

FILE NO. 090340

MOTION NO.

M09-62

1 [Adopting findings related to the reversal of the approval of the mitigated negative declaration
2 adopted by the Planning Commission for 110 The Embarcadero]

3 **Motion adopting findings related to the reversal of the approval of the mitigated**
4 **negative declaration adopted by the Planning Commission for 110 The Embarcadero.**

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6 On September 12, 2008, the Environmental Review Officer of the Planning
7 Department, in accordance with the California Environmental Quality Act ("CEQA"), the CEQA
8 Guidelines and San Francisco Administrative Code Chapter 31, issued a preliminary mitigated
9 negative declaration for a proposal at 110 The Embarcadero to demolish the existing two-
10 story office building and construct a new 10-story office building with ground floor retail space.

11 On September 29, 2008, and October 2, 2008, David Osgood, representing Rincon
12 Point Neighbors Association, and Sue C. Hestor, representing San Franciscans for
13 Reasonable Growth, respectively, appealed the preliminary negative declaration to the
14 Planning Commission in accordance with Administrative Code Section 31.11(c).

15 On November 6, 2008, the Planning Commission affirmed the decision of the Planning
16 Department to issue a final mitigated negative declaration for the proposal at 110 The
17 Embarcadero by Motion No. 17737, but deferred the approval of the proposal and adoption of
18 the final mitigated negative declaration and instead requested staff to prepare documents for
19 the approval of a revised project with the deletion of parking and the addition of more retail
20 space compared to the project as originally proposed.

21 On January 15, 2009, following a noticed public hearing, the Planning Commission by
22 Motion No. 17804 adopted a Final Mitigated Negative Declaration for 110 The Embarcadero
23 ("mitigated negative declaration") in accordance with Administrative Code Section 31.11(h). A
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1 copy of said document is on file with the Clerk of the Board of Supervisors in File No. 090159
2 and is incorporated by reference herein.

3 On January 15, 2009, the Planning Commission through Motions No. 17804, 17805,
4 and 17807 and Resolution Nos. 17806 and 17808 took various approval actions related to the
5 proposal, approving the demolition of an existing two-story office building and construction of
6 a new 123-foot tall, 10-story over basement building with approximately 52,890 square feet of
7 office uses, 2,490 square feet of ground floor retail space, 2,670 square feet of rooftop open
8 space and no parking spaces (the "Project") and recommending to the Board that the site be
9 rezoned from an 84-X Height and Bulk District to a 130-foot Height and Bulk District and the
10 General Plan be correspondingly amended.

11 On February 4, 2009, the Clerk of the Board received an appeal of the mitigated
12 negative declaration for the Project from Sue C. Hestor on behalf of San Franciscans for
13 Reasonable Growth ("Appellant").

14 This Board of Supervisor's held a duly noticed public hearing on March 17, 2009, to
15 consider the mitigated negative declaration appeal filed by Appellant for the Project.
16 Following the conclusion of the public hearing, the Board reversed the Planning Commission's
17 adoption of the mitigated negative declaration for 110 The Embarcadero based on the written
18 record before the Board as well as all of the testimony at the public hearing in support of and
19 opposed to the appeal. Said Motion and written record is in the Clerk of the Board of
20 Supervisors File No. 090161 and is incorporated herein as though set forth in its entirety.

21 In regard to said decision, this Board made certain findings specifying the basis for its
22 decision to reverse the Planning Commission's approval of the final mitigated negative
23 declaration for 110 The Embarcadero based on the whole record before the Board including
24 the written record in File No. 090159, which is hereby declared to be a part of this motion as if
25 set forth fully herein; and also including but not limited to: the written submissions to and

1 official written records of the Planning Department determination on the mitigated negative
2 declaration and subsequent determinations of the Planning Department related to 110 The
3 Embarcadero project; and the official written and oral testimony at and audio and video
4 records of the public hearing in support of and opposed to the appeal and deliberation of the
5 oral and written testimony at the public hearing before the Board of Supervisors by all parties
6 and the public in support of and opposed to the appeal of the mitigated negative declaration.

