



# SAN FRANCISCO PLANNING DEPARTMENT

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## Executive Summary Conditional Use

HEARING DATE: FEBRUARY 27, 2014

*Date:* February 20, 2014  
*Case No.:* **2007.0392CV**  
*Project Address:* **832 SUTTER STREET**  
*Zoning:* RC-4 (Residential-Commercial Combined, High Density) District  
80-A Height and Bulk District  
*Block/Lot:* 0281/003  
*Project Sponsor:* John Kevlin  
Reuben, Junius, and Rose, LLP  
One Bush Street, Suite 600  
San Francisco, CA 94124  
*Staff Contact:* Kevin Guy – (415) 558-6163  
[kevin.guy@sfgov.org](mailto:kevin.guy@sfgov.org)  
*Recommendation:* **Approval with Conditions**

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### PROJECT DESCRIPTION

The project proposes to demolish an existing surface parking lot and construct a new six-story mixed-use building containing approximately 20 dwelling units, 400 square feet of ground-floor commercial uses, and no off-street parking spaces.

### SITE DESCRIPTION AND PRESENT USE

The project is located on the north side of Sutter Street, west of Jones Street, Block 2083, Lot 001. The property is located within the RC-4 (Residential-Commercial Combined, High Density) District and the 80-A Height and Bulk District. The property measures approximately 4,660 sq. ft. and is currently used as a surface parking lot.

### SURROUNDING PROPERTIES AND NEIGHBORHOOD

The area surrounding the project site is mixed-use in character. The site is located within the Lower Nob Hill neighborhood, an area characterized by high-density residential development, including numerous residential hotels. Retail uses are often found on the ground floors of residential buildings, although retail frontage is not continuous on all streets. Processions of storefronts are interrupted by ground-floor dwelling units, residential lobbies and elevated entries, and utilitarian building service spaces. The project site is also located within the Lower Nob Hill Apartment Hotel District.

The scale of development varies in the vicinity of the project site. Older buildings in the immediate area are generally four to eight stories in height. Some taller residential towers of more recent construction are

interspersed among the older mid-rise structures. Tall hotel structures, such as the Hotel Nikko and the Hilton can be found in the blocks near Union Square to the southeast.

The Polk Street Neighborhood Commercial District (NCD) is located to the west, located in the gulch between Nob Hill, Russian Hill, and Pacific Heights. The Polk Street NCD provides convenience goods and services to the residents of the Polk Gulch neighborhood and the west slopes of Nob and Russian Hill. The district has a very active and continuous commercial frontage along Polk Street, while the side streets have a greater proportion of residences. The Union Square retail area is located to the east, characterized by an intense mixture of retail, restaurant, and hotel uses that is a regional draw and one of the primary attractions for visitors to San Francisco.

## ENVIRONMENTAL REVIEW

The Project is exempt from the California Environmental Quality Act (“CEQA”) as a Class 32 categorical exemption.

## HEARING NOTIFICATION

| TYPE               | REQUIRED PERIOD | REQUIRED NOTICE DATE | ACTUAL NOTICE DATE | ACTUAL PERIOD |
|--------------------|-----------------|----------------------|--------------------|---------------|
| Classified News Ad | 20 days         | February 7, 2014     | February 7, 2014   | 20 days       |
| Posted Notice      | 20 days         | February 7, 2014     | February 7, 2014   | 20 days       |
| Mailed Notice      | 10 days         | February 17, 2014    | February 14, 2014  | 13 days       |

## PUBLIC COMMENT

- When the Notice of Preparation for the project was issued in 2008, staff received correspondence in opposition to the project from several residents and business owners in the vicinity. These communications expressed concern over the loss of parking spaces in the existing surface parking lot, the lack of off-street parking in the proposed project, and damage to foundations and retaining walls on adjacent properties. It should be noted that, since these comments were received in 2008, the project has been reduced in height from 80 feet to 60 feet, and from 27 dwelling units to 20 dwelling units. Staff has not received any further correspondence in opposition since the project was revised, and has received one communication in support of the project.

## ISSUES AND OTHER CONSIDERATIONS

- The project proposes no off-street parking spaces, where five spaces are required by Planning Code Section 151. The sponsor has requested a Parking Reduction to waive the required parking spaces, and this request will be considered administratively by the Zoning Administrator based on the criteria in Planning Code Section 307(i). It should be noted that the project appears to meet the specified criteria to allow the waiver. The project site is located within a vibrant district where many convenience goods and services are available within walking distance. The project site is also within walking distance of the Financial District, and nine Muni lines are available within three blocks. Therefore, residents of the project will be able to commute via means other than

private automobile use. The area is characterized by dense residential uses situated over ground-floor commercial spaces. Providing parking for the project would likely require the removal of the ground-floor retail space, resulting in a less active and pedestrian-oriented streetscape.

- The project requires Conditional Use Authorization to construct a building exceeding 50 feet in height within an RC District. The existing development in the area surrounding the project site is varied in scale and intensity. Older buildings in the immediate area are generally four to eight stories in height. Some taller residential towers of more recent construction are interspersed among the older mid-rise structures. On the subject block, the majority of buildings are five to six stories in height. At a height of six stories, the project represents an appropriately-scaled infill development that respects the prevailing character of the block and the surrounding neighborhood.

### **REQUIRED COMMISSION ACTION**

In order for the project to proceed, the Commission must grant Conditional Use authorization to allow construction exceeding 50 feet in height within an RC District, pursuant to Planning Code Sections 253 and 303. In addition, the Zoning Administrator must grant a Parking Reduction to allow no off-street parking spaces where five are required, pursuant to Planning Code Sections 161(j) and 307(i).

### **BASIS FOR RECOMMENDATION**

- The project adds 20 dwelling units to the City's housing stock, including two on-site affordable dwelling units.
- The residents will add to the customer base of the area, support the economic viability of the surrounding commercial establishments, and activate the sidewalks in the neighborhood.
- Public transit and neighborhood-serving commercial establishments are abundant in the area. Residents are able to walk or utilize transit to commute and satisfy convenience needs without reliance on the private automobile.
- The project has been designed to sensitively relate to the Lower Nob Hill Apartment Hotel District, including the prevailing character and scale of existing buildings in the vicinity.
- The project is necessary and desirable, is compatible with the surrounding neighborhood, and would not be detrimental to persons or adjacent properties in the vicinity.

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| <b>RECOMMENDATION:</b> <b>Approval with Conditions</b> |
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**Attachments:**

- Draft Motion
- Block Book Map
- Sanborn Map
- Aerial Photographs
- Inclusionary Affordable Housing Program Affidavit
- Costa-Hawkins Waiver Agreement
- Residential Pipeline
- Public Correspondence
- Project Sponsor Submittal

Attachment Checklist

- |   |   |
|---|---|
| <input checked="" type="checkbox"/> Executive Summary   | <input checked="" type="checkbox"/> Project sponsor submittal   |
| <input checked="" type="checkbox"/> Draft Motion        | Drawings: <u>Existing Conditions</u>  |
| <input type="checkbox"/> Environmental Determination    | <input checked="" type="checkbox"/> Check for legibility  |
| <input checked="" type="checkbox"/> Zoning District Map | Drawings: <u>Proposed Project</u>   |
| <input checked="" type="checkbox"/> Height & Bulk Map   | <input checked="" type="checkbox"/> Check for legibility  |
| <input checked="" type="checkbox"/> Parcel Map          | 3-D Renderings (new construction or significant addition)   |
| <input checked="" type="checkbox"/> Sanborn Map         | <input checked="" type="checkbox"/> Check for legibility  |
| <input checked="" type="checkbox"/> Aerial Photo        | <input type="checkbox"/> Wireless Telecommunications Materials  |
| <input checked="" type="checkbox"/> Context Photos      | <input type="checkbox"/> Health Dept. review of RF levels   |
| <input checked="" type="checkbox"/> Site Photos         | <input type="checkbox"/> RF Report  |
|   | <input type="checkbox"/> Community Meeting Notice   |
|   | <input checked="" type="checkbox"/> Housing Documents   |
|   | <input checked="" type="checkbox"/> Inclusionary Affordable Housing Program: Affidavit for Compliance |
|   | <input checked="" type="checkbox"/> Residential Pipeline  |

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

\_\_\_\_\_  
Planner's Initials



# SAN FRANCISCO PLANNING DEPARTMENT

Subject to: (Select only if applicable)

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

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## Planning Commission Draft Motion

HEARING DATE: FEBRUARY 27, 2014

*Date:* February 20, 2014  
*Case No.:* **2007.0392C**  
*Project Address:* **832 SUTTER STREET**  
*Zoning:* RC-4 (Residential-Commercial Combined, High Density) District  
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**ADOPTING FINDINGS RELATED TO THE APPROVAL OF A CONDITIONAL USE AUTHORIZATION TO ALLOW DEVELOPMENT EXCEEDING 50 FEET IN HEIGHT WITHIN AN RC DISTRICT, PURSUANT TO SECTIONS 253 AND 303 OF THE PLANNING CODE, FOR A PROJECT TO DEMOLISH AN EXISTING SURFACE PARKING LOT AND CONSTRUCT A NEW SIX-STORY BUILDING CONTAINING APPROXIMATELY 20 DWELLING UNITS, 400 SQUARE FEET OF GROUND-FLOOR COMMERCIAL USES, AND NO OFF-STREET PARKING SPACES, ON A PROPERTY LOCATED AT 832 SUTTER STREET, LOT 003 IN ASSESSOR'S BLOCK 0281, WITHIN THE RC-4 DISTRICT AND THE 80-A HEIGHT AND BULK DISTRICT, AND ADOPTING FINDINGS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.**

### PREAMBLE

On January 7, 2013, John Kevlin, acting on behalf of Ed and Margaret Duffy ("Project Sponsor"), filed an application with the Planning Department ("Department") for Conditional Use Authorization to allow development exceeding 50 feet in height under Planning Code Sections ("Sections") 253 and 303 to allow a project that would demolish an existing surface parking lot and construct a new six-story mixed-use building containing approximately 20 dwelling units, 400 square feet of ground-floor commercial uses, and no off-street parking spaces, located at 832 Sutter Street ("Project Site"), Lot 003 in Assessor's Block 0281, within the RC-4 (Residential-Commercial Combined, High Density) District and the 80-A Height And Bulk District (collectively, "Project", Case No. 2007.0392C).

On April 30, 2013, the Project Sponsor submitted a request for a modification of the parking requirements of Section 151, to provide no parking spaces where five are required for the Project, pursuant to the process identified in Section 161(j) and 307(i).

On XXXX, 2014 the Project was determined to be exempt from the California Environmental Quality Act ("CEQA") as a Class 32 Categorical Exemption under CEQA as described in the determination contained in the Planning Department files for this Project.

On February 27, 2014, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2007.0392C.

The Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of the applicant, Department staff, and other interested parties.

**MOVED**, that the Commission hereby authorizes the Conditional Use requested in Application No. 2007.0392C, subject to the conditions contained in "EXHIBIT A" of this motion, based on the following findings:

## FINDINGS

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

1. The above recitals are accurate and constitute findings of this Commission.
2. **Site Description and Present Use.** The Project is located on the north side of Sutter Street, west of Jones Street, Block 2083, Lot 001. The property is located within the RC-4 (Residential-Commercial Combined, High Density) District and the 80-A Height and Bulk District. The property measures approximately 4,660 sq. ft. and is currently used as a surface parking lot.
3. **Surrounding Properties and Neighborhood.** The area surrounding the Project Site is mixed-use in character. The site is located within the Lower Nob Hill neighborhood, an area characterized by high-density residential development, including numerous residential hotels. Retail uses are often found on the ground floors of residential buildings, although retail frontage is not continuous on all streets. Processions of storefronts are interrupted by ground-floor dwelling units, residential lobbies and elevated entries, and utilitarian building service spaces. The project site is also located within the Lower Nob Hill Apartment Hotel District.

The scale of development varies in the vicinity of the project site. Older buildings in the immediate area are generally four to eight stories in height. Some taller residential towers of more recent construction are interspersed among the older mid-rise structures. Tall hotel structures, such as the Hotel Nikko and the Hilton can be found in the blocks near Union Square to the southeast.

The Polk Street Neighborhood Commercial District (NCD) is located to the west, located in the gulch between Nob Hill, Russian Hill, and Pacific Heights. The Polk Street NCD provides convenience goods and services to the residents of the Polk Gulch neighborhood and the west slopes of Nob and Russian Hill. The district has a very active and continuous commercial frontage along Polk Street, while the side streets have a greater proportion of residences. The Union Square retail area is located to the east, characterized by an intense mixture of retail, restaurant, and hotel uses that is a regional draw and one of the primary attractions for visitors to San Francisco.

4. **Project Description.** The Project proposes to demolish an existing surface parking lot and construct a new six-story mixed-use building containing approximately 20 dwelling units, 400 square feet of ground-floor commercial uses, and no off-street parking spaces.
5. **Public Comment.** When the Notice of Preparation for the project was issued in 2008, staff received correspondence in opposition to the project from several residents and business owners in the vicinity. These communications expressed concern over the loss of parking spaces in the existing surface parking lot, the lack of off-street parking in the proposed project, and damage to foundations and retaining walls on adjacent properties. It should be noted that, since these comments were received in 2008, the project has been reduced in height from 80 feet to 60 feet, and from 27 dwelling units to 20 dwelling units. Staff has not received any further correspondence in opposition since the project was revised, and has received one communication in support of the project.
6. **Planning Code Compliance:** The Commission finds that the Project is consistent with the relevant provisions of the Planning Code in the following manner:
  - A. **Use and Density.** Section 209.1 allows dwelling units within the RC-4 District at a density of one dwelling unit for each 200 square feet of lot area. Section 209.8 allows ground-floor commercial uses within the RC-4 District as a principally- or conditionally-permitted use if such a commercial use is principally- or conditionally-permitted within the NC-3 District.

*The Project proposes a total of 20 dwelling units. Based on the allowable density specified by Planning Code Section 209.1, up to 23 dwelling units would be allowed on the Project Site. Therefore, the residential portion of the Project conforms to the use and density allowed by the Planning Code. The Project also proposes a separate ground-floor commercial space measuring approximately 400 square feet. No specific use or tenant is proposed for the space at this time. Uses that may be proposed for this space in the future would either be principally permitted, conditionally permitted, or not permitted, depending on the controls of the NC-3 District for the particular use being proposed.*

- B. **Height and Bulk.** The subject property is located within the 80-A Height and Bulk District. Within this District, roof heights of buildings are limited to 80 feet. Maximum bulk dimensions apply to portions of the building above 40 feet in height. Above this height, the building may not exceed a length of 110', or a diagonal dimension of 125'.

*The finished roof of the proposed Project would reach a maximum height of approximately 64 feet. In addition, the elevator penthouse would reach a height of approximately 10 feet above the finished roof, for a maximum structure height of approximately 74 feet. The finished roof and the elevator penthouse comply with the applicable regulations of the Code, therefore the Project complies with the maximum allowable height within the 80-A Height and Bulk District. Proposed development that exceeds 50 feet in height within the RC-4 District is subject to additional criteria, as discussed under item #7 below.*

*Upper portions of the fourth floor exceed 40 feet in height, therefore the fourth through sixth floors are subject to the bulk limitations of the 65-A Height and Bulk District. This District allows a maximum building length of 110 feet, and a maximum diagonal dimension of 125 feet. The fourth through sixth floors of the building have a length of approximately 103 feet. The fourth through sixth floors have a diagonal dimension of approximately 109 feet. Therefore, these floors comply with the maximum permitted length and horizontal dimensions.*

- C. **Basic Floor Area Ratio.** In the RC-4 District, Section 124 allows a Floor Area Ratio (FAR) of up to 4.8 to 1. The Project Site has an area of 4,660 square feet, therefore the allowable FAR would permit a building of up to 22,368 square feet of Gross Floor Area as defined in Code Section 102.9.

*The Project proposes approximately 20,500 square feet of Gross Floor Area, and therefore complies with the maximum allowable FAR.*

- D. **Rear Yard.** Section 134(a) (1) of the Planning Code requires a rear yard equal to 25 percent of the lot depth to be provided at the first residential level, and at every succeeding story. The Project Site has a lot depth of 137.5 feet, therefore a rear yard measuring 34 feet, 4.5 inches in depth is required.

*The Project proposes a rear yard measuring 34 feet, 4.5 inches in depth, and therefore complies with the rear yard requirements of the Planning Code.*

- E. **Usable Open Space.** Section 135 requires that a minimum amount of usable open space be provided for dwelling units within the Polk Street NCD. This Section specifies that an outdoor area must meet minimum requirements for area, horizontal dimensions, and exposure to light and air to be considered usable open space.

*The Code requires that 47.9 square feet of common usable open space be provided for each dwelling unit within the RC-4 District. The Project therefore must provide a minimum of 958 square feet of common open space. The Project proposes a rear yard that measures approximately 1,166 square feet, and therefore complies with the open space requirements of the Planning Code.*

*Section 135 requires that, to qualify as usable open space, the area must either face a street, face or be within a rear yard, or face or be within other space within the property that meets certain criteria for dimensions and exposure to light and air. The common open space in the Project complies with these criteria.*

- F. **Street Trees.** Section 138 requires the planting of a minimum of one tree of 24-inch box size for each 20 feet of street frontage of the property, with any remaining fraction of 10 feet or more of frontage requiring an additional tree.

*The Project Site has approximately 34 feet of frontage on Sutter Street, therefore, two street trees are required. Conditions of approval have been added requiring the planting of trees in accordance with these requirements, and that the location of the trees be identified as part of the building permit review process.*

- G. **Dwelling Unit Exposure.** Section 140 requires that at least one room of all dwelling units face onto a public street, a rear yard, or other open area that meets minimum requirements for area and horizontal dimensions.

*All of the dwelling units face other onto Sutter Street or the rear yard. Therefore, the Project complies with the Planning Code requirements for dwelling unit exposure.*

- H. **Off-Street Parking.** Section 151 establishes off-street parking requirements for all uses in all districts. Pursuant to this Section, within the RC-4 District, one independently accessible space is required for each four dwelling units, as well as additional parking for commercial uses that exceed 5,000 square feet of occupied floor area. 150% of the required parking is permitted as accessory parking. The project proposes 20 dwelling units, and approximately 400 square feet of retail space (less than 5,000 square feet). The Project therefore requires five independently accessible parking spaces

*The Project proposes no off-street parking spaces. The sponsor has requested a Parking Reduction to waive the required parking spaces, in accordance with Sections 161(j) and 307(i). This request will be considered administratively by the Zoning Administrator. However, the Project appears to meet the specified criteria of Section 307(i), as follows:*

- a. The reduction in the parking requirement is justified by the reasonably anticipated automobile usage by residents of and visitors to the project.
- b. The reduction in the parking requirement will not be detrimental to the health, safety, convenience, or general welfare of persons residing in or working in the vicinity.
- c. The minimization of conflict of vehicular and pedestrian movements.
- d. The availability of transportation modes other than the automobile.
- e. The pattern of land use and character of development in the vicinity.

*The Project is not expected to result in a substantial net increase in vehicular traffic, and would not negatively affect transit services or have significant adverse impacts on pedestrians or bicyclists. The Project Site is located within a vibrant district where many convenience goods and services are available within walking distance. The Project Site is within walking distance of the Financial District, and nine Muni lines are available within three blocks. Therefore, residents of the Project will be able to commute via means other than private automobile use. The area is characterized by dense residential uses situated over*

*ground-floor commercial spaces. Providing parking for the Project would likely require the removal of the retail space, resulting in a less active and pedestrian-oriented streetscape.*

- I. **Off-Street Loading.** Section 152 provides a schedule of required off-street freight loading spaces for all uses in districts other than C-3 or South of Market.

