors would enhance existing retail businesses in the South of Market area to the south and west, thereby helping preserve the cultural and economic diversity of the surrounding neighborhood.*

3. That the City's supply of affordable housing be preserved and enhanced;

*The Proposed Project would, as required by Code, contribute approximately \$4.8 million to the City's Jobs-Housing Linkage Program, which funds the construction of affordable housing.*

4. That commuter traffic not impede Muni transit service or overburden our streets or neighborhood parking;

*The Proposed Project site is well served by public transit, and includes uses that would be less dependent on the private automobile. The Project is specifically located to service the Convention Center and Yerba Buena Gardens. As a result, the project would not adversely impact Muni transit or overburden local streets or neighborhood parking.*

5. 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 the sectors be enhanced;

*A private surface parking lot will be eliminated. The Proposed Project would provide significant new service jobs for local residents.*

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

*The proposed Project would fully comply with the seismic standards in the Building Code.*

7. That landmarks and historic buildings be preserved; and,

*The Project would be consistent with this policy by purchasing any remaining available TDR in the C-3-S District and by contributing at least \$1.145 million towards the preservation of a Landmark building in*

*the downtown C-3 area. (see conditions of approval in this Motion No. 16421).*

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

*A Shadow Study was conducted as required by Planning Code Section 295, which indicates that there would no net new shadow from the Project on any property under the jurisdiction of the Recreation and Park Department. Additional shadow analysis indicates that the Project's shadow impacts on other public parks and open space (such as Yerba Buena Gardens) would be minimal.*

**8. Compliance with Objectives and Policies of the General Plan.**

The Commission finds that the Project as proposed, including the creation of a C-3-S (SU) special use district with a basic FAR of 7.5:1 for hotel use, would, on balance, be consistent with the General Plan as shown in Resolution No. 16437 for the reclassification of the Project site from 160-F to 320-S, Resolution No. 16420 for the reclassification of the Project Site from C-3-S to C-3-S (SU), Motion No. 16436 for conditional use authorization, and this Motion No. 16421 for the Section 309 approval.

9. **Findings Under the California Environmental Quality Act.** The findings, recommendations and statement of overriding considerations set forth in Resolution No. 16435 (approved on May 23, 2002) are made and adopted by the Planning Commission as its findings under the California Environmental Quality Act relating to the Project. The findings provide the written analysis and conclusions of this Commission regarding the environmental impacts of the Project, mitigation measures, alternatives to the Project, and the overriding considerations, which in this Commission's view, justify approval of the Project despite its environmental impacts.

10. **Incorporation of Findings.** Each and every finding contained in Motion No. 16436 granting approvals for the Project under Section 303 of the Code, Resolution No. 16437 granting amendments to Zoning Map 1H under Section 302 of the Code and granting an amendment to Map 5 of the Downtown Area Plan under Section 340 of the Code, Resolution No. 16420 for amendments to the Planning Code, Zoning Map 1 and Map 1 of the Downtown Area Plan, and Resolution No. 16435 for required findings under CEQA are hereby incorporated by reference as though fully set forth herein. The Commission finds that the Project will promote the public welfare, convenience and necessity for reasons set forth above.

## DECISION

The Commission, after carefully balancing the competing public and private interests, both environmental and otherwise, hereby approves Application No. 2000.790EK~~X~~CTZM, and determines that the Project complies with the Section 309 and grants exceptions to the ground level wind currents requirements in Section 148 and the bulk requirements in Section 270, subject to the conditions set forth below and attached as Exhibit A and in general conformance with the plans included in the booklet dated May 23, 2002 and marked Exhibit B.

I hereby certify that the foregoing as ADOPTED by the Planning Commission at its regular meeting on June 6, 2002.

Linda Avery  
Commission Secretary

AYES: Commissioners Joe, Theoharis, Salinas, Lim, Baltimore

NOES: None

ABSENT: None

ABSTAINED: Commissioners Chinchilla, Fay

ADOPTED: June 6, 2002

## EXHIBIT A

### CONDITIONS OF APPROVAL

Wherever “Project Sponsor” is used in the following conditions, the conditions shall also bind any success to the Project or other persons having an interest in the Project or underlying property.