7 NOW, THEREFORE, BE IT MOVED, That the Board of Supervisors finds that there is
8 substantial evidence of a fair argument that the 110 The Embarcadero project may have a
9 significant effect on an historical resource and requires the preparation of an environmental
10 impact report for the following reasons:

11 1. There is substantial evidence that the existing building at 110 The Embarcadero,
12 which also fronts 113-115 Steuart Street, is an historical resource. As acknowledged by Page
13 and Turnbull in its submittal to the Board and as further explained in a letter from Robert W.
14 Cherny, Professor History at San Francisco State University, and in a letter from and in oral
15 testimony by Michael R. Corbett, an architectural historian, the building is eligible for listing on
16 the California Register under Criterion A, association with important events, for its direct
17 association with the 1934 waterfront and general strikes in San Francisco. The second floor
18 of 113 Steuart Street was the headquarters of Local 38-79 of the International
19 Longshoremen's Association ("ILA") when the local was chartered in 1933 and continued in
20 that capacity for about two years, including during 1934 when the ILA went on strike, an event
21 that lead to the death of two men at the intersection of Steuart and Mission Street on July 5,
22 1934, also referred to as "Bloody Thursday." The bodies lay in state at 113 Steuart Street and
23 from it a funeral procession began and wound down Market Street. The ILA strike in San
24 Francisco set off similar strikes elsewhere, which shut down all Pacific Coast ports. From the
25 ILA Local 38-79 strike emerged Harry Bridges, who went on to lead the ILA Local 38-79 and

1 later the International Longshoremen's and Warehousemen's Union from 1937 to 1977. This
2 is one of the most significant events in the labor history of San Francisco with repercussions
3 up and down the West Coast.

4 2. Although Page and Turnbull concluded and the negative declaration found that the
5 building was not an historical resource because it lacked integrity, there is substantial
6 evidence in the record that the building retains integrity, including information contained in a
7 letter and testimony from Bradley Wiedmaier, and in a letter and testimony from Michael R.
8 Corbett, both architectural historians. As Page and Turnbull acknowledge, the building
9 remains in its original location, the historic Audiffred Building remains next door and five of the
10 buildings in the vicinity visible from a 1934 photograph still stand, resulting in a blockface that
11 retains integrity. The massing and scale of the building, the shaped parapet with coping and
12 the stucco cladding of the building remain the same as they were in 1934. Bradley Wiedmaier
13 states that the second floor window opening dimensions, the number of openings, the depth
14 of the glazing from the wall surface and framing remain the same. As provided in his letter
15 and testimony, Michael R. Corbett provided justification based on the California Register
16 provisions relating to integrity for his conclusion that the building does retain integrity in view
17 of its importance for its association with a significant historical event, and considering that the
18 alterations to the façade details mentioned by Page and Turnbull are largely reversible.

19 3. The proposed project would result in the demolition of the existing building. Given
20 the substantial evidence in the record to support a determination that the building is an
21 historical resource because it retains integrity associated with important historic events, there
22 is a fair argument that the project, which proposed the demolition of the resource, may result
23 in a substantial adverse change in the significance of an historical resource requiring the
24 preparation of an EIR.
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1 FURTHER MOVED, That the Board of Supervisors finds that there is substantial
2 evidence of a fair argument that the project may have a significant impact on land use. The
3 project would conflict with urban design policies of the Downtown Plan and General Plan
4 adopted for the purpose of avoiding or mitigating environmental effects, including without
5 limitation, the stated intent of the height and bulk districts as set forth in Planning Code
6 Section 251, for the following reasons:

7 1. The project proposes a height of approximately 123 feet (with mechanical elevator
8 penthouses at 136 feet and 140 feet, respectively) and the sponsor is seeking a rezoning and
9 General Plan amendment of height and bulk district maps to reclassify the site from an 84-X
10 Height and Bulk District to a 130-X Height and Bulk District. A proposed motion prepared by
11 Planning Department staff and presented to the Planning Commission on November 6, 2008,
12 stated that the urban form policies in the Downtown Plan had been carefully considered to
13 create a legible pattern of development to allow for sensitive transitions between height
14 districts and maintain a step-down of heights along the waterfront to preserve light and
15 openness within the open space areas near the water and to retain views of the Bay and other
16 key landmarks. The Planning Department staff found that the project site occupies a unique
17 position within the City. Many Financial District lots are large with tall buildings, but the
18 subject block is characterized by an intimate, narrow lot pattern, with a rich and eclectic
19 assemblage of buildings from different eras in a highly prominent location that serves to frame
20 the waterfront and the Embarcadero. The 84-foot height limit was selected as a average of
21 existing heights on the block and except for the peak of a roof at the central tower of the
22 YMCA building located to the southeast, which reaches a height of 130 feet, all other buildings
23 are of heights at or below the existing 84-foot height limit. Furthermore, testimony before the
24 Board of Supervisors and the Planning Commission suggests that the 84-foot height limit was
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1 calculated prior to the demolition of the elevated Embarcadero Freeway, further diminishing
2 the basis for approving tall buildings along The Embarcadero.