*Pursuant to Section 152, residential uses with less than 100,000 square feet of gross floor area and retail uses with less than 10,000 square feet of gross floor area require no off-street freight loading spaces. The project proposes approximately 20,100 square feet of residential uses and approximately 400 square feet of retail uses. Therefore, no off-street freight loading spaces are required or provided.*

- J. **Shadows on Parks.** Pursuant to Section 295, no building permit authorizing the construction of any structure exceeding 40 feet in height that will cast any shade or shadow upon any property under the jurisdiction of the Recreation and Park Commission during the times of one hour after sunrise and one hour before sunset, all year round, may be issued except on prior action of the Commission pursuant to the provisions of this Section. The Commission must conduct a hearing and must disapprove the issuance of any building permit governed by the provisions of this Section if it finds that the proposed project will have any adverse impact on the use of the property under the jurisdiction of the Recreation and Park Commission because of the shading or shadowing that it will cause, unless it is determined that the impact would be insignificant.

*To determine whether this proposed project would conform to Section 295, a preliminary shadow fan was prepared by Department staff. The shadow fan indicated no potential shadow cast by the Project on properties under the Recreation and Park Commission. The Project therefore complies with Section 295.*

- H. **Inclusionary Affordable Housing Program.** Planning Code Section 415 sets forth the requirements and procedures for the Inclusionary Affordable Housing Program. Under Planning Code Section 415.3, these requirements would apply to projects that consist of 10 or more units, where the first application (EE or BPA) was applied for on or after July 18, 2006. Pursuant to Planning Code Section 415.5 and 415.6, the Inclusionary Affordable Housing Program requirement for the On-site Affordable Housing Alternative is to provide 15% of the proposed dwelling units as affordable. Pursuant to San Francisco Charter Section 16.110 (g), adopted by the voters in November, 2012, beginning on January 1, 2013, the City shall reduce by 20% the on-site inclusionary housing obligation for all on-site projects subject to the Inclusionary Affordable Housing, but in no case below 12%. Thus, under Charter Section 16.110 (g) all the on-site requirements here is reduced by 3% (20% of 15%) to 12%.

*The Project Sponsor has demonstrated that it is eligible for the On-Site Affordable Housing Alternative under Planning Code Section 415.5 and 415.6, and has submitted a 'Affidavit of Compliance with the Inclusionary Affordable Housing Program: Planning Code Section 415,' to satisfy the requirements of the Inclusionary Affordable Housing Program by providing the affordable housing on-site instead of through payment of the Affordable Housing Fee. In order for the Project Sponsor to be eligible for the On-Site Affordable Housing Alternative, the Project Sponsor must submit an 'Affidavit of Compliance with the Inclusionary Affordable Housing Program: Planning Code Section 415,' to the Planning Department*

*stating that any affordable units designated as on-site units shall be sold as ownership units and will remain as ownership units for the life of the project. The Project Sponsor submitted such Affidavit on January 30, 2014. The EE application was submitted on April 19, 2007. Pursuant San Francisco Charter Section 16.110 (g) the 15% on-site requirement stipulated in Planning Code Section 415.6, is reduced by 3% (20% of 15%) to 12%. Two one-bedroom units of the 20 units provided will be affordable units. If the Project becomes ineligible to meet its Inclusionary Affordable Housing Program obligation through the On-site Affordable Housing Alternative, it must pay the Affordable Housing Fee with interest, if applicable.*

7. **Planning Code Section 253** specifies that, because the Project exceeds 50 feet in height within an RC District, the Commission shall consider the expressed purposes of the Code, of the RC Districts, and of the height and bulk districts.

- a. **RC-4 (Residential-Commercial, High Density) District.** Section 206.3 describes that the RC-4 District contains, "...a mixture of high-density dwellings similar to those in RM-4 Districts with supporting commercial uses."

*The Project would add 20 dwelling units and ground-floor retail space in a manner that is appropriate for the context of the Project Site. The retail uses would provide goods and services to residents and visitors in the area, and would activate the adjacent public rights-of-way. The Project is compatible with the dense mixed-use character of the surrounding area.*

- b. **80-A Height and Bulk District.** Section 251 establishes that the general purposes of the height and bulk district are to relate the scale of new development to be harmonious with existing development patterns and the overall form of the City, respect and protect public open spaces and neighborhood resources, and to synchronize levels of development intensity with an appropriate land use and transportation pattern.

*The existing development in the area surrounding the Project site is varied in scale and intensity. On the subject block, the majority of buildings are five to six stories in height. At a height of six stories, the Project represents an appropriately scaled infill that respects the prevailing character of the block and of the neighborhood beyond. The Project also includes a code-complying rear yard, which will contribute to the pattern of mid-block open space which occurs within the subject block. The Project has been designed to sensitively related to the surrounding context of the Lower Nob Hill Apartment Hotel District.*

8. **Planning Code Section 303** establishes criteria for the Planning Commission to consider when reviewing applications for Conditional Use approval. On balance, the project does comply with said criteria in that:

- A. The proposed new uses and building, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable, and compatible with, the neighborhood or the community.

*The Project will add housing opportunities at a density that is suitable for an intensely-developed urban context served by ample public transit and retail services. By targeting infill residential development at such locations, residents of the Project will be able to walk, bicycle, or take transit to commute, shop, and meet other needs without reliance on private automobile use. The proposed ground floor retail will link the procession of commercial uses between the Polk Street corridor and the shopping district around Union Square, activating the streetscape and creating visual interest for pedestrians.*

*The existing development in the area surrounding the Project site is varied in scale and intensity. Older buildings in the immediate area are generally four to eight stories in height. Some taller residential towers of more recent construction are interspersed among the older mid-rise structures. On the subject block, the majority of buildings are five to six stories in height. At a height of six stories, the Project represents an appropriately scaled infill that respects the prevailing character of the block and of the neighborhood beyond.*

- B. The proposed project will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity. There are no features of the project that could be detrimental to the health, safety or convenience of those residing or working the area, in that:

- i. Nature of proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;

*The Project site is a regularly-shaped lot that is adequately sized to accommodate the development. Existing development in the vicinity varies in scale, but is generally represented by an intense, urban development pattern. The Project is generally compatible with the eclectic, but intense character of the area. The at-grade rear yard strengthens a pattern of mid-block open space that exists on the subject block. The shape and size of development on the subject property will not detrimental to persons or adjacent properties in the vicinity.*

- ii. The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading;

*The Project is not expected to result in a substantial net increase in vehicular traffic, and would not negatively affect transit services or have significant adverse impacts on pedestrians or bicyclists. The Project Site is located within a vibrant district where many convenience goods and services are available within walking distance. In addition, the area is served by ample public transit, allowing residents to commute without reliance on private automobile use. No off-street parking is provided for the Project, and abundant transportation options are available in the area.*

- iii. The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;

*The Project includes residential and retail uses that are typical of the surrounding context, and will not introduce operational noises or odors that are detrimental, excessive, or atypical for the area. While some temporary increase in noise can be expected during construction, this noise is limited in duration and will be regulated by the San Francisco Noise Ordinance which prohibits excessive noise levels from construction activity and limits the permitted hours of work. The building will not exhibit an excessive amount of glazing or other reflective materials, therefore, the Project is not expected to cause offensive amounts of glare.*

- iv. Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs;

*The Project provides the required amount of open space within a rear yard area. The conceptual plans show landscaping within the rear yard, and street trees would be planted along the Sutter Street frontage. No off-street parking or loading is provided for the Project. Conditions of approval require that, as the Project proceeds through the review of building permits, the Project Sponsor will continue to work the Planning staff to refine details of lighting, signage, materials, and other aspects of the design.*

- C. That the use as proposed will comply with the applicable provisions of the Planning Code and will not adversely affect the General Plan.

*The Project complies with all relevant requirements and standards of the Planning Code and is consistent with objectives and policies of the General Plan as detailed in item #9 below.*

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

**HOUSING ELEMENT:  
Objectives and Policies**

**OBJECTIVE 11**

**SUPPORT AND RESPECT THE DIVERSE AND DISTINCT CHARACTER OF SAN FRANCISCO'S NEIGHBORHOODS.**

**Policy 11.1**

Promote the construction and rehabilitation of well-designed housing that emphasizes beauty, flexibility, and innovative design, and respects existing neighborhood character.

**Policy 11.3**

Ensure growth is accommodated without substantially and adversely impacting existing residential neighborhood character.

**Policy 11.4**

Continue to utilize zoning districts which conform to a generalized residential land use and density plan and the General Plan.

*The existing site is relatively underutilized, hosting a surface parking lot. The Project will not displace or demolish any existing housing, and will introduce new residential units and retail space that will strengthen the intense, mixed-use nature of the District. The area has abundant transit, commercial services, and other amenities that will accommodate increased residential densities without negatively impacting the surrounding neighborhood.*

**TRANSPORTATION ELEMENT:  
Objectives and Policies**

**OBJECTIVE 2**

**USE THE TRANSPORTATION SYSTEM AS A MEANS FOR GUIDING DEVELOPMENT  
AND IMPROVING THE ENVIRONMENT.**

**Policy 2.1:**

Use rapid transit and other transportation improvements in the city and region as the catalyst for desirable development, and coordinate new facilities with public and private development.

**Policy 2.2:**

Reduce pollution, noise and energy consumption.

*Due to the abundant transit and commercial services in the area, residents of the Project can minimize use of the private automobile to commute and meet basic needs. The Project site is suitable for accommodating dense residential development that will discourage sprawling regional development patterns that are strongly auto-oriented and contribute to greenhouse gas emissions.*

**URBAN DESIGN ELEMENT:  
Objectives and Policies**

**OBJECTIVE 12**

**IMPROVEMENT OF THE NEIGHBORHOOD ENVIRONMENT TO INCREASE PERSONAL  
SAFETY, COMFORT, PRIDE AND OPPORTUNITY**

**Policy 4.13:**

Improve pedestrian areas by providing human scale and interest.

*The ground floor of the Project includes a retail space that helps to define an attractive and vibrant pedestrian realm on Sutter Street while broadening the availability of good and services. Residents of the*

*Project will activate the sidewalks and open spaces in the area, and will help to support retail and service establishments in the neighborhood.*

10. **Planning Code Section 101.1(b)** establishes eight priority-planning policies and requires review of permits for consistency with said policies. On balance, the project does comply with said policies in that:

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

*The Project will include a new commercial space that will provide local business ownership and employment opportunities. In addition, the new residents of the Project will patronize area businesses, bolstering the viability of surrounding commercial districts.*

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

*The project will not diminish the existing housing stock, and will add dwelling units in a manner that enhances the vitality of the surrounding commercial corridors.*

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

*The Project would add not demolish any dwelling units, and will comply with the City's Inclusionary Affordable Housing Program by providing on-site affordable units.*

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

*A wide variety of goods and services are available within walking distance of the Project Site. In addition, the area is well served by public transit, providing connections to all areas of the City and to the larger regional transportation network. The Project provides no off-street parking, and will encourage transit usage and deemphasize reliance on the private automobile.*

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

*The Project does not propose any commercial office development. The new development will include retail space that will provide employment and/or business ownership opportunities for area residents.*

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

*The Project is designed and will be constructed to conform to the structural and seismic safety requirements of the City Building Code.*

- G. That landmarks and historic buildings be preserved.

*The Project has been designed in a manner that sensitively relates to the surrounding Lower Nob Hill Apartment Hotel District.*

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

*The Project will not cast shadows or impede views for parks and open spaces in the area, nor have any negative impact on existing public parks and open spaces.*

11. The Project is consistent with and would promote the general and specific purposes of the Code provided under Section 101.1(b) in that, as designed, the Project would contribute to the character and stability of the neighborhood and would constitute a beneficial development.
12. The Commission hereby finds that approval of the Conditional Use authorization would promote the health, safety and welfare of the City.

### DECISION

That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby **APPROVES Conditional Use Application No. 2007.0392C** subject to the following conditions attached hereto as "EXHIBIT A" in general conformance with plans on file, dated February 27, 2014, and stamped "EXHIBIT B", which is incorporated herein by reference as though fully set forth.

**APPEAL AND EFFECTIVE DATE OF MOTION:** Any aggrieved person may appeal this Conditional Use Authorization to the Board of Supervisors within thirty (30) days after the date of this Motion No. XXXXX. The effective date of this Motion shall be the date of this Motion if not appealed (After the 30-day period has expired) OR the date of the decision of the Board of Supervisors if appealed to the Board of Supervisors. For further information, please contact the Board of Supervisors at (415) 554-5184, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

**Protest of Fee or Exaction:** You may protest any fee or exaction subject to Government Code Section 66000 that is imposed as a condition of approval by following the procedures set forth in Government Code Section 66020. The protest must satisfy the requirements of Government Code Section 66020(a) and must be filed within 90 days of the date of the first approval or conditional approval of the development referencing the challenged fee or exaction. For purposes of Government Code Section 66020, the date of imposition of the fee shall be the date of the earliest discretionary approval by the City of the subject development.

If the City has not previously given Notice of an earlier discretionary approval of the project, the Planning Commission's adoption of this Motion, Resolution, Discretionary Review Action or the Zoning Administrator's Variance Decision Letter constitutes the approval or conditional approval of the development and the City hereby gives **NOTICE** that the 90-day protest period under Government Code Section 66020 has begun. If the City has already given Notice that the 90-day approval period has begun for the subject development, then this document does not re-commence the 90-day approval period.

I hereby certify that the Planning Commission **ADOPTED** the foregoing Motion on February 27, 2014.

Jonas P. Ionin  
Acting Commission Secretary

AYES:

NAYS:

ABSENT:

ADOPTED: February 27, 2014

## EXHIBIT A

### AUTHORIZATION

This authorization is for a Conditional Use to allow a building exceeding 50 feet in an RC District, for a project that would demolish an existing surface parking lot and construct a new six-story mixed-use building containing approximately 20 dwelling units, 400 square feet of ground-floor commercial uses, and no off-street parking spaces, located at 832 Sutter Street, Lot 003 of Assessor's Block 0281, pursuant to Planning Code Section(s) 253 and 303 within the RC-4 District and the 80-A Height and Bulk District; in general conformance with plans, dated February 27, 2014, and stamped "EXHIBIT B" included in the docket for Case No. 2007.0392C and subject to conditions of approval reviewed and approved by the Commission on February 27, 2014 under Motion No XXXXXX. This authorization and the conditions contained herein run with the property and not with a particular Project Sponsor, business, or operator.

### RECORDATION OF CONDITIONS OF APPROVAL

Prior to the issuance of the building permit or commencement of use for the Project the Zoning Administrator shall approve and order the recordation of a Notice in the Official Records of the Recorder of the City and County of San Francisco for the subject property. This Notice shall state that the project is subject to the conditions of approval contained herein and reviewed and approved by the Planning Commission on February 27, 2014 under Motion No XXXXXX.

### PRINTING OF CONDITIONS OF APPROVAL ON PLANS

The conditions of approval under the 'Exhibit A' of this Planning Commission Motion No. XXXXXX shall be reproduced on the Index Sheet of construction plans submitted with the site or building permit application for the Project. The Index Sheet of the construction plans shall reference to the Conditional Use authorization and any subsequent amendments or modifications.

### SEVERABILITY

The Project shall comply with all applicable City codes and requirements. If any clause, sentence, section or any part of these conditions of approval is for any reason held to be invalid, such invalidity shall not affect or impair other remaining clauses, sentences, or sections of these conditions. This decision conveys no right to construct, or to receive a building permit. "Project Sponsor" shall include any subsequent responsible party.

### CHANGES AND MODIFICATIONS

Changes to the approved plans may be approved administratively by the Zoning Administrator. Significant changes and modifications of conditions shall require Planning Commission approval of a new Conditional Use authorization.

## Conditions of Approval, Compliance, Monitoring, and Reporting

### PERFORMANCE

**Validity.** The authorization and right vested by virtue of this action is valid for three (3) years from the effective date of the Motion. The Department of Building Inspection shall have issued a Building Permit or Site Permit to construct the project and/or commence the approved use within this three-year period.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

**Expiration and Renewal.** Should a Building or Site Permit be sought after the three (3) year period has lapsed, the project sponsor must seek a renewal of this Authorization by filing an application for an amendment to the original Authorization or a new application for Authorization. Should the project sponsor decline to so file, and decline to withdraw the permit application, the Commission shall conduct a public hearing in order to consider the revocation of the Authorization. Should the Commission not revoke the Authorization following the closure of the public hearing, the Commission shall determine the extension of time for the continued validity of the Authorization.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

**Diligent pursuit.** Once a site or Building Permit has been issued, construction must commence within the timeframe required by the Department of Building Inspection and be continued diligently to completion. Failure to do so shall be grounds for the Commission to consider revoking the approval if more than three (3) years have passed since this Authorization was approved.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

**Extension.** All time limits in the preceding three paragraphs may be extended at the discretion of the Zoning Administrator where implementation of the project is delayed by a public agency, an appeal or a legal challenge and only by the length of time for which such public agency, appeal or challenge has caused delay.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

**Conformity with Current Law.** No application for Building Permit, Site Permit, or other entitlement shall be approved unless it complies with all applicable provisions of City Codes in effect at the time of such approval.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

**Additional Project Authorization.** The Project Sponsor must obtain a Parking Reduction authorization under Sections 161(j) and 307(i) to provide no off-street parking spaces where five are required and satisfy all the conditions thereof. The conditions set forth below are additional conditions required in connection with the Project. If these conditions overlap with any other requirement imposed on the

Project, the more restrictive or protective condition or requirement, as determined by the Zoning Administrator, shall apply.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

## DESIGN – COMPLIANCE AT PLAN STAGE

**Final Materials.** The Project Sponsor shall continue to work with Planning Department on the building design. Final materials, glazing, color, texture, landscaping, and detailing shall be subject to Department staff review and approval. The architectural addenda shall be reviewed and approved by the Planning Department prior to issuance.

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org)*

**Garbage, composting and recycling storage.** Space for the collection and storage of garbage, composting, and recycling shall be provided within enclosed areas on the property and clearly labeled and illustrated on the building permit plans. Space for the collection and storage of recyclable and compostable materials that meets the size, location, accessibility and other standards specified by the San Francisco Recycling Program shall be provided at the ground level of the buildings.

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org)*

**Rooftop Mechanical Equipment.** Pursuant to Planning Code 141, the Project Sponsor shall submit a roof plan to the Planning Department prior to Planning approval of the building permit application. Rooftop mechanical equipment, if any is proposed as part of the Project, is required to be screened so as not to be visible from any point at or below the roof level of the subject building.

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org)*

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

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

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

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

**Overhead Wiring.** The Property owner will allow MUNI to install eyebolts in the building adjacent to its electric streetcar line to support its overhead wire system if requested by MUNI or MTA.

*For information about compliance, contact San Francisco Municipal Railway (Muni), San Francisco Municipal Transit Agency (SFMTA), at 415-701-4500, [www.sfmta.org](http://www.sfmta.org)*

**Street Trees.** Pursuant to Planning Code Section 138.1 (formerly 143), the Project Sponsor shall submit a site plan to the Planning Department prior to Planning approval of the building permit application indicating that street trees, at a ratio of one street tree of an approved species for every 20 feet of street frontage along public or private streets bounding the Project, with any remaining fraction of 10 feet or more of frontage requiring an extra tree, shall be provided. The street trees shall be evenly spaced along the street frontage except where proposed driveways or other street obstructions do not permit. The exact location, size and species of tree shall be as approved by the Department of Public Works (DPW). In any case in which DPW cannot grant approval for installation of a tree in the public right-of-way, on the basis of inadequate sidewalk width, interference with utilities or other reasons regarding the public welfare, and where installation of such tree on the lot itself is also impractical, the requirements of this Section 428 may be modified or waived by the Zoning Administrator to the extent necessary.

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org)*

## PARKING AND TRAFFIC

**Bicycle Parking** Pursuant to Planning Code Sections 155.1, 155.2, and 155.3, the Project shall provide no fewer than 23 bicycle parking spaces (20 Class 1 spaces for the residential portion and three Class 2 spaces).