This approval and the granting of certain exceptions pursuant to Section 309 (from the requirements set forth in Planning Code Sections 148, 270(d)(2) and 270(d)(3) is for a proposed hotel project located at 888 Howard Street on Assessor’s Block 3724, Lot 66 in a C-3-S (Downtown Commercial Support) District and within a 160-F Height/Bulk District, in general conformance with the plans included in the booklet dated May 23, 2002 and marked “Exhibit B.” The Project would excavate 39,275 cubic yards of soil to a depth of about 28 feet, construct an approximately 320-foot tall building, 31 stories high with 572 hotel rooms, 9,200 square feet of restaurant and bar/lounge space on the ground floor, 43,000 square feet of conference room and meeting space, 12,600 square feet of publicly-accessible open space on two upper-level terraces (3<sup>rd</sup> and 5<sup>th</sup> floors) and a one-story below grade parking garage with up to 30,000 square feet of parking (approximately 115 valet-style or 73 independently accessible automobile spaces). Three loading docks would be located on Fifth Street.

#### 1. CONDITIONS TO EFFECTIVENESS OF THIS APPROVAL

- A. Reclassification of the Height and Bulk District of the Project Site and related Amendments of Zoning Map 1H and Map 5 of the Downtown Area Plan of the General Plan

It shall be a condition precedent to the effectiveness of this approval that the Project receives approval of a rezoning pursuant to Section 302 to change the zoning from the existing 160-F Height and Bulk District to a 320-S Height and Bulk District, and of related amendments to Zoning Map 1H and Map 5 of the Downtown Area Plan of the General Plan. This approval shall not be effective until such amendments have been approved by the Board of Supervisors and any appeal period has run or the appeal for the amendment has been upheld.

- B. Creation of C-3-S (SU) District, Reclassification of the Project Site from C-3-S to C-3-S (SU) and related Amendments to the Planning Code, Amendment of Zoning Map 1 and Amendment of Map 1 of the Downtown Area Plan of the General Plan.

It shall be a condition precedent to the effectiveness of this approval that the Project receives approval of the creation of a new special use district known as C-3-S (SU), approval of a rezoning pursuant to Section 302 to change the zoning from the existing C-3-S District to a C-3-S (SU) District as shown on Zoning Map 1, and that Map 1 of the Downtown Area Plan of the General Plan be

amended to show the reclassification of the project site from a C-3-S District to a C-3-S (SU) District. This approval shall not be effective until such amendments have been approved by the Board of Supervisors and any appeal period has run or the appeal for the amendments has been upheld.

C. Conditional Use Authorization

It shall be a condition precedent to the effectiveness of this approval that the Project receives approval of conditional use permit pursuant to Section 303 for the construction of a hotel with more than 200 rooms.

2. COMPLIANCE WITH OTHER REQUIREMENTS

This decision conveys no right to construct, or to receive a building permit. The Project Sponsor must obtain all other required approvals and satisfy all the conditions thereof, including mitigation measures addressing environmental impacts. 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.

3. GENERAL CONDITIONS

A. Mitigation Measures

Mitigation Measures identified in the Project's FEIR (2000.790E) proposed as part of the Project, as outlined in Chapter IV of the FEIR: "Mitigation Measures" and as shown in Exhibit "A" of the CEQA Resolution No. 16435 (approved by the Commission on May 23, 2002) shall be conditions of approval and are accepted by the Project Sponsor or its successor in interest, and are incorporated herein.

B. Community Liaison

The Project Sponsor shall appoint a community liaison officer to deal with issues of concern to the owners and occupants of nearby properties at all times during the Project construction. Prior to the commencement of Project construction, the Project Sponsor shall give the Zoning Administrator and the owners of properties within 300 feet of the Project site boundaries written notice of the name, business address and telephone number of the community liaison.

C. Advertising

No general advertising sign shall be permitted on the Project site or on any structure on the Project site.



