FILE NO. 090340

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

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

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

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

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

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

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

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

In regard to said decision, this Board made certain findings specifying the basis for its decision to reverse the Planning Commission's approval of the final mitigated negative declaration for 110 The Embarcadero based on the whole record before the Board including the written record in File No. 090159, which is hereby declared to be a part of this motion as if set forth fully herein; and also including but not limited to: the written submissions to and
official written records of the Planning Department determination on the mitigated negative
declaration and subsequent determinations of the Planning Department related to 110 The
Embarcadero project; and the official written and oral testimony at and audio and video
records of the public hearing in support of and opposed to the appeal and deliberation of the
oral and written testimony at the public hearing before the Board of Supervisors by all parties
and the public in support of and opposed to the appeal of the mitigated negative declaration.

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

1. There is substantial evidence that the existing building at 110 The Embarcadero,
which also fronts 113-115 Steuart Street, is an historical resource. As acknowledged by Page
and Turnbull in its submittal to the Board and as further explained in a letter from Robert W.
Cherny, Professor History at San Francisco State University, and in a letter from and in oral
testimony by Michael R. Corbett, an architectural historian, the building is eligible for listing on
the California Register under Criterion A, association with important events, for its direct
association with the 1934 waterfront and general strikes in San Francisco. The second floor
of 113 Steuart Street was the headquarters of Local 38-79 of the International
Longshoremen's Association ("ILA") when the local was chartered in 1933 and continued in
that capacity for about two years, including during 1934 when the ILA went on strike, an event
that lead to the death of two men at the intersection of Steuart and Mission Street on July 5,
1934, also referred to as "Bloody Thursday." The bodies lay in state at 113 Steuart Street and
from it a funeral procession began and wound down Market Street. The ILA strike in San
Francisco set off similar strikes elsewhere, which shut down all Pacific Coast ports. From the
ILA Local 38-79 strike emerged Harry Bridges, who went on to lead the ILA Local 38-79 and
later the International Longshoremen's and Warehousemen's Union from 1937 to 1977. This is one of the most significant events in the labor history of San Francisco with repercussions up and down the West Coast.

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

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

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

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

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

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

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

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

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