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

**Managing Traffic During Construction.** The Project Sponsor and construction contractor(s) shall coordinate with the Traffic Engineering and Transit Divisions of the San Francisco Municipal Transportation Agency (SFMTA), the Police Department, the Fire Department, the Planning Department, and other construction contractor(s) for any concurrent nearby Projects to manage traffic congestion and pedestrian circulation effects during construction of the Project.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

## PROVISIONS

**First Source Hiring.** The Project shall adhere to the requirements of the First Source Hiring Construction and End-Use Employment Program approved by the First Source Hiring Administrator, pursuant to

Section 83.4(m) of the Administrative Code. The Project Sponsor shall comply with the requirements of this Program regarding construction work and on-going employment required for the Project.

*For information about compliance, contact the First Source Hiring Manager at 415-581-2335, [www.onestopSF.org](http://www.onestopSF.org)*

### **Affordable Units**

1. **Number of Required Units.** Pursuant to Planning Code Section 415.6, the Project is required to provide 15% of the proposed dwelling units as affordable to qualifying households. Pursuant San Francisco Charter Section 16.110 (g) the 15% on-site requirement stipulated in Planning Code Section 415.6, is reduced by 3% (20% of 15%) to 12%. The Project contains 20 units; therefore, 2 affordable units are required. The Project Sponsor will fulfill this requirement by providing the 2 affordable units on-site. If the number of market-rate units change, the number of required affordable units shall be modified accordingly with written approval from Planning Department staff in consultation with the Mayor's Office of Housing ("MOH").  
*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org) or the Mayor's Office of Housing at 415-701-5500, [www.sf-moh.org](http://www.sf-moh.org).*
2. **Unit Mix.** The Project contains 18 one-bedroom and 2 two-bedroom units; therefore, the required affordable unit mix is 2 one-bedroom units. If the market-rate unit mix changes, the affordable unit mix will be modified accordingly with written approval from Planning Department staff in consultation with MOH.  
*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org) or the Mayor's Office of Housing at 415-701-5500, [www.sf-moh.org](http://www.sf-moh.org).*
3. **Unit Location.** The affordable units shall be designated on a reduced set of plans recorded as a Notice of Special Restrictions on the property prior to the issuance of the first construction permit.  
*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org) or the Mayor's Office of Housing at 415-701-5500, [www.sf-moh.org](http://www.sf-moh.org).*
4. **Phasing.** If any building permit is issued for partial phasing of the Project, the Project Sponsor shall have designated not less than twelve percent (12%) of the each phase's total number of dwelling units as on-site affordable units.  
*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org) or the Mayor's Office of Housing at 415-701-5500, [www.sf-moh.org](http://www.sf-moh.org).*
5. **Duration.** Under Planning Code Section 415.8, all units constructed pursuant to Section 415.6, must remain affordable to qualifying households for the life of the project.  
*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org) or the Mayor's Office of Housing at 415-701-5500, [www.sf-moh.org](http://www.sf-moh.org).*
6. **Other Conditions.** The Project is subject to the requirements of the Inclusionary Affordable Housing Program under Section 415 et seq. of the Planning Code and City and County of San Francisco Inclusionary Affordable Housing Program Monitoring and Procedures Manual ("Procedures Manual"). The Procedures Manual, as amended from time to time, is incorporated

herein by reference, as published and adopted by the Planning Commission, and as required by Planning Code Section 415. Terms used in these conditions of approval and not otherwise defined shall have the meanings set forth in the Procedures Manual. A copy of the Procedures Manual can be obtained at the MOH at 1 South Van Ness Avenue or on the Planning Department or Mayor's Office of Housing's websites, including on the internet at:

<http://sf-planning.org/Modules/ShowDocument.aspx?documentid=4451>. As provided in the Inclusionary Affordable Housing Program, the applicable Procedures Manual is the manual in effect at the time the subject units are made available for sale.

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org) or the Mayor's Office of Housing at 415-701-5500, [www.sf-moh.org](http://www.sf-moh.org).*

- a. The affordable unit(s) shall be designated on the building plans prior to the issuance of the first construction permit by the Department of Building Inspection ("DBI"). The affordable unit(s) shall (1) reflect the unit size mix in number of bedrooms of the market rate units, (2) be constructed, completed, ready for occupancy and marketed no later than the market rate units, and (3) be evenly distributed throughout the building; and (4) be of comparable overall quality, construction and exterior appearance as the market rate units in the principal project. The interior features in affordable units should be generally the same as those of the market units in the principal project, but need not be the same make, model or type of such item as long they are of good and new quality and are consistent with then-current standards for new housing. Other specific standards for on-site units are outlined in the Procedures Manual.
- b. If the units in the building are offered for sale, the affordable unit(s) shall be sold to first time home buyer households, as defined in the Procedures Manual, whose gross annual income, adjusted for household size, does not exceed an average of ninety (90) percent of Area Median Income under the income table called "Maximum Income by Household Size derived from the Unadjusted Area Median Income for HUD Metro Fair Market Rent Area that contains San Francisco." The initial sales price of such units shall be calculated according to the Procedures Manual. Limitations on (i) reselling; (ii) renting; (iii) recouping capital improvements; (iv) refinancing; and (v) procedures for inheritance apply and are set forth in the Inclusionary Affordable Housing Program and the Procedures Manual.
- c. The Project Sponsor is responsible for following the marketing, reporting, and monitoring requirements and procedures as set forth in the Procedures Manual. MOH shall be responsible for overseeing and monitoring the marketing of affordable units. The Project Sponsor must contact MOH at least six months prior to the beginning of marketing for any unit in the building.
- d. Required parking spaces shall be made available to initial buyers or renters of affordable units according to the Procedures Manual.
- e. Prior to the issuance of the first construction permit by DBI for the Project, the Project Sponsor shall record a Notice of Special Restriction on the property that contains these

- conditions of approval and a reduced set of plans that identify the affordable units satisfying the requirements of this approval. The Project Sponsor shall promptly provide a copy of the recorded Notice of Special Restriction to the Department and to MOH or its successor.
- f. The Project Sponsor has demonstrated that it is eligible for the On-site Affordable Housing Alternative under Planning Code Section 415.6 instead of payment of the Affordable Housing Fee, and has submitted the *Affidavit of Compliance with the Inclusionary Affordable Housing Program: Planning Code Section 415* to the Planning Department stating that any affordable units designated as on-site units shall be sold as ownership units and will remain as ownership units for the life of the Project.
  - g. If the Project Sponsor fails to comply with the Inclusionary Affordable Housing Program requirement, the Director of DBI shall deny any and all site or building permits or certificates of occupancy for the development project until the Planning Department notifies the Director of compliance. A Project Sponsor's failure to comply with the requirements of Planning Code Section 415 et seq. shall constitute cause for the City to record a lien against the development project and to pursue any and all available remedies at law.
  - h. If the Project becomes ineligible at any time for the On-site Affordable Housing Alternative, the Project Sponsor or its successor shall pay the Affordable Housing Fee prior to issuance of the first construction permit or may seek a fee deferral as permitted under Ordinances 0107-10 and 0108-10. If the Project becomes ineligible after issuance of its first construction permit, the Project Sponsor shall notify the Department and MOH and pay interest on the Affordable Housing Fee at a rate equal to the Development Fee Deferral Surcharge Rate in Section 107A.13.3.2 of the San Francisco Building Code and penalties, if applicable.

## MONITORING - AFTER ENTITLEMENT

**Enforcement.** Violation of any of the Planning Department conditions of approval contained in this Motion or of any other provisions of Planning Code applicable to this Project shall be subject to the enforcement procedures and administrative penalties set forth under Planning Code Section 176 or Section 176.1. The Planning Department may also refer the violation complaints to other city departments and agencies for appropriate enforcement action under their jurisdiction.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

**Revocation due to Violation of Conditions.** Should implementation of this Project result in complaints from interested property owners, residents, or commercial lessees which are not resolved by the Project Sponsor and found to be in violation of the Planning Code and/or the specific conditions of approval for the Project as set forth in Exhibit A of this Motion, the Zoning Administrator shall refer such complaints to the Commission, after which it may hold a public hearing on the matter to consider revocation of this authorization.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

## OPERATION

**Garbage, Recycling, and Composting Receptacles.** Garbage, recycling, and compost containers shall be kept within the premises and hidden from public view, and placed outside only when being serviced by the disposal company. Trash shall be contained and disposed of pursuant to garbage and recycling receptacles guidelines set forth by the Department of Public Works.

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

**Sidewalk Maintenance.** The Project Sponsor shall maintain the main entrance to the building and all sidewalks abutting the subject property in a clean and sanitary condition in compliance with the Department of Public Works Streets and Sidewalk Maintenance Standards.

*For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works, 415-695-2017, <http://sfdpw.org>*

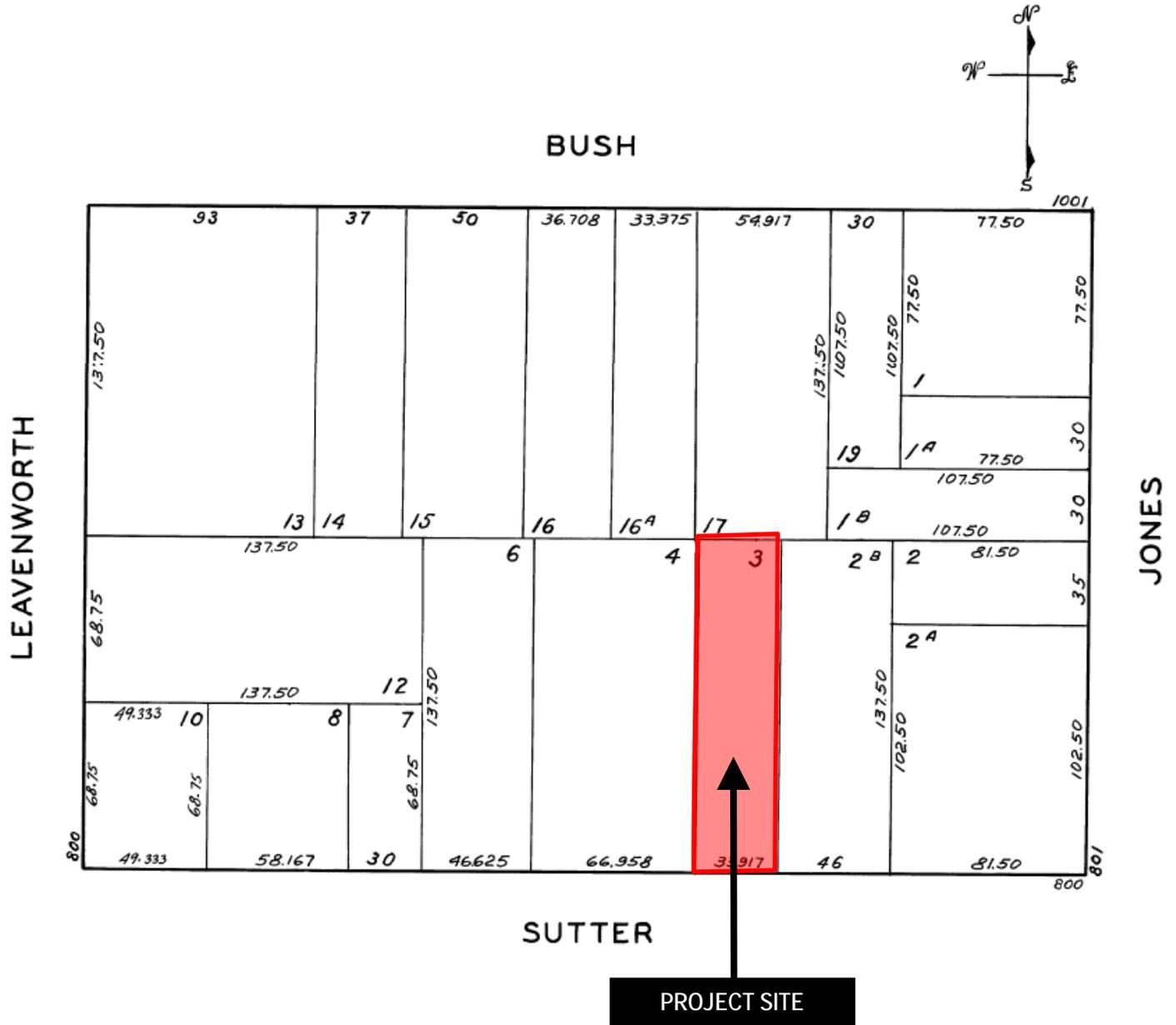
**Community Liaison.** Prior to issuance of a building permit to construct the project and implement the approved use, the Project Sponsor shall appoint a community liaison officer to deal with the issues of concern to owners and occupants of nearby properties. The Project Sponsor shall provide the Zoning Administrator with written notice of the name, business address, and telephone number of the community liaison. Should the contact information change, the Zoning Administrator shall be made aware of such change. The community liaison shall report to the Zoning Administrator what issues, if any, are of concern to the community and what issues have not been resolved by the Project Sponsor.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

**Lighting.** All Project lighting shall be directed onto the Project site and immediately surrounding sidewalk area only, and designed and managed so as not to be a nuisance to adjacent residents. Nighttime lighting shall be the minimum necessary to ensure safety, but shall in no case be directed so as to constitute a nuisance to any surrounding property.

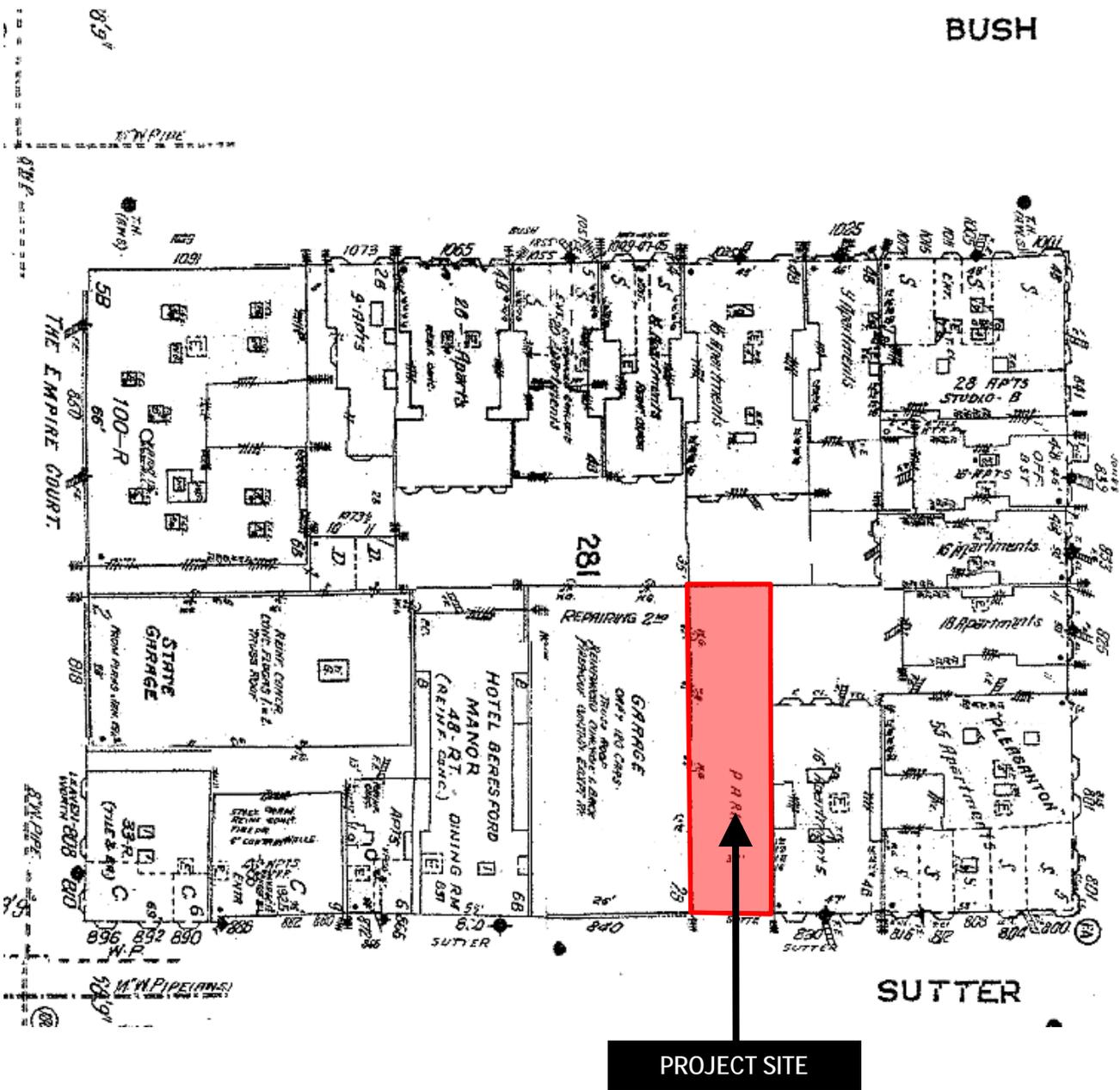
*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

# Parcel Map



Conditional Use  
 Case Number 2007.0392C  
 832 Sutter Street

# Sanborn Map\*

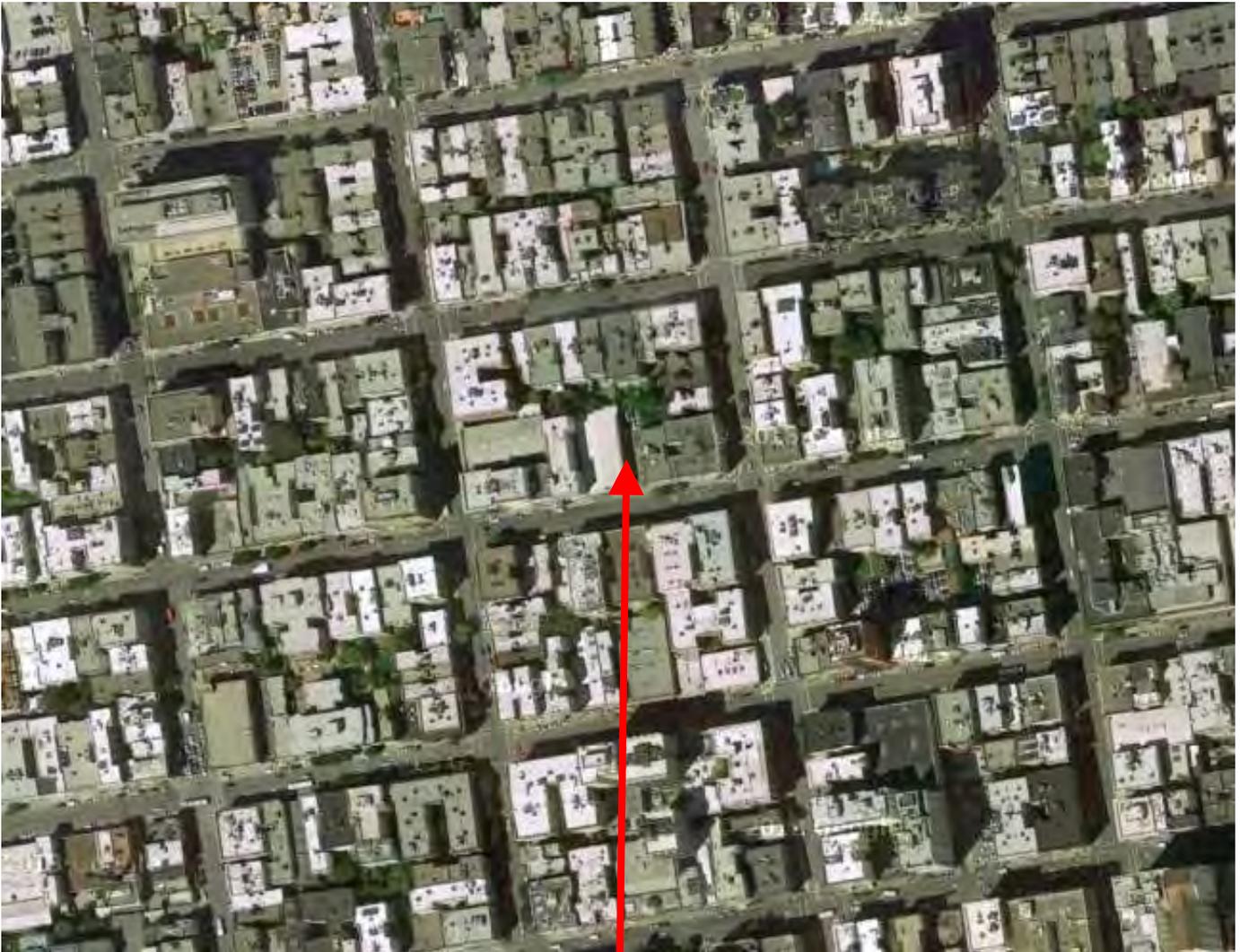


\*The Sanborn Maps in San Francisco have not been updated since 1998, and this map may not accurately reflect existing conditions.