D. Recordation

Prior to the issuance of any building permit for the construction of 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, which notice shall state that construction of the Project has been authorized by and is subject to the conditions of this Motion. From time to time after the recordation of such notice, at the request of the Project Sponsor, the Zoning Administrator shall affirm in writing the extent to which the conditions of this Motion have been satisfied, and record said writing if requested.

E. Reporting

The Project Sponsor shall submit to the Zoning Administrator two copies of a written report describing the status of compliance with the conditions of approval contained within this Motion every six months from the date of this approval through the issuance of the first temporary certificate of occupancy. Thereafter, the submittal of the report shall be on an annual basis. This requirement shall lapse when the Zoning Administrator determines that all the conditions of approval have been satisfied or that the report is no longer required for other reasons.

F. Construction

- 1) The Project Sponsor shall ensure the construction contract will coordinate with the City and other construction contractor(s) for any concurrent nearby projects that are planned for construction to avoid negative impacts on pedestrian and vehicular traffic.
- 2) In order to avoid conflict with peak period traffic, construction deliveries shall not occur prior to 9:00 AM or after 3:30 PM Monday through Friday.
- 3) If the Project Sponsor requires use of a street for staging or storage of materials for the Project, the Project Sponsor shall request approval from the Department of Parking and Traffic for the utilization of a street.

G. The Project shall comply with all City Codes.

H. Should monitoring of the Conditions of Approval of this Motion be required, the Project Sponsor shall pay fees as established in the Planning Code.

I. Performance

This authorization shall be extended at the discretion of the Zoning Administrator only where failure to issue a permit by the Department of Building Inspection to construct the proposed building is caused by a delay by a City, State or Federal agency or by any appeal of the issuance of such permit(s). Construction of the project shall commence within three (3) years of the date this Section 309 Motion No. 16421 is approved, or this authorization shall be void and cancelled.

J. Transportation

- (1) The Project Sponsor shall, in consultation with the Municipal Railway, install eyebolts or make provisions for direct attachment of eyebolts for MUNI trolley wires on the Project wherever necessary or agree to waive the right to refuse the attachment of eyebolts to the Project if such attachment is done at City expense. The Project sponsor shall report back to the Department within two weeks the results of such consultation with MUNI.
- (2) All vehicular driveways shall include warning devices (lighted signs and noise-emitting devices) to alert pedestrians to vehicles exiting the structure. The Department transportation staff shall make the final determination on installation of these devices. Evidence of installation of warning devices shall be submitted to Department staff prior to building occupancy.

4. CONDITIONS TO BE MET PRIOR TO THE ISSUANCE OF THE FIRST BUILDING OR SITE PERMIT

- A. Pursuant to Section 313, the required in-lieu fee to the Jobs-Housing Linkage Program shall be paid to City. The net addition of gross floor area subject to the fee shall be determined based on drawings submitted with the Building Permit Application. (A permit application for utility undergrounding work submitted in order to coordinate with work on Moscone West shall not require payment of this fee).

B. Signage and Lighting Programs

The Project Sponsor shall develop signage and lighting programs for the Project which shall be subject to review and approval by Planning Department staff. All subsequent sign permits shall conform to the approved signage program.

C. First Source Hiring: Construction Program

The project is subject to the requirements of the First Source Hiring Program (Chapter 83 of the Administrative Code) and the Project Sponsor shall comply with the requirements of this Program. Prior to the issuance of any building permit to construct or a First Addendum to the Site Permit, the Project Sponsor shall have a First Source Hiring Construction Program approved by the First Source Hiring Administrator, and evidenced in writing.