3 2. Although the urban form policies are designed to achieve a step-down of heights to
4 the east of downtown as one approached the waterfront, the building would substantially
5 exceed the height of the building immediately to the west of it on Steuart Street, the Rincon
6 Center, which is three to five stories in height.

7 3. Planning Department staff found the project inconsistent with Planning Code
8 Section 101.1(b)(2), which calls for conserving and protecting existing housing and
9 neighborhood character. This parcel specific height change, in an area where the step-down
10 to the water is to be preserved, in a height and bulk district of 84-X, and on a block with
11 narrow lots, could compromise the character of the area and overwhelm adjacent structures.
12 The height change proposed should be evaluated within a environmental context that
13 considers the height change effects on urban form, shadow on parks, wind patterns and
14 impacts resulting from increased development intensity and other issues that affect the
15 comfort, usability and enjoyment of the public realm

16 FURTHER MOVED, That the Board of Supervisors finds that the negative declaration
17 did not adequately analyze the combined effects of shadow on parks and public open spaces
18 caused by the project in the vicinity of the project. The project will shadow the Embarcadero
19 Promenade, the plaza at the northwest corner of Mission and Steuart Streets and Rincon Park
20 and Justin Herman Plaza and the combined effects of this shading should be more fully
21 evaluated. The project would generate less shadow if redesigned as a code compliant project
22 within the existing height limit. An independent shadow study should be done as part of an
23 EIR to assess the shadow impacts of the existing building compared to the proposed new
24 building and to a code-compliant alternative. In addition, the project's shadow impacts may
25 be cumulatively significant when considered with the impacts of other past, current, and future

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1 projects that have requested height map amendments and the cumulative shadow impacts of
2 this project, together with other past, current and reasonably foreseeable proposed future
3 projects that have or may shade the same parks and public open spaces affected by this
4 project, should be considered in an EIR.

5 FURTHER MOVED, That the Board of Supervisors finds that the negative declaration
6 did not adequately analyze the possible impacts of the proposed "living wall" on the adjacent
7 Audiffred Building and the project's impacts on migratory birds for the following reasons:

8 1. The wall would be irrigated with recycled water and although the negative
9 declaration identifies a mitigation measure that requires an operation plan that must
10 demonstrate how the irrigation system for the wall will not result in water infiltration of the
11 masonry of the adjacent historic building or the spread of organic bloom to the building that
12 could damage its masonry walls, methods for feasibly achieving this goal are not identified
13 and, therefore, the feasibility of this measure is unclear. These potentially significant impacts
14 on the adjacent Audiffred Building (Landmark No. 7) should be adequately analyzed and, if a
15 significant impact is found, mitigation measures developed, as a part of an EIR.

16 2. Written and oral testimony presented at the hearing identified the potentially
17 significant impact on birds flying into the "mostly glass" walls that will comprise three principal
18 facades (west, north and east) of the proposed structure. The Audubon Society has identified
19 lit glass walls with lobby greenery as a hazard for migratory birds. The negative declaration
20 does not adequately explain why the proposed project will not pose a hazard to migratory
21 birds. An EIR should examine the potential impacts on birds of the proposed glass curtain
22 walls, with its proposed flowering ivy and other greenery planted along the horizontal belt
23 courses of aluminum mesh-faced planters and trellis system, particularly given this structure's
24 proposed location on the waterfront.



City and County of San Francisco

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Tails Motion

File Number: 090340

Date Passed: March 31, 2009

Motion adopting findings related to the reversal of the approval of the mitigated negative declaration adopted by the Planning Commission for 110 The Embarcadero.

March 24, 2009 Board of Supervisors — REFERRED: Board of Supervisors

March 31, 2009 Board of Supervisors — AMENDED

Ayes: 11 - Alioto-Pier, Avalos, Campos, Chiu, Chu, Daly, Dufty, Elsbernd, Mar, Maxwell, Mirkarimi

March 31, 2009 Board of Supervisors — APPROVED AS AMENDED

Ayes: 8 - Avalos, Campos, Chiu, Daly, Dufty, Mar, Maxwell, Mirkarimi
Noes: 3 - Alioto-Pier, Chu, Elsbernd

File No. 090340

I hereby certify that the foregoing Motion was APPROVED AS AMENDED on March 31, 2009 by the Board of Supervisors of the City and County of San Francisco.



Angela Calvillo
Clerk of the Board