Conditional Use  
Case Number 2007.0392C  
832 Sutter Street

# Aerial Photo



PROJECT SITE



Conditional Use  
Case Number 2007.0392C  
832 Sutter Street

# Aerial Photo



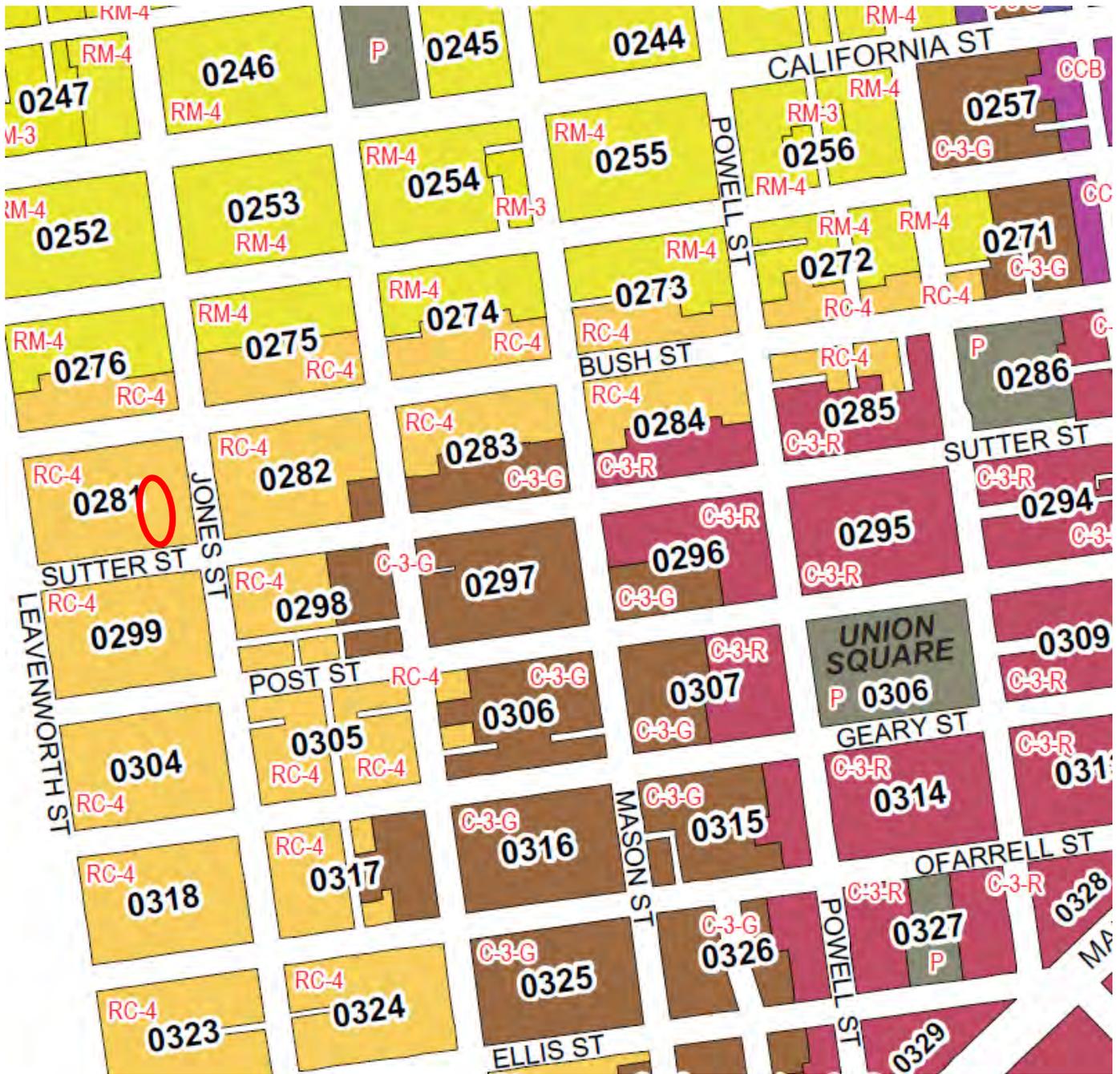
Looking North

PROJECT SITE



Conditional Use  
Case Number 2007.0392C  
832 Sutter Street

# Zoning Map



Conditional Use  
Case Number 2007.0392C  
832 Sutter Street

# Affidavit for Compliance with the Inclusionary Affordable Housing Program: Planning Code Section 415

January 30, 2014

Date

I, John Kevlin, do hereby declare as follows:

a. The subject property is located at (address and block/lot):

832 Sutter Street

Address

0281/003

Block / Lot

b. The proposed project at the above address is subject to the Inclusionary Affordable Housing Program, Planning Code Section 415 et seq.

The Planning Case Number and/or Building Permit Number is:

2007.0392

Planning Case Number

not yet filed

Building Permit Number

This project requires the following approval:

- Planning Commission approval (e.g. Conditional Use Authorization, Large Project Authorization)
- This project is principally permitted.

The Current Planner assigned to my project within the Planning Department is:

Kevin Guy

Planner Name

Is this project within the Eastern Neighborhoods Plan Area?

- Yes (if yes, please indicate Tier) \_\_\_\_\_
- No

This project is exempt from the Inclusionary Affordable Housing Program because:

- This project uses California Debt Limit Allocation Committee (CDLAC) funding.
- This project is 100% affordable.

c. This project will comply with the Inclusionary Affordable Housing Program by:

- Payment of the Affordable Housing Fee prior to the first site or building permit issuance (Planning Code Section 415.5).
- On-site or Off-site Affordable Housing Alternative (Planning Code Sections 415.6 and 416.7).

d. If the project will comply with the Inclusionary Affordable Housing Program through an **On-site** or **Off-site Affordable Housing Alternative**, please fill out the following regarding how the project is eligible for an alternative and the accompanying unit mix tables on page 4.

**Ownership.** All affordable housing units will be sold as ownership units and will remain as ownership units for the life of the project.

**Rental.** Exemption from Costa Hawkins Rental Housing Act.<sup>2</sup> The Project Sponsor has demonstrated to the Department that the affordable units are not subject to the Costa Hawkins Rental Housing Act, under the exception provided in Civil Code Sections 1954.50 through one of the following:

Direct financial contribution from a public entity.

Development or density bonus or other public form of assistance.

Development Agreement with the City. The Project Sponsor has entered into or has applied to enter into a Development Agreement with the City and County of San Francisco pursuant to Chapter 56 of the San Francisco Administrative Code and, as part of that Agreement, is receiving a direct financial contribution, development or density bonus, or other form of public assistance.

e. The Project Sponsor acknowledges that failure to sell the affordable units as ownership units or to eliminate the on-site or off-site affordable ownership-only units at any time will require the Project Sponsor to:

(1) Inform the Planning Department and the Mayor's Office of Housing and, if applicable, fill out a new affidavit;

(2) Record a new Notice of Special Restrictions; and

(3) Pay the Affordable Housing Fee plus applicable interest (using the fee schedule in place at the time that the units are converted from ownership to rental units) and any applicable penalties by law.

f. The Project Sponsor must pay the Affordable Housing Fee in full sum to the Development Fee Collection Unit at the Department of Building Inspection for use by the Mayor's Office of Housing prior to the issuance of the first construction document, with an option for the Project Sponsor to defer a portion of the payment to prior to issuance of the first certificate of occupancy upon agreeing to pay a deferral surcharge that would be deposited into the Citywide Affordable Housing Fund in accordance with Section 107A.13.3 of the San Francisco Building Code.

g. I am a duly authorized officer or owner of the subject property.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this day in:

San Francisco, CA  
Location

January 30, 2014  
Date

  
Signature

John Kevlin - agent for project sponsor  
Name (Print), Title

cc: Mayor's Office of Housing  
Planning Department Case Docket  
Historic File, if applicable  
Assessor's Office, if applicable

(415) 567-9000  
Contact Phone Number

<sup>2</sup> California Civil Code Section 1954.50 and following.

# Unit Mix Tables

| NUMBER OF ALL UNITS IN PRINCIPAL PROJECT: |     |         |                   |                   |                     |
|---|-----|---------|-------------------|-------------------|---------------------|
| Total Number of Units                     | SRO | Studios | One-Bedroom Units | Two-Bedroom Units | Three-Bedroom Units |
| 20  | 0   | 0       | 18                | 2                 | 0                   |

If you selected an On-site or Off-Site Alternative, please fill out the applicable section below:

- On-site Affordable Housing Alternative (Charter Section 16.110 (g) and Planning Code Section 415.6): calculated at 12% of the unit total.

| NUMBER OF AFFORDABLE UNITS TO BE LOCATED ON-SITE |     |         |                   |                   |                     |
|--|-----|---------|-------------------|-------------------|---------------------|
| Total Affordable Units                           | SRO | Studios | One-Bedroom Units | Two-Bedroom Units | Three-Bedroom Units |
| 2  | 0   | 0       | 2                 | 0                 | 0                   |

- Off-site Affordable Housing Alternative (Planning Code Section 415.7): calculated at 20% of the unit total.

| NUMBER OF AFFORDABLE UNITS TO BE LOCATED OFF-SITE |     |         |                   |                   |                     |
|---|-----|---------|-------------------|-------------------|---------------------|
| Total Affordable Units                            | SRO | Studios | One-Bedroom Units | Two-Bedroom Units | Three-Bedroom Units |
|   |     |         |                   |                   |                     |

|  |                            |  |  |   |  |
|--|----------------------------|--|--|---|--|
| Area of Dwellings in Principal Project (in sq. feet) | Off-Site Project Address   |  |  |   |  |
| Area of Dwellings in Off-Site Project (in sq. feet)  |                            |  |  |   |  |
| Off-Site Block/Lot(s)                                | Motion No. (if applicable) |  |  | Number of Market-Rate Units in the Off-site Project |  |
|  |                            |  |  |   |  |

- Combination of payment of a fee, on-site affordable units, or off-site affordable units with the following distribution:  
Indicate what percent of each option would be implemented (from 0% to 99%) and the number of on-site and/or off-site below market rate units for rent and/or for sale.

- Fee \_\_\_\_\_ % of affordable housing requirement.
- On-Site \_\_\_\_\_ % of affordable housing requirement.

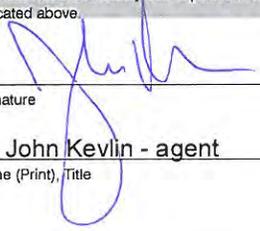
| NUMBER OF AFFORDABLE UNITS TO BE LOCATED ON-SITE |     |         |                   |                   |                     |
|--|-----|---------|-------------------|-------------------|---------------------|
| Total Affordable Units                           | SRO | Studios | One-Bedroom Units | Two-Bedroom Units | Three-Bedroom Units |
|  |     |         |                   |                   |                     |

- Off-Site \_\_\_\_\_ % of affordable housing requirement.

| NUMBER OF AFFORDABLE UNITS TO BE LOCATED OFF-SITE |     |         |                   |                   |                     |
|---|-----|---------|-------------------|-------------------|---------------------|
| Total Affordable Units                            | SRO | Studios | One-Bedroom Units | Two-Bedroom Units | Three-Bedroom Units |
|   |     |         |                   |                   |                     |

|  |                            |  |  |   |  |
|--|----------------------------|--|--|---|--|
| Area of Dwellings in Principal Project (in sq. feet) | Off-Site Project Address   |  |  |   |  |
| Area of Dwellings in Off-Site Project (in sq. feet)  |                            |  |  |   |  |
| Off-Site Block/Lot(s)                                | Motion No. (if applicable) |  |  | Number of Market-Rate Units in the Off-site Project |  |
|  |                            |  |  |   |  |

Affidavit for **Compliance with the Inclusionary Affordable Housing Program**

| CONTACT INFORMATION AND DECLARATION OF SPONSOR OF PRINCIPAL PROJECT   | CONTACT INFORMATION AND DECLARATION OF SPONSOR OF OFF-SITE PROJECT (IF DIFFERENT)   |
|---|---|
| Company Name<br><b>Ed Duffy</b>   | Company Name  |
| Print Name of Contact Person<br><b>Ed Duffy</b>   | Print Name of Contact Person  |
| Address<br><b>2104 Hale Drive</b>   | Address   |
| City, State, Zip<br><b>Burlingame, CA 94010</b>   | City, State, Zip  |
| Phone, Fax<br><b>415-242-1994</b>   | Phone, Fax  |
| Email<br><b>renovatioconstruction@gmail.com</b>   | Email   |
| I hereby declare that the information herein is accurate to the best of my knowledge and that I intend to satisfy the requirements of Planning Code Section 415 as indicated above. | I hereby declare that the information herein is accurate to the best of my knowledge and that I intend to satisfy the requirements of Planning Code Section 415 as indicated above. |
| Signature<br>   | Signature   |
| <b>John Kevlin - agent</b><br>Name (Print), Title   | Name (Print), Title   |

Free Recording Requested Pursuant to  
Government Code Section 27383

When recorded, mail to:  
San Francisco Planning Department  
1650 Mission Street, Room 400  
San Francisco, California 94103  
Attn: Director

Lot 003 in Assessor's Block 0281

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**AGREEMENT TO PROVIDE ON-SITE AFFORDABLE HOUSING UNITS BETWEEN  
THE CITY AND COUNTY OF SAN FRANCISCO AND  
EDWARD AND MARGARET DUFFY, RELATIVE TO THE  
DEVELOPMENT KNOWN AS 832 SUTTER STREET**

THIS AGREEMENT TO PROVIDE ON-SITE AFFORDABLE HOUSING UNITS ("Agreement") dated for reference purposes only as of this 19<sup>th</sup> day of February, 2014, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a political subdivision of the State of California (the "City"), acting by and through its Planning Department, and EDWARD AND MARGARET DUFFY ("Developers") with respect to the project approved for 832 SUTTER STREET (the "Project"). City and Developers are also sometimes referred to individually as a "Party" and together as the "Parties."

**RECITALS**

This Agreement is made with reference to the following facts:

A. Code Authorization. Chapter 4.3 of the California Government Code directs public agencies to grant concessions and incentives to private developers for the production of housing for lower income households. The Costa-Hawkins Rental Housing Act (California Civil Code Sections 1954.50 et seq., hereafter "Costa-Hawkins Act") imposes limitations on the establishment of the initial and all subsequent rental rates for a dwelling unit with a certificate of occupancy issued after February 1, 1995, with exceptions, including an exception for dwelling units constructed pursuant to a contract with a public entity in consideration for a direct financial contribution or any other form of assistance specified in Chapter 4.3 of the California Government Code (Section 1954.52(b)). Pursuant to Civil Code Section 1954.52(b), the City's Board of Supervisors has enacted as part of the Inclusionary Affordable Housing Program, Planning Code Section 415 et seq, procedures and requirements for entering into an agreement with a private developer to memorialize the concessions and incentives granted to the developer and to provide an exception to the Costa-Hawkins Act for the inclusionary units included in the Developers' project.

B. Property Subject to this Agreement. The property that is the subject of this Agreement consists of the real property in the City and County of San Francisco, California, at 832 Sutter Street, Lot 003 in Assessor's Block 0281 and located at the north side of Sutter Street between Leavenworth and Jones Streets (hereinafter "Property"). The Property is more particularly described in Exhibit A attached hereto. The Property is owned in fee by Developers.

C. Development Proposal; Intent of the Parties. The Developers propose to eliminate an existing 4,664 square foot surface parking lot and construct a new six-story, 20,509 square foot residential building containing 20 dwelling units and 407 square feet of ground floor retail. The project would include no off-street parking. The dwelling units would be offered as rental units and the inclusionary affordable housing would be provided on-site. The Project would fulfill its inclusionary affordable housing requirement by providing 12% of the dwelling units, or 2 below-market rate (BMR) units, on-site, assuming that 20 residential units are constructed.

On February 27<sup>th</sup>, 2014, pursuant to Motion No \_\_\_\_\_, the Planning Commission approved a Conditional Use Authorization (“Conditional Use Approval”) for the Project, allowing construction exceeding 50 feet in height in the RC Zoning District, Pursuant to Planning Code Section 253. Subsequently, on \_\_\_\_\_, 2014, the San Francisco Zoning Administrator granted the Project a Variance (“Variance”) allowing a parking reduction to require no off-street parking spaces where five are required, pursuant to Planning Code Sections 161(j) and 307(i).

The Conditional Use Approval and Variance are collectively referred to herein as the “Project Approvals”. The dwelling units that are the subject of this Agreement are the Project’s on-site inclusionary units representing twelve percent (12%) of the Project’s dwelling units, which assuming that 20 dwelling are constructed, would total 2 inclusionary units (the “Inclusionary Units”). The dwelling units in the Project that are not Inclusionary Units, representing eighty-eight percent (88%) of the Project’s dwelling units, which assuming that 20 units are constructed would total 18 units, are referred to herein as the “Market Rate Units”. This Agreement is not intended to impose restrictions on the Market Rate Units or any portions of the Project other than the Inclusionary Units. The Parties acknowledge that this Agreement is entered into in consideration of the respective burdens and benefits of the Parties contained in this Agreement and in reliance on their agreements, representations and warranties.

D. Inclusionary Affordable Housing Program. The Inclusionary Affordable Housing Program, San Francisco Planning Code Section 415 et seq. (the "Affordable Housing Program") provides that developers of any housing project consisting of ten or more units to pay an Affordable Housing Fee, as defined therein. The Affordable Housing Program provides that developers may be eligible to meet the requirements of the program through the alternative means of entering into an agreement with the City and County of San Francisco pursuant to Chapter 4.3 of the California Government Code for concessions and incentives, pursuant to which the developer covenants to provide affordable on-site units as an alternative to payment of the Affordable Housing Fee to satisfy the requirements of the Affordable Housing Program and in consideration of the City’s concessions and incentives.

E. Developers’ Election to Provide On-Site Units. Developers have elected to enter into this Agreement to provide the Inclusionary Units in lieu of payment of the Affordable Housing Fee in satisfaction of its obligation under the Affordable Housing Program and to

provide for an exception to the rent restrictions of the Costa-Hawkins Act for the Inclusionary Units only.

F. Compliance with All Legal Requirements. It is the intent of the Parties that all acts referred to in this Agreement shall be accomplished in such a way as to fully comply with the California Environmental Quality Act (Public Resources Code Section 21000 et seq., “CEQA”), Chapter 4.3 of the California Government Code, the Costa-Hawkins Act, the San Francisco Planning Code, and all other applicable laws and regulations.

G. Project’s Compliance with CEQA. Pursuant to section 15332 of the CEQA Guidelines (Class 32 – Infill Development Projects) and Chapter 31 of the San Francisco Administrative Code, the Planning Department published a Categorical Exemption Certificate (“CatEx”) for the Project on \_\_\_\_\_, 2014, declaring the Project exempt from environmental review. The Planning Commission subsequently reviewed and concurred with the information contained in the CatEx at a noticed public hearing on February 27th, 2014 (Motion No. \_\_\_\_\_).