D. Purchase of TDR and Contribution Towards Historic Preservation

(1) Prior to the issuance of the First Addendum to the Site permit for the Project (as set forth in Section 128(h) of the Code), the Project Sponsor shall have either:

(a) acquired all remaining available TDR within the C-3-S District (estimated to be approximately 12,000 square feet from one property. A second property owner has approximately 8,000 square feet of eligible TDR but says they are not for sale); and shall have received a written certification from the Zoning Administrator that such transfer has occurred; or

(b) in the event that there are fewer than 12,000 square feet of TDR within the C-3-S District for sale, or the sale price of the TDR exceeds \$20 per square foot, the Project Sponsor shall contribute an equivalent amount of money, at \$20 per square foot, towards the preservation of a Landmark building in the downtown C-3 area (in addition to the \$1.145 million described below in (2)).<sup>15</sup>

(2) Also prior to the issuance of the First Addendum to the Site permit for the Project, the Project Sponsor shall have made a contribution of at least \$1.145 million towards the preservation of a Landmark building in the downtown C-3 area. The Project Sponsor shall provide the Director of Planning with documentation sufficient to establish that such payment has been made.

5. CONDITIONS TO BE MET PRIOR TO THE ISSUANCE OF A FINAL ADDENDUM TO A BUILDING (OR SITE) PERMIT

A. Design

(1) Highly reflective spandrel glass, mirror glass, or deeply tinted glass shall not be permitted. Only clear glass shall be used at pedestrian levels.

(2) The Project Sponsor shall continue to work with the Department on certain aspects of the design including but not limited to:

- the design and illumination of the top of the building;
- details regarding massing and fenestration;
- treatment of property line walls or borders (Moscone West and Wells Fargo buildings where they border the Project's open space terraces);

<sup>15</sup> For example, if no TDR are available, the Project Sponsor would pay the full 12,000 x \$20 = \$240,000 to the selected Landmark building. If only 6,000 square feet of TDR were available, the Project Sponsor would acquire the TDR (as per Section 128) AND pay 6,000 x \$20 = \$120,000 to the selected Landmark building.

- details of the street level facades;
  - landscaping, etc. to buffer the loading areas on 5<sup>th</sup> Street
- (3) Space shall be included for antennae in the building's design to avoid unattractive appendages.
- (4) Prior to the issuance of the final addendum to the site permit, final architectural and decorative detailing, materials, glazing, color and texture of exterior finishes shall be submitted for review by, and shall be satisfactory to the Director of the Department. The Project architect shall submit dimensional design drawings for building details with specifications and samples of materials to insure a high design quality is maintained.
- (5) Except as otherwise provided in this Motion, the Project shall be completed in general accordance with plans included in the booklet dated May 23, 2002 labeled "Exhibit B," and reviewed by the Commission on May 23, 2002.

B. Open Space

- (1) The Project plans shall include 12,600 square feet of publicly accessible on-site open space on two terraces, one on the third floor of the building and another on the fifth floor of the building, as described in Section 5.A. of this Motion (pages 7-10), as well as 4,000 square feet of publicly-accessible open space meeting the requirements of Section 138 and the *Guidelines for Downtown Open Space*.
- (2) The final design of all of the Project open spaces provided pursuant to Section 138, including materials and their treatment, furniture, and planting plan including species shall be submitted for review by, and shall be satisfactory to the Director of the Planning Department. The open space flooring shall be of a material which provides a non-slipping surface when wet.

C. Pedestrian Streetscape Improvements

The Project plans shall include pedestrian streetscape improvements generally as described in this Motion and in conformance with Planning Code Section 138.1. As required to mitigate high winds (one exceedance of the 26 mph hazard criterion) identified in the Project's wind tunnel analysis, mature street trees (at least 36" box) will be planted along the Howard and 5<sup>th</sup> Street frontages. Prior to issuance of the final addendum to the site permit a final pedestrian streetscape improvement plan including landscaping and paving materials and patterns, shall be submitted for review by, and shall be satisfactory to the Director of the Department, in consultation with the Director of the Department of Public Works.

D. Public Artwork

- (1) The Project plans shall include the work(s) of art in the location described in this Motion (Section 5.C. on page 11). The work(s) of art shall be valued at an amount equal to or greater than 1% of the hard construction costs for the Project as determined by the Director of the Department of Building Inspection. The Project Sponsor shall provide to the Director necessary information to make the determination of construction cost hereunder.
- (2) The Project Sponsor and the Project artist shall consult with the Planning Department during design development regarding the height, size, type and location of the art work(s). The final art concept and location shall be submitted for review by, and shall be satisfactory to the Director of the (Planning) Department in consultation with the Commission. The Project Sponsor and the Director shall report to the Commission on the progress of the development and design of the art concept no later than 6 months after the date of this approval.
- (3) The proposed artwork(s) shall meet the requirements of Section 149 of the Code and the *Fine Art Guidelines*, and shall be appropriately lit.