H. General Plan Findings. This Agreement is consistent with the objectives, policies, general land uses and programs specified in the General Plan and any applicable area or specific plan, and the Priority Policies enumerated in Planning Code Section 101.1, as set forth in Planning Commission Motion No. \_\_\_\_\_.

## **AGREEMENT**

The Parties acknowledge the receipt and sufficiency of good and valuable consideration and agree as follows:

### **1. GENERAL PROVISIONS**

1.1 Incorporation of Recitals and Exhibits. The preamble paragraph, Recitals, and Exhibits, and all defined terms contained therein, are hereby incorporated into this Agreement as if set forth in full.

### **2. CITY’S DENSITY BONUS AND CONCESSIONS AND INCENTIVES FOR THE INCLUSIONARY UNITS.**

2.1 Exceptions, Concessions and Incentives. The Developers have received the following exceptions, concessions and incentives for the production of the Inclusionary Units on-site.

2.1.1 Project Approvals and Density Bonus. The Project Approvals include the Conditional Use Authorization allowing construction exceeding 50 feet in height within an RC Zoning District, pursuant to Planning Code Section 253, and the Variance allowing the Project to be constructed with no off-street parking spaces where five are required by Planning Code Sections 161(j) and 307(i). These Project Approvals allowed development of the Project at a greater residential density than would otherwise have been permitted under the Planning Code.

2.1.2 Waiver of Affordable Housing Fee. City hereby determines that the Developers have satisfied the requirements of the Affordable Housing Program by covenanting to provide the Inclusionary Units on-site, as provided in Section 3.1, and accordingly hereby waives the obligation of the Developers to pay the Affordable Housing Fee. City would not be willing to enter into this Agreement and waive the Affordable Housing Fee without the understanding and agreement that Costa-Hawkins Act provisions set forth in California Civil Code section 1954.52(a) do not apply to the Inclusionary Units as a result of the exemption set forth in California Civil Code section 1954.52(b). Upon completion of the Project and identification of the Inclusionary Units, Developers agree to record a notice of restriction against the Inclusionary Units in the form required by the Affordable Housing Program.

2.2 Costa-Hawkins Act Inapplicable to Inclusionary Units Only.

2.2.1 Inclusionary Units. The parties acknowledge that, under Section 1954.52(b) of the Costa-Hawkins Act, the Inclusionary Units are not subject to the Costa Hawkins Act. Through this Agreement, Developers hereby enter into an agreement with a public entity in consideration for forms of concessions and incentives specified in California Government Code Sections 65915 et seq. The concessions and incentives are comprised of, but not limited to, the concessions and incentives set forth in Section 2.1.

2.2.2 Market Rate Units. The Parties hereby agree and acknowledge that this Agreement does not alter in any manner the way that the Costa-Hawkins Act or any other law, including the City's Rent Stabilization and Arbitration Ordinance (Chapter 37 of the San Francisco Administrative Code) apply to the Market Rate Units.

**3. COVENANTS OF DEVELOPERS**

3.1 On-Site Inclusionary Affordable Units. In consideration of the concessions and incentives set forth in Section 2.1 and in accordance with the terms and conditions set forth in the Affordable Housing Program and the Project Approvals, upon Developers obtaining the first certificate of occupancy for the Project, Developers shall provide twelve percent (12%) of the dwelling units as on-site Inclusionary Units in lieu of payment of the Affordable Housing Fee. For example, based on the contemplated total of 20 units comprising the Project, a total of 2 Inclusionary Units would be required in the aggregate for the entire Project in lieu of payment of the Affordable Housing Fee.

3.2 Developers' Waiver of Rights Under the Costa-Hawkins Act Only as to the Inclusionary Units. The Parties acknowledge that under the Costa-Hawkins Act, the owner of newly constructed residential real property may establish the initial and all subsequent rental rates for dwelling units in the property without regard to the City's Residential Rent Stabilization and Arbitration Ordinance (Chapter 37 of the San Francisco Administrative Code). The Parties also understand and agree that the Costa-Hawkins Act does not and in no way shall limit or otherwise affect the restriction of rental charges for the Inclusionary Units because this Agreement falls within an express exception to the Costa-Hawkins Act as a contract with a public entity in consideration for a direct financial contribution or other forms of assistance specified in Chapter 4.3 (commencing with section 65915) of Division 1 of Title 7 of the California Government Code including but not limited to the density bonus, concessions and

incentives specified in Section 2. Developers acknowledge that the density bonus and concessions and incentives result in identifiable and actual cost reductions to the Project. Should the Inclusionary Units be deemed subject to the Costa-Hawkins Act, as a material part of the consideration for entering into this Agreement, Developers, on behalf of themselves and all of their successors and assigns to this Agreement, hereby expressly waives, now and forever, any and all rights it may have under the Costa-Hawkins Act with respect only to the Inclusionary Units (but only the Inclusionary Units and not as to the Market Rate Units) consistent with Section 3.1 of this Agreement. Without limiting the foregoing, Developers, on behalf of themselves and all successors and assigns to this Agreement, agree not to bring any legal or other action against City seeking application of the Costa-Hawkins Act to the Inclusionary Units for so long as the Inclusionary Units are subject to the restriction on rental rates pursuant to the Affordable Housing Program. The Parties understand and agree that the City would not be willing to enter into this Agreement without the waivers and agreements set forth in this Section 3.2.

3.3 Developers' Waiver of Right to Seek Waiver of Affordable Housing Program. Developers specifically agree to be bound by all of the provisions of the Affordable Housing Program applicable to on-site inclusionary units with respect to the Inclusionary Units. Developers covenant and agree that it will not seek a waiver of the provisions of the Affordable Housing Program applicable to the Inclusionary Units.

#### **4. MUTUAL OBLIGATIONS**

4.1 Good Faith and Fair Dealing. The Parties shall cooperate with each other and act in good faith in complying with the provisions of this Agreement and implementing the Project Approvals.

4.2 Other Necessary Acts. Each Party shall execute and deliver to the other all further instruments and documents as may be reasonably necessary to carry out this Agreement, the Project Approvals, the Affordable Housing Program (as applied to the Inclusionary Units) and applicable law in order to provide and secure to each Party the full and complete enjoyment of its rights and privileges hereunder.

4.3 Effect of Future Changes to Affordable Housing Program. The City hereby acknowledges and agrees that, in the event that the City adopts changes to the Affordable Housing Program after the date this Agreement is executed by both Parties, nothing in this Agreement shall be construed to limit or prohibit any rights Developers may have to modify Project requirements with respect to the Inclusionary Units to the extent permitted by such changes to the Affordable Housing Program.

#### **5. DEVELOPERS' REPRESENTATIONS, WARRANTIES AND COVENANTS.**

5.1 Interest of Developers. Developers represent that they are the legal and equitable fee owners of the Property, that they have the power and authority to bind all other persons with legal or equitable interest in the Inclusionary Units to the terms of this Agreement, and that all other persons holding legal or equitable interest in the Inclusionary Units are to be bound by this

Agreement. Developers have all requisite power and authority to own property and conduct business as presently conducted.

5.2 No Conflict With Other Agreements; No Further Approvals; No Suits. Developers warrant and represent that they are not a party to any other agreement that would conflict with the Developers' obligations under this Agreement. No consent, authorization or approval of, or other action by, and no notice to or filing with, any governmental authority, regulatory body or any other person is required for the due execution, delivery and performance by Developers of this Agreement or any of the terms and covenants contained in this Agreement. To Developers' knowledge, there are no pending or threatened suits or proceedings or undischarged judgments affecting Developers before any court, governmental agency, or arbitrator which might materially adversely affect Developers' business, operations, or assets or Developers' ability to perform under this Agreement.

5.3 No Inability to Perform; Valid Execution. Developers warrant and represent that they have no knowledge of any inability to perform its obligations under this Agreement. The execution and delivery of this Agreement and the agreements contemplated hereby by Developers have been duly and validly authorized by all necessary action. This Agreement will be a legal, valid and binding obligation of Developers, enforceable against Developers in accordance with its terms.

5.4 Conflict of Interest. Through their execution of this Agreement, Developers acknowledge that they are familiar with the provisions of Section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the California Government Code, and certifies that they do not know of any facts which constitute a violation of said provisions and agree that they will immediately notify the City if they become aware of any such fact during the term of this Agreement.

5.5 Notification of Limitations on Contributions. Through execution of this Agreement, the Developers acknowledge that they are familiar with Section 1.126 of City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City, whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for the contract until three (3) months after the date the contract is approved by the City elective officer or the board on which that City elective officer serves. San Francisco Ethics Commission Regulation 1.126-1 provides that negotiations are commenced when a prospective contractor first communicates with a City officer or employee about the possibility of obtaining a specific contract. This communication may occur in person, by telephone or in writing, and may be initiated by the prospective contractor or a City officer or employee. Negotiations are completed when a contract is finalized and signed by the City and the contractor. Negotiations are terminated when the City and/or the prospective contractor end the negotiation process before a final decision is made to award the contract.

5.6 Nondiscrimination. In the performance of this Agreement, Developers agree not to discriminate on the basis of the fact or perception of a person's, race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic

partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes, against any City employee, employee of or applicant for employment with the Developers, or against any bidder or contractor for public works or improvements, or for a franchise, concession or lease of property, or for goods or services or supplies to be purchased by the Developers. A similar provision shall be included in all subordinate agreements let, awarded, negotiated or entered into by the Developers for the purpose of implementing this Agreement.

## **6. AMENDMENT; TERMINATION**

6.1 Amendment or Termination. Except as provided in Sections 6.2 (Automatic Termination) and 8.3 (Remedies for Default), this Agreement may only be amended or terminated with the mutual written consent of the Parties.

6.1.1 Amendment Exemptions. No amendment of the Project Approvals shall require an amendment to this Agreement. Upon approval, any such matter shall be deemed to be incorporated automatically into the Project and this Agreement (subject to any conditions set forth in the amendment). Notwithstanding the foregoing, in the event of any direct conflict between the terms of this Agreement and any amendment to the Project Approvals, then the terms of this Agreement shall prevail and any amendment to this Agreement shall be accomplished as set forth in Section 6.1 above.

6.2 Automatic Termination. This Agreement shall automatically terminate in the event that the Inclusionary Units are no longer subject to regulation as to the rental rates of the Inclusionary Units and/or the income level of households eligible to rent the Inclusionary Units under the Affordable Housing Program, or successor program.

## **7. TRANSFER OR ASSIGNMENT; RELEASE; RIGHTS OF MORTGAGEES; CONSTRUCTIVE NOTICE**

7.1 Agreement Runs With The Land. Developers may assign or transfer their duties and obligations under this Agreement to another entity, provided such entity is the legal and equitable fee owner of the Property ("Transferee"). As provided in Section 9.2, this Agreement runs with the land and any Transferee will be bound by all of the terms and conditions of this Agreement.

7.2 Rights of Developers. The provisions in this Section 7 shall not be deemed to prohibit or otherwise restrict Developers from (i) granting easements or licenses to facilitate development of the Property, (ii) encumbering the Property or any portion of the improvements thereon by any mortgage, deed of trust, or other device securing financing with respect to the Property or Project, (iii) granting a leasehold interest in all or any portion of the Property, or (iv) transferring all or a portion of the Property pursuant to a sale, transfer pursuant to foreclosure, conveyance in lieu of foreclosure, or other remedial action in connection with a mortgage. None of the terms, covenants, conditions, or restrictions of this Agreement or the other Project Approvals shall be deemed waived by City by reason of the rights given to the Developers pursuant to this Section 7.2. Furthermore, although the Developers initially intend to operate the

Project on a rental basis, nothing in this Agreement shall prevent Developers from later selling all or part of the Project on a condominium basis, provided that such sale is permitted by, and complies with, all applicable City and State laws including, but not limited to that, with respect to any inclusionary units, those shall only be sold pursuant to the City Procedures for sale of inclusionary units under the Affordable Housing Program.

7.3 Developers' Responsibility for Performance. If Developers transfer or assign all or any portion of the Property or any interest therein to any other person or entity, Developers shall continue to be responsible for performing the obligations under this Agreement as to the transferred property interest until such time as there is delivered to the City a legally binding agreement pursuant to which the Transferee assumes and agrees to perform Developers' obligations under this Agreement from and after the date of transfer of the Property (or an interest therein) to the Transferee (an "Assignment and Assumption Agreement"). The City is entitled to enforce each and every such obligation assumed by the Transferee directly against the Transferee as if the Transferee were an original signatory to this Agreement with respect to such obligation. Accordingly, in any action by the City against a Transferee to enforce an obligation assumed by the Transferee, the Transferee shall not assert any defense against the City's enforcement of performance of such obligation that is attributable to Developers' breach of any duty or obligation to the Transferee arising out of the transfer or assignment, the Assignment and Assumption Agreement, the purchase and sale agreement, or any other agreement or transaction between the Developers and the Transferee. The transferor Developers shall remain responsible for the performance of all of its obligations under the Agreement prior to the date of transfer, and shall remain liable to the City for any failure to perform such obligations prior to the date of the transfer.

7.4 Release Upon Transfer or Assignment. Upon the Developers' transfer or assignment of all or a portion of the Property or any interest therein, including the Developers' rights and interests under this Agreement, the Developers shall be released from any obligations required to be performed from and after the date of transfer under this Agreement with respect to the portion of the Property so transferred; provided, however, that (i) the Developers are not then in default under this Agreement and (ii) the Transferee executes and delivers to the City the legally binding Assignment and Assumption Agreement. Following any transfer, in accordance with the terms of this Section 7, a default under this Agreement by the Transferee shall not constitute a default by the Developers under this Agreement and shall have no effect upon the Developers' rights under this Agreement as to the remaining portions of the Property owned by the Developers. Further, a default under this Agreement by the Developers as to any portion of the Property not transferred or a default under this agreement by the Developers prior to the date of transfer shall not constitute a default by the Transferee and shall not affect any of Transferee's rights under this Agreement.

7.5 Rights of Mortgagees; Not Obligated to Construct; Right to Cure Default.

7.5.1 Notwithstanding anything to the contrary contained in this Agreement (including without limitation those provisions that are or are intended to be covenants running with the land), a mortgagee or beneficiary under a deed of trust, including any mortgagee or beneficiary who obtains title to the Property or any portion thereof as a result of foreclosure proceedings or conveyance or other action in lieu thereof, or other remedial action,

("Mortgagee") shall not be obligated under this Agreement to construct or complete the Inclusionary Units required by this Agreement or to guarantee their construction or completion solely because the Mortgagee holds a mortgage or other interest in the Property or this Agreement. The foregoing provisions shall not be applicable to any other party who, after such foreclosure, conveyance, or other action in lieu thereof, or other remedial action, obtains title to the Property or a portion thereof from or through the Mortgagee or any other purchaser at a foreclosure sale other than the Mortgagee itself. A breach of any obligation secured by any mortgage or other lien against the mortgaged interest or a foreclosure under any mortgage or other lien shall not by itself defeat, diminish, render invalid or unenforceable, or otherwise impair the obligations or rights of the Developers under this Agreement.

7.5.2 Subject to the provisions of the first sentence of Section 7.5.1, any person, including a Mortgagee, who acquires title to all or any portion of the mortgaged property by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise shall succeed to all of the rights and obligations of the Developers under this Agreement and shall take title subject to all of the terms and conditions of this Agreement. Nothing in this Agreement shall be deemed or construed to permit or authorize any such holder to devote any portion of the Property to any uses, or to construct any improvements, other than the uses and improvements provided for or authorized by the Project Approvals and this Agreement.

7.5.3 If City receives a written notice from a Mortgagee or from Developers requesting a copy of any Notice of Default delivered to Developers and specifying the address for service thereof, then City shall deliver to such Mortgagee, concurrently with service thereon to Developers, any Notice of Default delivered to Developers under this Agreement. In accordance with Section 2924 of the California Civil Code, City hereby requests that a copy of any notice of default and a copy of any notice of sale under any mortgage or deed of trust be mailed to City at the address shown on the first page of this Agreement for recording, provided that no Mortgagee or trustee under a deed of trust shall incur any liability to the City for any failure to give any such notice of default or notice of sale except to the extent the City records a request for notice of default and notice of sale in compliance with Section 2924b of the California Civil Code (a "Request for Special Notice") with respect to a specific mortgage or deed of trust and the Mortgagee or trustee fails to give any notice required under Section 2924b of the California Civil Code as a result of the recordation of a Request for Special Notice.

7.5.4 A Mortgagee shall have the right, at its option, to cure any default or breach by the Developers under this Agreement within the same time period as Developers have to remedy or cause to be remedied any default or breach, plus an additional period of (i) thirty (30) calendar days to cure a default or breach by the Developers to pay any sum of money required to be paid hereunder and (ii) ninety (90) days to cure or commence to cure a non-monetary default or breach and thereafter to pursue such cure diligently to completion; provided that if the Mortgagee cannot cure a non-monetary default or breach without acquiring title to the Property, then so long as Mortgagee is diligently pursuing foreclosure of its mortgage or deed of trust, Mortgagee shall have until ninety (90) days after completion of such foreclosure to cure such non-monetary default or breach. Mortgagee may add the cost of such cure to the indebtedness or other obligation evidenced by its mortgage, provided that if the breach or default is with respect to the construction of the improvements on the Property, nothing contained in this Section or elsewhere in this Agreement shall be deemed to permit or authorize such Mortgagee,

either before or after foreclosure or action in lieu thereof or other remedial measure, to undertake or continue the construction or completion of the improvements (beyond the extent necessary to conserve or protect improvements or construction already made) without first having expressly assumed the obligation to the City, by written agreement reasonably satisfactory to the City, to complete in the manner provided in this Agreement the improvements on the Property or the part thereof to which the lien or title of such Mortgagee relates. Notwithstanding a Mortgagee's agreement to assume the obligation to complete in the manner provided in this Agreement the improvements on the Property or the part thereof acquired by such Mortgagee, the Mortgagee shall have the right to abandon completion of the improvement at any time thereafter.

7.5.5 If at any time there is more than one mortgage constituting a lien on any portion of the Property, the lien of the Mortgagee prior in lien to all others on that portion of the mortgaged property shall be vested with the rights under this Section 7.5 to the exclusion of the holder of any junior mortgage; provided that if the holder of the senior mortgage notifies the City that it elects not to exercise the rights sets forth in this Section 7.5, then each holder of a mortgage junior in lien in the order of priority of their respective liens shall have the right to exercise those rights to the exclusion of junior lien holders. Neither any failure by the senior Mortgagee to exercise its rights under this Agreement nor any delay in the response of a Mortgagee to any notice by the City shall extend Developers' or any Mortgagee's rights under this Section 7.5. For purposes of this Section 7.5, in the absence of an order of a court of competent jurisdiction that is served on the City, a then current title report of a title company licensed to do business in the State of California and having an office in the City setting forth the order of priority of lien of the mortgages shall be reasonably relied upon by the City as evidence of priority.

7.6 Constructive Notice. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Project or the Property is and shall be constructively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Project or the Property.

## **8. ENFORCEMENT OF AGREEMENT; REMEDIES FOR DEFAULT; DISPUTE RESOLUTION**

8.1 Enforcement. The only parties to this Agreement are the City and the Developers. This Agreement is not intended, and shall not be construed, to benefit or be enforceable by any other person or entity whatsoever.

8.2 Default. For purposes of this Agreement, the following shall constitute a default under this Agreement: the failure to perform or fulfill any material term, provision, obligation, or covenant hereunder and the continuation of such failure for a period of thirty (30) calendar days following a written notice of default and demand for compliance; provided, however, if a cure cannot reasonably be completed within thirty (30) days, then it shall not be considered a default if a cure is commenced within said 30-day period and diligently prosecuted to completion thereafter, but in no event later than one hundred twenty (120) days.

8.3 Remedies for Default. In the event of an uncured default under this Agreement, the remedies available to a Party shall include specific performance of the Agreement in addition to any other remedy available at law or in equity. In addition, the non-defaulting Party may terminate this Agreement subject to the provisions of this Section 8 by sending a Notice of Intent to Terminate to the other Party setting forth the basis for the termination. The Agreement will be considered terminated effective upon receipt of a Notice of Termination. The Party receiving the Notice of Termination may take legal action available at law or in equity if it believes the other Party's decision to terminate was not legally supportable.

8.4 No Waiver. Failure or delay in giving notice of default shall not constitute a waiver of default, nor shall it change the time of default. Except as otherwise expressly provided in this Agreement, any failure or delay by a Party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies; nor shall it deprive any such Party of its right to institute and maintain any actions or proceedings that it may deem necessary to protect, assert, or enforce any such rights or remedies.

## 9. MISCELLANEOUS PROVISIONS

9.1 Entire Agreement. This Agreement, including the preamble paragraph, Recitals and Exhibits, constitute the entire understanding and agreement between the Parties with respect to the subject matter contained herein.

9.2 Binding Covenants; Run With the Land. From and after recordation of this Agreement, all of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the Parties, and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, and all persons or entities acquiring the Property, any lot, parcel or any portion thereof, or any interest therein, whether by sale, operation of law, or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. Regardless of whether the procedures in Section 7 are followed, all provisions of this Agreement shall be enforceable during the term hereof as equitable servitudes and constitute covenants and benefits running with the land pursuant to applicable law, including but not limited to California Civil Code Section 1468.

9.3 Applicable Law and Venue. This Agreement has been executed and delivered in and shall be interpreted, construed, and enforced in accordance with the laws of the State of California. All rights and obligations of the Parties under this Agreement are to be performed in the City and County of San Francisco, and such City and County shall be the venue for any legal action or proceeding that may be brought, or arise out of, in connection with or by reason of this Agreement.

9.4 Construction of Agreement. The Parties have mutually negotiated the terms and conditions of this Agreement and its terms and provisions have been reviewed and revised by legal counsel for both City and Developers. Accordingly, no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement. Language in this Agreement shall be construed as a whole and in accordance with its true meaning. The captions of the paragraphs and subparagraphs of this

Agreement are for convenience only and shall not be considered or referred to in resolving questions of construction. Each reference in this Agreement to this Agreement or any of the Project Approvals shall be deemed to refer to the Agreement or the Project Approval as it may be amended from time to time pursuant to the provisions of the Agreement, whether or not the particular reference refers to such possible amendment.

9.5 Project Is a Private Undertaking; No Joint Venture or Partnership.

9.5.1 The development proposed to be undertaken by Developers on the Property is a private development. The City has no interest in, responsibility for, or duty to third persons concerning any of said improvements. The Developers shall exercise full dominion and control over the Property, subject only to the limitations and obligations of the Developers contained in this Agreement or in the Project Approvals.

9.5.2 Nothing contained in this Agreement, or in any document executed in connection with this Agreement, shall be construed as creating a joint venture or partnership between the City and the Developers. Neither Party is acting as the agent of the other Party in any respect hereunder. The Developers are not a state or governmental actor with respect to any activity conducted by the Developers hereunder.

9.6 Signature in Counterparts. This Agreement may be executed in duplicate counterpart originals, each of which is deemed to be an original, and all of which when taken together shall constitute one and the same instrument.

9.7 Time of the Essence. Time is of the essence in the performance of each and every covenant and obligation to be performed by the Parties under this Agreement.

9.8 Notices. Any notice or communication required or authorized by this Agreement shall be in writing and may be delivered personally or by registered mail, return receipt requested. Notice, whether given by personal delivery or registered mail, shall be deemed to have been given and received upon the actual receipt by any of the addressees designated below as the person to whom notices are to be sent. Either Party to this Agreement may at any time, upon written notice to the other Party, designate any other person or address in substitution of the person and address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

**To City:**

John Rahaim  
Director of Planning  
San Francisco Planning Department  
1650 Mission Street  
San Francisco, California 94102

with a copy to:

Dennis J. Herrera, Esq.  
City Attorney

City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102  
Attn: Evan A. Gross, Dep. City Attorney

**To Developer:**

Edward and Margaret Duffy  
414 Pinehill Road  
Hillsborough, CA 94010

and a copy to:

Melinda Sarjapur  
Reuben, Junius & Rose, LLP  
One Bush Street, Suite 600  
San Francisco, CA 94104

9.9 Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect unless enforcement of the remaining portions of the Agreement would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

9.10 MacBride Principles. The City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 et seq. The City also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Developers acknowledge that they have read and understand the above statement of the City concerning doing business in Northern Ireland.

9.11 Tropical Hardwood and Virgin Redwood. The City urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product.

9.12 Sunshine. The Developers understand and agree that under the City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (Gov't Code Section 6250 et seq.), this Agreement and any and all records, information, and materials submitted to the City hereunder are public records subject to public disclosure.

9.13 Effective Date. This Agreement will become effective on the date that the last Party duly executes and delivers this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

**CITY**

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

Approved as to form:  
Dennis J. Herrera, City Attorney

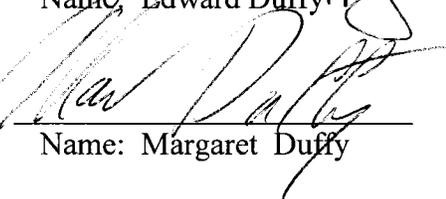
By: \_\_\_\_\_  
John Rahaim  
Director of Planning

By:  \_\_\_\_\_  
Evan A. Gross  
Deputy City Attorney

**DEVELOPERS**

EDWARD AND MARGARET DUFFY

By:  \_\_\_\_\_  
Name: Edward Duffy

By:  \_\_\_\_\_  
Name: Margaret Duffy

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

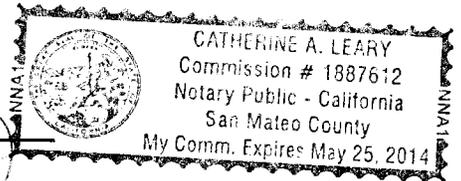
County of San Mateo

On February 19, 2014 before me, Catherine A. Leary, Notary Public, personally appeared Edward Duffy, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Catherine A. Leary  
Signature of Notary Public



(Notary Seal)

State of California

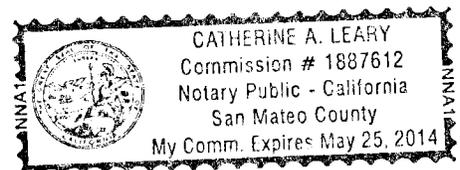
County of San Mateo

On February 19, 2014 before me, Catherine A. Leary, Notary Public, personally appeared Margaret Duffy, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Catherine A. Leary  
Signature of Notary Public



(Notary Seal)

**EXHIBIT A**

**Legal Description of Property**

## **EXHIBIT A**

The land referred to is situated in the County of San Francisco, City of San Francisco, State of California, and is described as follows:

### **PARCEL ONE:**

*Commencing at a point on the Northerly line of Sutter Street distant thereon 127 feet 6 inches Westerly from the Westerly line of Jones Street; running thence Westerly and along said line of Sutter Street 33 feet 11 inches; thence at a right angle Easterly 33 feet 11 inches; thence at a right angle Southerly 137 feet 6 inches, to the point of commencement.*

Being part of 50 Vara Lots Nos. 1086 and 1122 in Block No. 250.

Assessor's Lot 003 Block 0281

### **PARCEL TWO:**

*Commencing at a point on the Northerly line of Sutter Street, distant thereon 161 feet and 5 inches Westerly from the point formed by the intersection of the Northerly line of Sutter Street with the Westerly line of Jones Street; and running thence Westerly along said line of Sutter Street 66 feet and 11-1/2 inches; thence at a right angle Northerly 137 feet and 6 inches; thence at a right angle Southerly 66 feet and 11-1/2 inches; and thence at a right angle Southerly 137 feet and 6 inches to the point of commencement.*

Being part of 50 Vara Lot No. 1122.

Assessor's Lot 004 Block 0281



# SAN FRANCISCO PLANNING DEPARTMENT

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## Residential Pipeline

### ENTITLED HOUSING UNITS 2007 TO Q1 2012

State law requires each city and county to adopt a Housing Element as a part of its general plan. The State Department of Housing and Community Development (HCD) determines a Regional Housing Need Allocation (RHNA) that the Housing Element must address. The need is the minimum number of housing units that a region must plan for in each RHNA period.

This table represents all development projects adding residential units that have been entitled since January 2007. The total number of entitled units is tracked by the San Francisco Planning Department, and is updated quarterly in coordination with the Pipeline Report. Subsidized housing units, including moderate and low income units, are tracked by the Mayor's Office of Housing, and are also updated quarterly.

| 2012 - QUARTER 1                        | RHNA Allocation<br>2007-2014 | Units Entitled<br>To Date | Percent<br>Entitled |
|---|------------------------------|---------------------------|---------------------|
| <b>Total Units Entitled<sup>1</sup></b> | <b>31,193</b>                | <b>11,130</b>             | <b>35.7%</b>        |
| Above Moderate (> 120% AMI)             | 12,315                       | 7,457                     | 60.6%               |
| Moderate Income (80-120% AMI)           | 6,754                        | 360                       | 5.3%                |
| Low Income (< 80% AMI)                  | 12,124                       | 3,313                     | 27.3%               |

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<sup>1</sup> Total does not include entitled major development projects such as Treasure Island,, Candlestick, and Park Merced. While entitled, these projects are not projected to be completed within the current RHNA reporting period (through June 2014).

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

Reception:  
**415.558.6378**

Fax:  
**415.558.6409**

Planning  
Information:  
**415.558.6377**

**From:** [Jackie Bender](#)  
**To:** [Guy, Kevin](#)  
**Cc:** [jkevin@reubenlaw.com](mailto:jkevin@reubenlaw.com)  
**Subject:** 832 Sutter St. - support  
**Date:** Friday, January 31, 2014 1:51:43 PM

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Dear Mr. Guy,

I am a neighborhood resident and I attended the information meeting about 832 Sutter St. this week. I am in support of the project and think it will be a positive addition to the neighborhood. My main concern was construction times as our apartment overlooks the site. It sounds like they will be reasonable, with minimal construction on the weekends.

Thanks,  
Jackie Bender  
1065 Bush St. Apt. 20  
San Francisco, CA 94109

**From:** [Cynthia Servetnick](mailto:Cynthia.Servetnick@sfgov.org)  
**To:** [jeremy.battis@sfgov.org](mailto:jeremy.battis@sfgov.org)  
**Cc:** [Mark Luellen](mailto:Mark.Luellen@sfgov.org); [sonya Banks](mailto:sonya.Banks@sfgov.org); [Linda Avery](mailto:Linda.Avery@sfgov.org); [kevin.guy@sfgov.org](mailto:kevin.guy@sfgov.org)  
**Subject:** 832 Sutter Street, Case No. 2007.0392E and Conditional Use Authorization  
**Date:** Saturday, July 19, 2008 12:11:00 PM  
**Attachments:** [832 Sutter.pdf](#)

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Jeremy:

Per the Notification of Project Receiving Environmental Review for 832 Sutter Street, Case No. 2007.0392E, I am concerned about impacts to transportation and parking and to historical resources within the National Register-eligible Lower Nob Hill Apartment Hotel District. I am also concerned about massing, scale, view, shadow and wind impacts—especially with regard to the rear light well of the adjacent apartment building at 830 Sutter Street.

Parking in this neighborhood is extremely limited. This site houses ZipCar—one of the most resource-efficient transportation options for folks who choose not to own and house cars, but need them occasionally. The proposed project would not only eliminate 22 parking spaces—most of which are currently assigned to ZipCar—but would also create a demand for parking to serve 27 new dwelling units and the associated 1,176 sq. ft. of ground floor retail space. The adjacent Butterick Garage, which serves existing residents and neighborhood retail, is often full and does not appear to have the capacity to serve the proposed project.

Further, the Butterick Garage to the west, and the adjacent apartment building to the east, are contributing historical resources to the Lower Nob Hill Apartment Hotel District. The garage is only two stories high and the apartment building is only four stories high. Wedging an eight-story apartment building into this very narrow infill site is contextually inappropriate. The proposed project would require a conditional use authorization in order to double the height of the building from the authorized 40-feet to 80-feet.

The project as proposed appears to have significant impacts to transportation and parking and to historical resources that cannot be mitigated. I am requesting an appropriate level of environmental analysis be conducted including a transportation study and an historic resource evaluation. Said environmental document should also evaluate temporary construction impacts, explain how the proposed project would be staged, and how it would affect the Nos. 2, 3, 4 and 76 Muni buses and the Academy of Art University Shuttle.

Finally, I am concerned about segmentation under CEQA as the adjacent garage is owned by the same entity as the proposed site. The entitlement of the proposed project could threaten the historic Butterick Garage and prompt permit requests for additional construction at the 80-foot height on the garage site. This could involve the demolition or major alteration of said historical resource as well as the loss of high-demand parking (in-and-out during local business hours) coupled with the creation of additional parking demand. Thank you in advance for addressing these concerns.

I wish to receive a copy of the environmental document and potential conditional use authorization for this project.

Sincerely,

Cynthia Servetnick

845 Sutter Street, No. 512  
San Francisco, CA 94109

Attachment: Site Photos

**From:** [Lisa Zwirner](mailto:Lisa.Zwirner@sfgov.org)  
**To:** [jeremy.battis@sfgov.org](mailto:jeremy.battis@sfgov.org); [kevin.guy@sfgov.org](mailto:kevin.guy@sfgov.org)  
**Cc:** [michela.alioto-pier@sfgov.org](mailto:michela.alioto-pier@sfgov.org); [aaron.peskin@sfgov.org](mailto:aaron.peskin@sfgov.org)  
**Subject:** Case # 2007.0392E  
**Date:** Wednesday, July 16, 2008 5:03:00 PM

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To San Francisco Planning Department  
Re: Notice of Project Receiving Environmental Review  
Case# 2007.0392E  
Address: 832 Sutter St

Attn: Jeremy Battis & Kevin Guy,

Dear Mr. Battis and Guy;

This is concerning the proposed 8 story (80-foot high) high density development that is under review currently. I am a tenant that lives at 830 Sutter Street connecting the proposed development. I have some serious concerns about the construction of this proposed building, the first of which is that the building I live in was built in 1914, it is a brick structure, and this is right next to where the construction will be. Our building has undergone earthquake retrofitting but only of one corner of the entire building which would be the SE corner I believe. I am extremely concerned about any foundation damage that might occur due to the heavy pile driving for an extended period of time. Although it may not cause damage immediately I am afraid of what sort of effect this will have, should there be a larger earthquake. Another issue is that I don't believe there has been any study into the retaining walls that support the yards and foundations for the buildings that back against this from the Bush Street side. Clearly you can see large cracks in the walls in our yard as well as the adjoining yards to the garage. The actual space you are intending to build on has a concert wall but the surrounding area is not and this sort of disturbance could cause a landside or destruction of the surrounding retaining walls.

Another issue that is of great concern is the effect this tall of a building will have on the light that the neighborhood gets. There are no other structures of this size in this neighborhood. The proposed building will cast huge shadows and block any sort of light the surrounding buildings get. Not too mention it extends deeper than the current buildings if the intention is to build up against the retaining wall, which will have a profound impact.

I also see that there are no plans to provide alternate parking for the residents currently in the neighborhood. This project will take away parking spaces for an area already stretched to the limit in number of spaces available. Now you would like to add another 27 units which could potentially add another 50-100 cars in the neighborhood, depending on how many tenants live in each unit.

Also being someone who has respiratory problems and knowing there are many older tenants living in this area, I am concerned about the amount of dust and debris will be airborne. It's bad enough with how many chemicals we are exposed to on a daily basis but this will exacerbate this 1000 times. The building I live in has old windows and the dust with easily get into my unit. It is not feasible for me to move either since I am lucky enough to have low rent which I can afford. If I had to contemplate moving I would not be able to nor would I want to.

The other concern is for the animal and plant life that exists in the yards in this neighborhood. There are very few places downtown where you have such an array of open space, plant and animal life. This sort of construction will not only negatively impact the plants by causing dust and other chemicals to come in contact with them, but the animal life will most inevitably be displaced by the construction.

I am extremely concerned about all these negative environmental impacts on our neighborhood. I understand the need for more housing in SF, but I don't feel that this large of a structure is needed or warranted in our neighborhood. Was there ever a neighborhood meeting to discuss such a building prior to the plans being submitted as far a long as they are? With all the housing being constructed all over the city currently, is there really such a need? I have lived in SF all my life and there really needs to be more careful planning of our city, instead of putting up huge high rises where ever there is any sort of open space. Besides, with the economy in the state it is, do we really need this?

I implore your review panel to seriously address my concerns and issues with the proposed building.

I thank you for your time.

Sincerely,

Lisa Zwirner  
830 Sutter St. #14  
San Francisco, CA 94109  
(415) 312-0010

**'The difference between what we are doing and what we are capable of doing would solve most of the world's problems.'** --Mahatma Gandhi.

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**From:** [thomas.schneider](mailto:thomas.schneider)  
**To:** [jeremy.battis@sfgov.org](mailto:jeremy.battis@sfgov.org); [kevin.guy@sfgov.org](mailto:kevin.guy@sfgov.org)  
**Subject:** case no: 2007.0392E ; Comment on proposed project at 832 Sutter Street  
**Date:** Thursday, July 24, 2008 2:46:00 PM

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to whom it may concern:

As a neighbor of the proposed project on 832 Sutter Street (8 story, 80 foot high 25,520 sqft mixed use residential building ...) i would like to give the following input for consideration:

The project, as currently described, would require among other things, a variance from the off-street parking requirements. I do propose the city grant no such variance, if for no other reasons than:

- the project will eliminate 22 current off street parking spaces.
- the project will eliminate about 11 current car-sharing parking spaces (Zip Car).
- the project will no doubt create the need for additional parking through the addition of 27 dwelling units in a neighborhood where there are already insufficient residential street parking spaces available.
- the project will most likely negatively effect the availability of the bus stop (in close proximity) on the NW corner of the Sutter /Jones Street intersection.

I appreciate the opportunity to add the above comments to the process, and would very much like to be kept informed about any further progress/actions in the above case.

Sincerely

Thomas Schneider  
795 Sutter Street #601  
SF, CA 94109

**From:** [Toshi Kasai](mailto:Toshi.Kasai)  
**To:** [Jeremy.battis@sfgov.org](mailto:Jeremy.battis@sfgov.org)  
**Cc:** [kevin.guy@sfgov.org](mailto:kevin.guy@sfgov.org)  
**Subject:** Notification of project at 832 Sutter St. Case# 2007.0392E  
**Date:** Thursday, July 24, 2008 1:32:00 PM

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**Re: Notification of project Receiving environmental Review at 832 Sutter St.  
Case# 2007.0392E**

Dear Jeremy D. Battis

I am writing to express my concerns on the proposed mixed-use residential building at 832 Sutter Street.

The proposed project has 27 dwelling units and 1,176 sq.ft. of retail space. According to San Francisco Planning Code, the project is under Zone RC-4. A building in RC-4 zone is required to provide 1 parking stall per 1 dwelling unit and 1 parking stall per 500sq.ft. of retail space. Therefore, the project should provide 29 off-site parking spaces. I would like to know what are reasons for exempting the parking requirements.

On-street parking spaces on Sutter street between Leavenworth and Jones are always occupied. There are many vehicles parked illegally in front of fire hydrant, bus top area and loading zones. The proposed project will eradicate 22 parking spaces in the existing parking lot with which is fully occupied throughout the day.