E. Garbage and Recycling

The building design shall provide adequate space designated for trash compactors, trash loading, and recycling. These areas shall be indicated on the building plans.

6. CONDITIONS TO BE MET PRIOR TO THE ISSUANCE OF THE FIRST TEMPORARY OR PERMANENT CERTIFICATE OF OCCUPANCY

A. Open Space

- (1) Subject to all the requirements in Section 138 of the Planning Code and the *Guidelines for Downtown Open Space*, the Project Sponsor shall complete and make available to the public the required on-site open space as described in Section 5.A. (pages 7-10) of this Motion, including 12,600 square feet of space on two 3<sup>rd</sup> and 5<sup>th</sup> floor terraces and an additional 4,000 square feet of space in a location to be determined.
- (2) The two terraces shall be in general conformity with the plans in the booklet dated May 23, 2002 and labeled Exhibit B. The first terrace will be on the third floor of the building and measure approximately 7,426 square feet. The second terrace shall be located on the fifth floor and measure approximately 5,168 square feet.

- (3) The Project Sponsor shall install all necessary signs and plaques pursuant to Section 138 of the Planning Code, including but not limited to plaques identifying the publicly accessible open space, the right of the public use, the hours of availability to the public and the name and address of the owner or owner's agent responsible for maintenance. These plaques shall be installed in publicly conspicuous locations near both the Howard Street and Fifth Street entries (or access routes) to the on-site open spaces. Signage clearly indicating the location of public restrooms shall be installed along with the plaques just described.

B. Public Artwork

The Project Sponsor shall install the work(s) of art generally as described in Section 5.C. of this Motion (page 11) and make it available to the public. The Project Sponsor shall place a plaque or cornerstone identifying the Project architect, the artwork creator and the Project completion date in a publicly conspicuous location on the Project site.

C. Garbage and Recycling

The Project shall provide containers to collect and store recyclable solid waste and the Project Sponsor shall contract for recycling pickup.

D. Shower Facilities

The project shall provide shower facilities and lockers in accordance with the requirements of Planning Code Section 155.3.

E. Pedestrian Streetscape Improvements

The Project Sponsor shall comply with Section 138.1 and complete the required pedestrian streetscape improvements, including the installation of mature (at least 36" box) street trees along the Fifth and Howard Street frontages. The Project Sponsor shall be responsible for the upkeep and maintenance of such improvements if they exceed City standards.

F. Childcare Requirement

Pursuant to Section 314, the Project Sponsor shall pay the in-lieu fee as required. The net addition of gross floor area subject to the fee shall be determined based on drawings submitted with the Building Permit Application.

G. First Source Hiring: Occupancy Program

The project is subject to the requirements of the First Source Hiring Program (Chapter 83 of the Administrative Code) and the Project Sponsor shall comply

with the requirements of this program. The Project shall have a First Source Hiring Occupancy Program approved by the First Source Hiring Administrator, and evidenced in writing.

7. CONDITIONS TO BE MET WITHIN THREE (3) MONTHS OF THE ISSUANCE OF A CERTIFICATE OF OCCUPANCY

A. Winds on Public Terraces

The Project's wind tunnel study showed wind speeds between 11 and 13 mph in the publicly-accessible open space terraces on the 3<sup>rd</sup> and 5<sup>th</sup> floors of the hotel. Section 148(a) sets a wind speed limit of 7 mph in public seating areas. Because the terraces would contain public seating, the Project Sponsor shall test the seating areas of both terraces once they are constructed, for wind speeds in excess of 7mph. If the 7 mph criterion is exceeded, screening or landscaping (and perhaps some form of enclosure) shall be installed so as to reduce the wind speeds to the maximum extent possible.