As a resident, I am very much concerned that the proposed project will worsen on-street parking situation in the area. I am also disturbed that the Planning Department does not enforce the parking requirements on the proposed project.

I would like an explanation for the parking requirement exemptions and to receive future environmental review documents for this project.

Thank you for your attentions,

Toshi Kasai  
830 Sutter St., #17  
San Francisco, CA

Toshi Kasai SENIOR DESIGNER

**naylor&chu**  
ARCHITECTS

1515 Vallejo St./ San Francisco CA 94109 / t. 415.749.6500 x235 f. 415.749.5266  
San Diego office / t. 619.722.1010 f. 619.445.7096 [www.naylorandchu.com](http://www.naylorandchu.com)

**From:** [PHILIP J. DEJAUREGUI](#)  
**To:** [jeremy.battis@sfgov.org](mailto:jeremy.battis@sfgov.org); [kevin.guy@sfgov.org](mailto:kevin.guy@sfgov.org)  
**Subject:** Planning Review 832 Sutter Street  
**Date:** Monday, July 28, 2008 2:04:00 PM

---

Hello—

It is said that you can't stop progress, and I don't intend to. However, destroying the old simply for the sake of something new is questionable progress. Progress should benefit us all not just well connected land developers. A major development, such as the one proposed for the property at 832 Sutter Street will impact on the entire neighborhood and it is only right and proper that the residents of the neighborhood be allowed their say. With that thought in mind I submit my comments on this proposed project.

I am a long time resident of this neighborhood. For twenty-four years now I have lived at 833 Jones Street. My apartment at the rear of the building overlooks a small garden and the outdoor parking area of the subject parking garage on Sutter Street. The creation and on going care of garden has been my pride and joy for as long as I have lived here and has added value to the property. I am pleased to hear that the design of this project should not adversely affect the neighborhood gardens, although a decrease in the amount of morning or southern light would need to be considered when deciding what to plant.

My biggest concern also concerns the gardens, although somewhat indirectly. I am told the proposed building will occupy the entire parking lot site and will back up against the retaining wall at the northern end of the lot. These retaining walls- there are such walls below my property and the property immediately west of me- are brick and or masonry. As best I know they were built about 1919. I think the one facing the garage was worked on not too long ago and is structurally sound, but I can't speak for the one below/besides me (between 833 and 825 Jones). My concern is will all the foundation work at 832 Sutter undermine these walls?

Thank you for addressing my concerns. I await your response.

Sincerely,

Philip J. de Jauregui  
833 Jones Street, Apt. #4  
San Francisco, CA 94109  
(415) 474-2736  
[philip.dejauregui@comcast.net](mailto:philip.dejauregui@comcast.net)

**From:** [Ahrie Moon](#)  
**To:** [kevin.guy@sfgov.org](mailto:kevin.guy@sfgov.org)  
**Subject:** Project at 832 Sutter St, San Francisco, CA  
**Date:** Thursday, January 21, 2010 2:05:00 PM

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Mr. Guy:

I'm concerned about the project proposed from 832 Sutter Street -- the eight-story unit with no parking. Potentially adding 27 more cars and removing 22 parking spaces to a neighborhood that's already short on parking is not a good idea. I've already written Mr. Jeremy Battis about the environmental effects of having additional cars circling the neighborhood looking for parking.

Question: Is the project proposed for just the paved lot or will the existing parking garage building next to the lot be demolished for this project?

Sincerely,  
Ahrie Moon

**From:** [Mark West](#)  
**To:** [kevin.guy@sfgov.org](mailto:kevin.guy@sfgov.org)  
**Subject:** Proposed construction of 832 Sutter St.  
**Date:** Tuesday, September 23, 2008 2:33:00 PM

---

Dear Kevin Guy,

I am writing because I have been informed that the San Francisco Planning Department is debating whether to allow a developer to erect a new building at 832 Sutter St. I was also informed that you are one of the city employees who will be reviewing the developer's proposal. I believe such a building could be damaging to the neighborhood where I have lived for the past six years and, for the reasons spelled out below, request that you reject the developer's request at this time.

Many of my concerns, like those of my neighbors, are somewhat pedestrian: construction invariably causes noise and air pollution and increases traffic and parking congestion. My opposition is also, admittedly, selfish. The proposed mix-use eight story building would block my only view of green trees, an unremarkable panorama but one I have treasured for years, a view that reminds me that San Francisco is not – and I hope never will be – Manhattan. While these objections are real (my heart literally sank upon hearing news of the proposed structure), my primary concern is that the construction of such a building ignores and will likely stall the much needed revitalization of existing structures.

To date, I know of at least four large and unused buildings within two blocks of 832 Sutter St., an address which now houses a healthy and well-cared-for parking garage as well as a ZipCar lot. Moving beyond a two block radius there are numerous other neglected and abandoned buildings.

As I'm sure you are aware, abandoned buildings invite vandalism and, more ominously, crime. It is difficult to understate how the shuttering of a single building can transform an entire block. Since the movie theater located on the southeast corner of Sutter and VanNess shut its door a few years ago, that section of the street has become a hub of violence, drug dealing, and prostitution. While I do my best to avoid this corner, I have seen people attacked, harassed, and threatened on a block that used to be filled with people waiting in line to see a film. During the day I step over homeless people sleeping on the sidewalk and smell feces and urine wafting from behind a waist high police barricade.

While I support San Francisco's commitment to providing affordable housing and recognize that in many instances this means building more apartments, there are hundreds of unused apartments within a stone's throw of 832 Sutter St. 699 Sutter,

the huge yellow building with blue trim on the southeast corner of Sutter and Taylor Streets has been empty for years. I know this because I worked for three years at Transworld School, located on the sixth floor of 701 Sutter St. The view out my classroom window was one of broken windows and thousands of square-feet of unused real estate right in the heart of downtown. Over the years I saw developers and engineers pace the empty floors carrying tablet PCs, but still this building sits abandoned.

Just a half block from 832 Sutter St. is the old Canterbury Hotel, at 726 Sutter, halfway between Jones and Taylor on the north side of the street. This building, like its yellow and blue neighbor, has sat empty and neglected for at least two years. While it is true that one can occasionally see construction crews walking in and out, the work has been halting at best. Crews have been fiddling with the structure on and off for over a year and they do not appear to be anywhere near finished.

Heading north, just one block on Jones St. is 901 Bush St., commanding the southwest corner of Bush and Jones. I watched in awe as large number of workers transformed this building into what appeared to be over a hundred high-end apartments in a short period of time. I watched workers carry-in shiny sinks and stone counter tops. I saw men installing expensive windows. I talked to contractors adding rich flourishes to the building's exterior molding. I recall thinking, "I bet those apartments are expensive." And then, one day, for no apparent reason, the building's big beautiful front door was shuttered. You can walk by this building anytime and see big pieces of wood literally nailed over the entrance. But here's the kicker: that building's doors were nailed shut in 2006. Since that time, I have never seen a single worker or a person inside. In an irony that is possible only in San Francisco, what I do see regularly are homeless people sleeping on the doorstep. With no tenants or building manager to clean up, trash piles up on the corner daily.

Finally, directly next to my building, 861 Sutter St., is yet another boarded building, 871 Sutter, this one formerly a corner store. This building has not had a tenant for almost four years. I know the homeless man who sleeps next to the black boards nailed over the door. He has lived there for longer than many of the tenants in my building. While I sympathize with this man's problems (he is addicted to drugs and does not want to go to one of the city's homeless shelters), he often urinates on the building. Many of my work days begin with my stepping onto the street (861 Sutter) and inhaling the pungent fumes of human urine.

These observations, no doubt shared by other long-time residents of the neighborhood, force me to turn suspicious eyes to the proposed construction of 832 Sutter St. With the price of real estate falling dramatically and financial markets in turmoil, will 832 Sutter become another 901 Bush? And with so many empty buildings within a two block radius, why is the San Francisco Planning Commission approving new construction? 901 Bush, a building that looks to be just a few weeks from completion has been empty for almost two years. Why not finish this building before ripping out a well-kept parking garage used by hundreds of neighborhood residents? Why not push developers to finally repair the yellow and blue building with broken windows at southwest corner of Sutter and Taylor? Why not ask them

to finish whatever it is they are doing with the old Canterbury Hotel? Why not tell them to revitalize the old movie theater at the southeast corner of Sutter and VanNess and pull a dangerous block back into a neighborhood that can't seem to decide if it's rotting or thriving? Why not ask the developers to fix up 871 Sutter St. so that my neighbors and I have as many places to buy groceries as we do stores to buy liquor? A new building will do little to help fix and populate these long-empty structures, and, I fear, by increasing supply, may even stall the limited work that is presently underway on buildings like the old Canterbury Hotel.

Finally, whenever new construction is proposed it is worth looking at what is already located on the site. In this case, it's nothing particularly fancy: just a parking garage and a ZipCar lot. However, both structures, unlike so many of the empty buildings in the neighborhood, are clean and well-patrolled. The ZipCar lot allows me and other neighborhood residents to rent cars for short periods of time, eliminating my need to own a vehicle, effectively reducing pollution and parking congestion – two problems San Francisco leaders have pledged to fight. There is no doubt in my mind that the structures presently located at 832 Sutter are superior to an empty building or, worse, an empty lot.

Please reject the proposal to build a large new structure at 832 Sutter until the long neglected buildings in my neighborhood (in many instances not more than 100 feet away from the proposed construction site) have been revitalized. Please keep me informed of developments regarding the 832 Sutter site and do not hesitate to call or write me if you have any questions.

Yours sincerely,

Mark West

861 Sutter St. Apt. 600

San Francisco, CA 94109

415.254.1634

[mark80west@gmail.com](mailto:mark80west@gmail.com)

**From:** [Lisa Zwirner](mailto:Lisa.Zwirner)  
**To:** [jeremy.battis@sfgov.org](mailto:jeremy.battis@sfgov.org); [kevin.guy@sfgov.org](mailto:kevin.guy@sfgov.org)  
**Subject:** RE: Case # 2007.0392E  
**Date:** Thursday, August 28, 2008 12:58:00 PM

---

Dear Jeremy and Kevin,

This is in regards to the development at 832 Sutter St. I was at home yesterday when they were jack hammering the lot I assume for the pipes etc. My concern regarding the structural integrity of the building I live in at 830 Sutter St was made clear yesterday. With only one jack hammer the entire building was shaking. The fact that there was only one and there was that much movement in my building I am even more concerned now as to what will happen once the entire project is underway. In addition I was told by the attorney representing the builders that there would be no work for at least a year. Is this project being fast tracked?

Lastly, there were surveyors the other day that illegally got into our building and into our back lot killing the plants we had back there. Is that common practice to illegally trespass on other people's property when it comes to these developments?

My main concern is in regards to the movement of our building and I would like this addressed before any further work is done and any further damage is done to our building.

Thank you,  
Lisa Zwirner

**'The difference between what we are doing and what we are capable of doing would solve most of the world's problems.'** --Mahatma Gandhi.

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From: chat\_noir13@hotmail.com  
To: [jeremy.battis@sfgov.org](mailto:jeremy.battis@sfgov.org); [kevin.guy@sfgov.org](mailto:kevin.guy@sfgov.org)  
CC: [michela.alioto-pier@sfgov.org](mailto:michela.alioto-pier@sfgov.org); [aaron.peskin@sfgov.org](mailto:aaron.peskin@sfgov.org)  
Subject: Case # 2007.0392E  
Date: Thu, 17 Jul 2008 00:05:11 +0000

To San Francisco Planning Department  
Re: Notice of Project Receiving Environmental Review  
Case# 2007.0392E  
Address: 832 Sutter St

Attn: Jeremy Battis & Kevin Guy,

Dear Mr. Battis and Guy;

This is concerning the proposed 8 story (80-foot high) high density development that is under review currently. I am a tenant that lives at 830 Sutter Street connecting the proposed development. I have some serious concerns about the construction of this proposed building, the first of which is that the building I live in was built in 1914, it is a brick structure, and this is right next to where the construction will be. Our building has undergone earthquake retrofitting but only of one corner of the entire building which would be the SE corner I believe. I am extremely concerned about any foundation damage that might occur due to the heavy pile driving for an extended period of time. Although it may not cause damage immediately I am afraid of what sort of effect this will have, should there be a larger earthquake. Another issue is that I don't believe there has been any study into the retaining walls that support the yards and foundations for the buildings that back against this from the Bush Street side. Clearly you can see large cracks in the walls in our yard as well as the

adjoining yards to the garage. The actual space you are intending to build on has a concert wall but the surrounding area is not and this sort of disturbance could cause a landside or destruction of the surrounding retaining walls.

Another issue that is of great concern is the effect this tall of a building will have on the light that the neighborhood gets. There are no other structures of this size in this neighborhood. The proposed building will cast huge shadows and block any sort of light the surrounding buildings get. Not too mention it extends deeper than the current buildings if the intention is to build up against the retaining wall, which will have a profound impact.

I also see that there are no plans to provide alternate parking for the residents currently in the neighborhood. This project will take away parking spaces for an area already stretched to the limit in number of spaces available. Now you would like to add another 27 units which could potentially add another 50-100 cars in the neighborhood, depending on how many tenants live in each unit.

Also being someone who has respiratory problems and knowing there are many older tenants living in this area, I am concerned about the amount of dust and debris will be airborne. It's bad enough with how many chemicals we are exposed to on a daily basis but this will exacerbate this 1000 times. The building I live in has old windows and the dust with easily get into my unit. It is not feasible for me to move either since I am lucky enough to have low rent which I can afford. If I had to contemplate moving I would not be able to nor would I want to.

The other concern is for the animal and plant life that exists in the yards in this neighborhood. There are very few places downtown where you have such an array of open space, plant and animal life. This sort of construction will not only negatively impact the plants by causing dust and other chemicals to come in contact with them, but the animal life will most inevitably be displaced by the construction.

I am extremely concerned about all these negative environmental impacts on our neighborhood. I understand the need for more housing in SF, but I don't feel that this large of a structure is needed or warranted in our neighborhood. Was there ever a neighborhood meeting to discuss such a building prior to the plans being submitted as far a long as they are? With all the housing being constructed all over the city currently, is there really such a need? I have lived in SF all my life and there really needs to be more careful planning of our city, instead of putting up huge high rises where ever there is any sort of open space. Besides, with the economy in the state it is, do we really need this?

I implore your review panel to seriously address my concerns and issues with the proposed building.

I thank you for your time.

Sincerely,

Lisa Zwirner  
830 Sutter St. #14  
San Francisco, CA 94109  
(415) 312-0010

# REUBEN, JUNIUS & ROSE, LLP

February 19, 2014

## **BY MESSENGER**

President Cindy Wu  
San Francisco Planning Department  
1650 Mission Street, Suite 400  
San Francisco, CA 94103

**Re: 832 Sutter Street  
Planning Department Case No. 2007.0392C  
Hearing Date: February 27, 2014  
Our File No.: 5930.02**

Dear President Fong and Commissioners:

This office represents Ed and Margaret Duffy, the project sponsors of a proposed new residential building with ground floor retail (the "Project") to be located at 832 Sutter Street (the "Property"), on the north side of the block between Jones and Leavenworth Streets. The Property currently contains a surface parking lot. The Project proposes to construct a 63-foot-6 inch-tall, six-story building with 20 dwelling units over a ground-floor, 407 square foot retail space. It will provide approximately 1,165 square feet of common open space in the rear yard, and will not provide parking.

The Property is a particularly appropriate location for the Project as the underutilized lot is located in one of San Francisco's highest density neighborhoods. In an area that mainly consists of residential developments and hotel uses, with some ground-floor commercial uses, it would provide 20 new dwelling units, including two on-site affordable units and a modest retail space, which, due to its size is expected to be occupied by a neighborhood-serving retailer. The Project will not provide off-street parking as it is located on a narrow lot, with the only means of ingress and egress being on Sutter Street. Any parking would create conflicts between vehicular and pedestrian movement and eliminate the ground floor retail space. Because of its central location and easy access to public transportation, there is a reduced need for automobiles in the area. The Project supports the City's Transit First policies, and it is not anticipated that the lack of parking at the Property will negatively impact the residents at the Property, or in the surrounding neighborhood.

As described in greater detail below, the City is in an extreme housing crisis, and building new dwelling units, while being sensitive to existing neighborhood character, has been identified by both the Mayor and the Mayor's Working Group as a primary method to address this issue.

James A. Reuben | Andrew J. Junius | Kevin H. Rose | Daniel A. Frattin  
Sheryl Reuben<sup>1</sup> | David Silverman | Thomas Tunny | Jay F. Drake | John Kevlin  
Lindsay M. Petrone | Melinda A. Sarjapur | Kenda H. McIntosh | Jared Eigerman<sup>2,3</sup> | John McInerney III<sup>2</sup>

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

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The current proposal requires Planning Commission approval of a conditional use authorization for a building taller than 50 feet in an RC-4 District and a Parking Reduction approval from the Zoning Administrator. Project plans, renderings and photographs of the surrounding neighborhood are included in your packet.

**A. Benefits of the Project**

Benefits of the Project will include:

- Converts an underutilized surface parking lot to a much needed and more desirable mixed-use residential development, creating 20 new dwelling units (including two on-site affordable units);
- Creation of new neighborhood-serving retail space in a location zoned for such uses;
- Creation of new dwelling units in close proximity of multiple public transit options. The Project is one block south from the MUNI 1, 31, 38 AX BX express lines and adjacent to the 2, 3 and 76 lines that transport passengers to and from downtown San Francisco. The Project is also between the northbound and southbound routes for the 27 bus line, and is within walking distance of Market Street and several BART and MUNI underground stations, giving residents at the Project access to jobs both inside and outside San Francisco.

**B. New Housing Development Sensitive to Existing Neighborhood**

The Project will provide 20 new dwelling units, including two on-site, affordable units in the high-density, Lower Nob Hill neighborhood. It has been almost universally recognized that the City is in the midst of an extreme housing crisis. In just the last year, San Francisco rents have increased 10.6%, the largest increase in the country and three times more than the national average of 3%. (<http://trends.truliablog.com/2014/01/price-and-rent-monitors-dec-2013/>). 42,452 jobs have been created in San Francisco since 2011, yet an average of only 1,500 new dwelling units have been constructed per year since then. This imbalance has created increased demand for housing and has exacerbated San Francisco's long-time struggle with a dwindling housing supply.

City government has identified this problem, and has taken the following recent actions to help improve our housing situation:

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- Mayor Lee set out a seven-point housing plan in his State of the City speech, calling for the construction of 30,000 dwelling units in the next six years (5,000 per year);
- The Mayor's Working Group (consisting of the heads of relevant city agencies) has drafted a number of short, medium and long-term recommendations to ease the crisis, including asking the Planning Commission to encourage new residential projects to maximize the density allowed by zoning.

These new policies coincide with the City's existing Transit First policies, which encourage new, dense housing projects at infill sites near transit.

The Project is a perfect example of the type of new development that, with others like it, has the ability to ease the housing crisis: a residential project that proposes significant density at an infill site while staying consistent with the character of the existing neighborhood, and respecting the needs of the community. The Project proposes a six-story, 20 unit residential development over ground floor retail. It is consistent and compatible with the neighborhood in the following ways:

1. The Project proposes a six-story building. The Property is surrounded by buildings ranging from four to nine stories, and a majority of uses in the area are residential over small-scale retail. The building "steps down" from taller buildings up the hill to the west towards shorter buildings to the east.
2. The Project proposes a small, 407 square foot, ground floor retail space. Because of the modest size of the space, this is expected to attract neighborhood-serving uses on the ground floor, consistent with other retail uses in the area.
3. The Project will not provide any parking. It is centrally located within walking distance of the financial district and numerous transit options. Most of the existing residential buildings in the area do not provide on-site parking, and eliminating parking brings the Project more into conformance with the surroundings. There are several parking garages in the vicinity that serve local residents, and the Project will promote the City's "Transit First" policy in an area with adequate off-street parking to serve the needs of the new residents.

The Project fulfills the City's goals of providing new dwelling units at an infill location while maintaining consistency with the existing neighborhood. It also promotes the City's "Transit First" policy in a centrally located area with easy access to all San Francisco has to offer, by walking and public transportation.

**C. Community Outreach**

The Project Sponsor has been responsive to the concerns of neighbors. The original Project proposed an 80 foot building with 27 dwelling units. In 2008, when the Notice of Environmental Review was mailed for the Project, the Planning Department received several response letters from people in the community. The main concern expressed by the letters was that the originally-proposed building was too tall for the neighborhood, and the lack of parking at the Project would over-tax the off-street parking supply in the neighborhood. The Project Sponsor contacted all of the people who sent letters to discuss their concerns individually, and reduced the Project to a six-story, 63 foot tall, 20 unit building, reducing the height of the building and the overall parking demand generated by the Project.

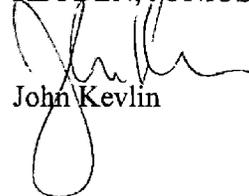
On January 29, 2014, the Project Sponsor held a neighborhood meeting to present and get feedback on the revised Project plans. **All building owners and tenants within 300 feet of the Property and neighborhood groups were invited to the meeting (over 1,500 invites). In total, nine people from the community attended the meeting, and all were supportive of the re-designed Project.**

**D. Conclusion**

The Project requires conditional use authorization for development of a building taller than 50 feet in an RC-4 District. The Project creates 20 units of much-needed housing, including two units of on-site affordable housing, while being sensitive to the character of the surrounding neighborhood. It creates a more consistent street frontage along the block, and will provide space for a new, neighborhood-serving retailer. The Project Sponsor has been open and responsive to the concerns of the community and has agreed to significant modifications in response. The Project is a prime example of the type of infill housing that will help relieve the City of the current housing crisis. For all of these reasons and those listed in the application, we respectfully request the Commission grant the conditional use authorization for this Project.

Very truly yours,

REUBEN, JUNIUS & ROSE, LLP



John Kevin

Encls.

cc: Vice President Rodney Fong

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REUBEN & JUNIUS LLP

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President Cindy Wu  
February 19, 2014  
Page 5

Commissioner Michael Antonini  
Commissioner Gwyneth Borden  
Commissioner Rich Hillis  
Commissioner Kathrin Moore  
Commissioner Hisashi Sugaya  
John Rahaim - Planning Director  
Ed Duffy

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## 832 SUTTER

Final Package for the San Francisco Planning Commission

Date of Package: February 19, 2014

Project Sponsor:

832 Sutter LLC  
414 Pinehill Road  
Hillsborough, CA 94010  
Tel: 415.533.4953



1. SUTTER LOOKING EAST



2. SUTTER LOOKING SOUTH



3. SUTTER LOOKING EAST



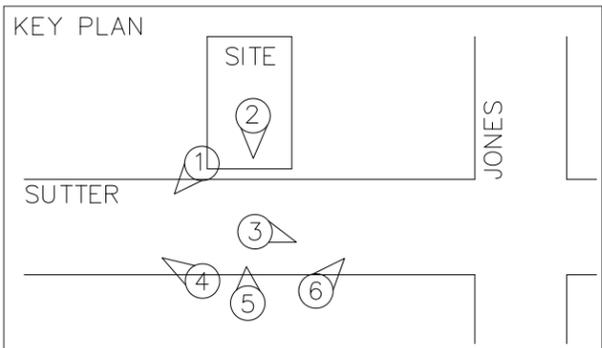
4. SUTTER LOOKING NORTHWEST



5. SUBJECT PROPERTY - SUTTER LOOKING NORTH



6. SUTTER LOOKING NORTHEAST



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Tel: 415.533.4953

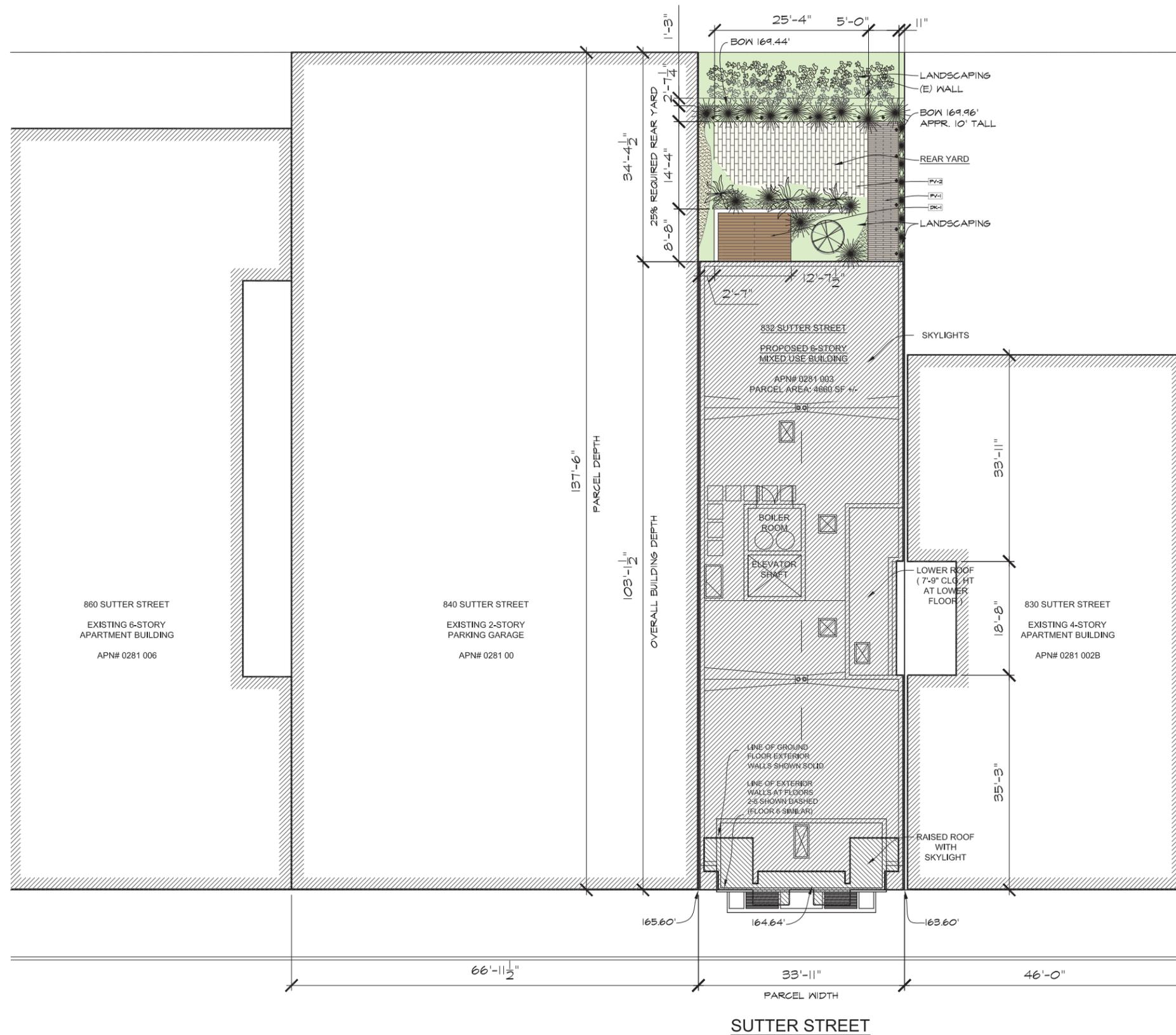
Date of Package:  
February 19, 2014

**SITE AND SURROUNDING NEIGHBORHOOD  
ARCHITECTURE**

832 SUTTER STREET



Ian Birchall and Associates  
251 South Van Ness Ave, Suite 300  
San Francisco, CA 94103  
p: 415.512.9660  
f: 415.512.9663  
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Project Sponsor:  
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 Hillsborough, CA 94010  
 Tel: 415.533.4953

Date of Package:  
 February 19, 2014

**SITE PLAN**

832 SUTTER STREET



lan Birchall and Associates  
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SUBJECT PROPERTY

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Tel: 415.533.4953

Date of Package:  
February 19, 2014

### BLOCK FACE RENDERING LOOKING NORTH

832 SUTTER STREET

**ib+a**  
architecture

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ACROSS FROM SUBJECT PROPERTY

Project Sponsor:  
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Tel: 415.533.4953

Date of Package:  
February 19, 2014

**BLOCK FACE RENDERING  
LOOKING SOUTH**

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architecture

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Date of Package:  
February 19, 2014

## AERIAL SITE VIEW

832 SUTTER STREET

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architecture

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February 19, 2014

## AERIAL SITE VIEW

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Date of Package:  
February 19, 2014

### STREET VIEW LOOKING EAST

832 SUTTER STREET

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architecture

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Date of Package:  
February 19, 2014

### STREET VIEW LOOKING WEST

832 SUTTER STREET



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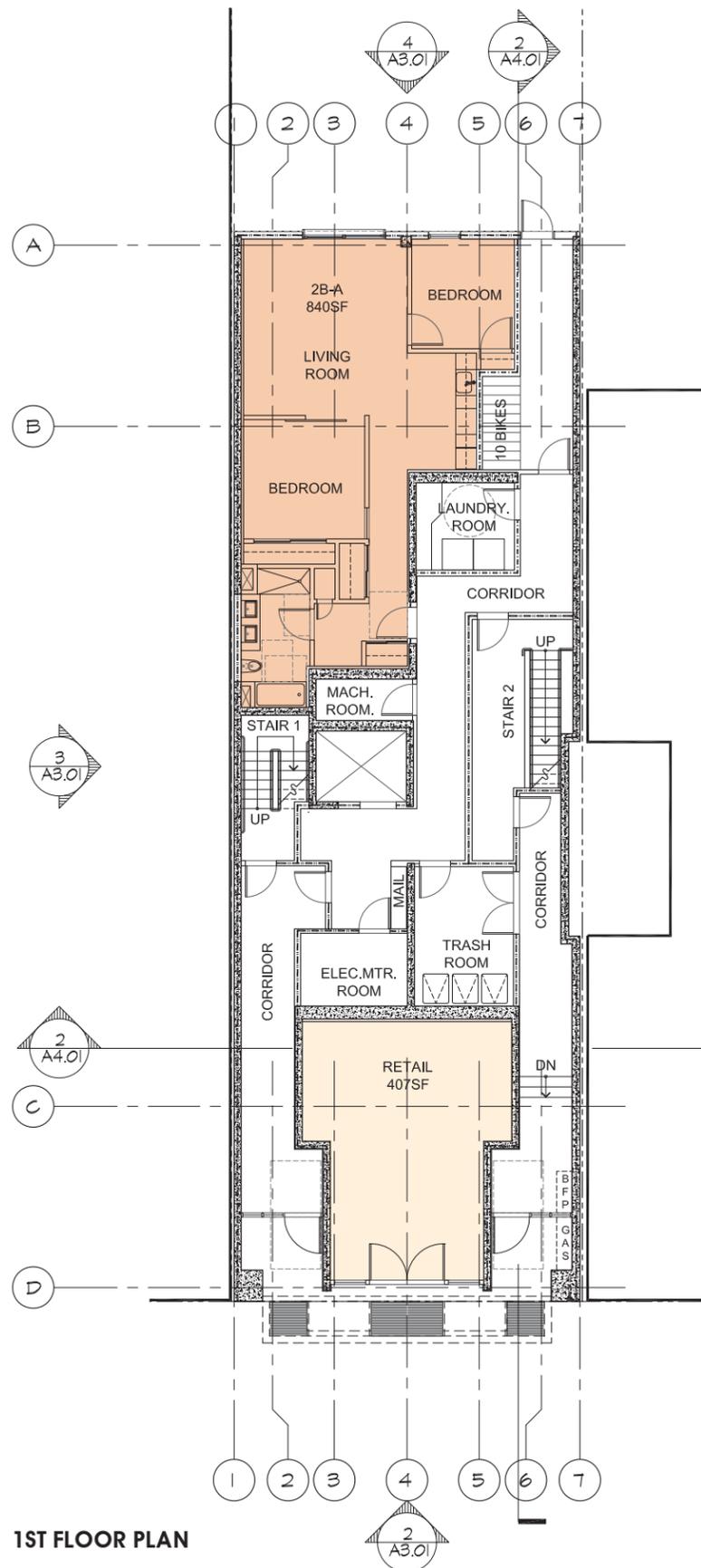
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### VIEW OF RETAIL ENTRY

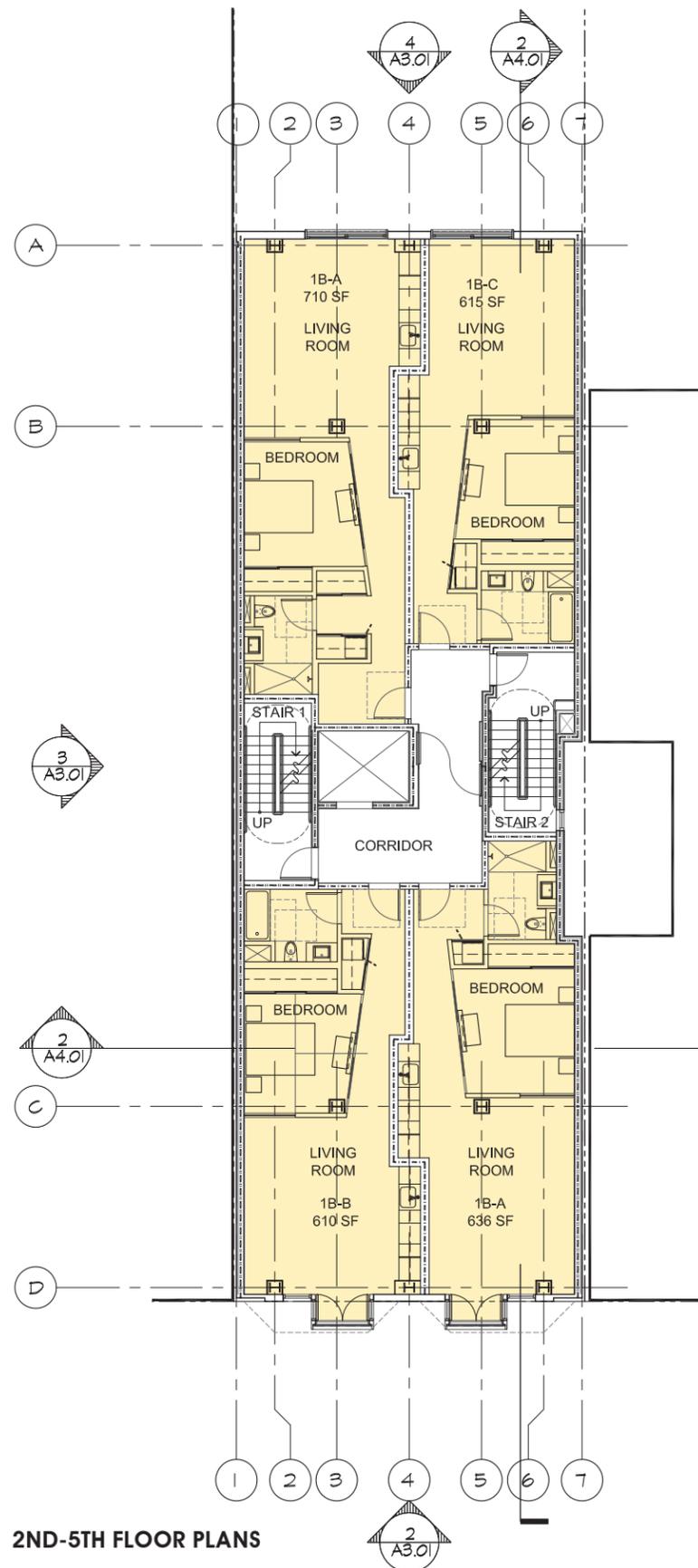
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**ib+a**  
architecture

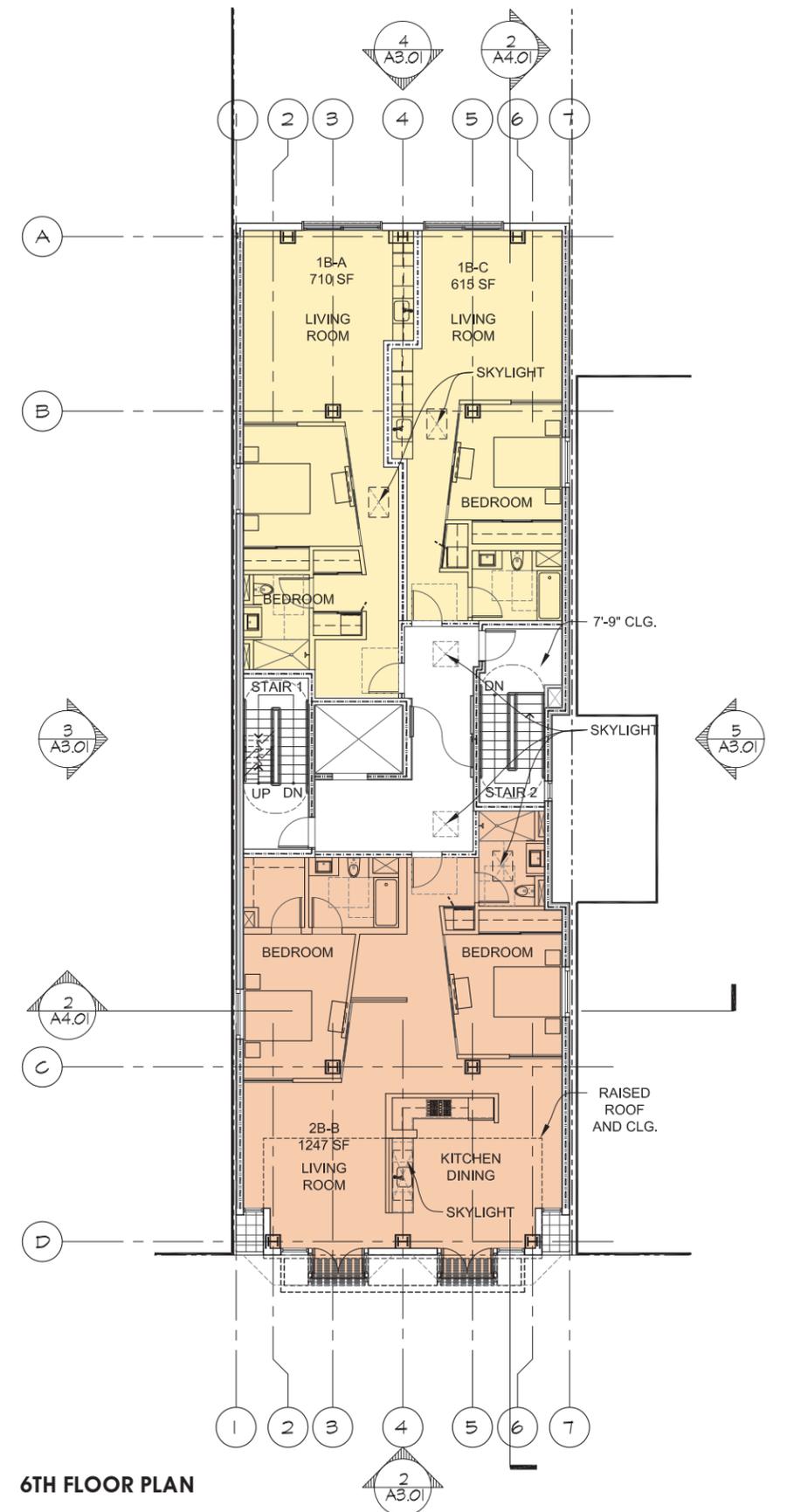
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1ST FLOOR PLAN



2ND-5TH FLOOR PLANS



6TH FLOOR PLAN

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Date of Package:  
February 19, 2014

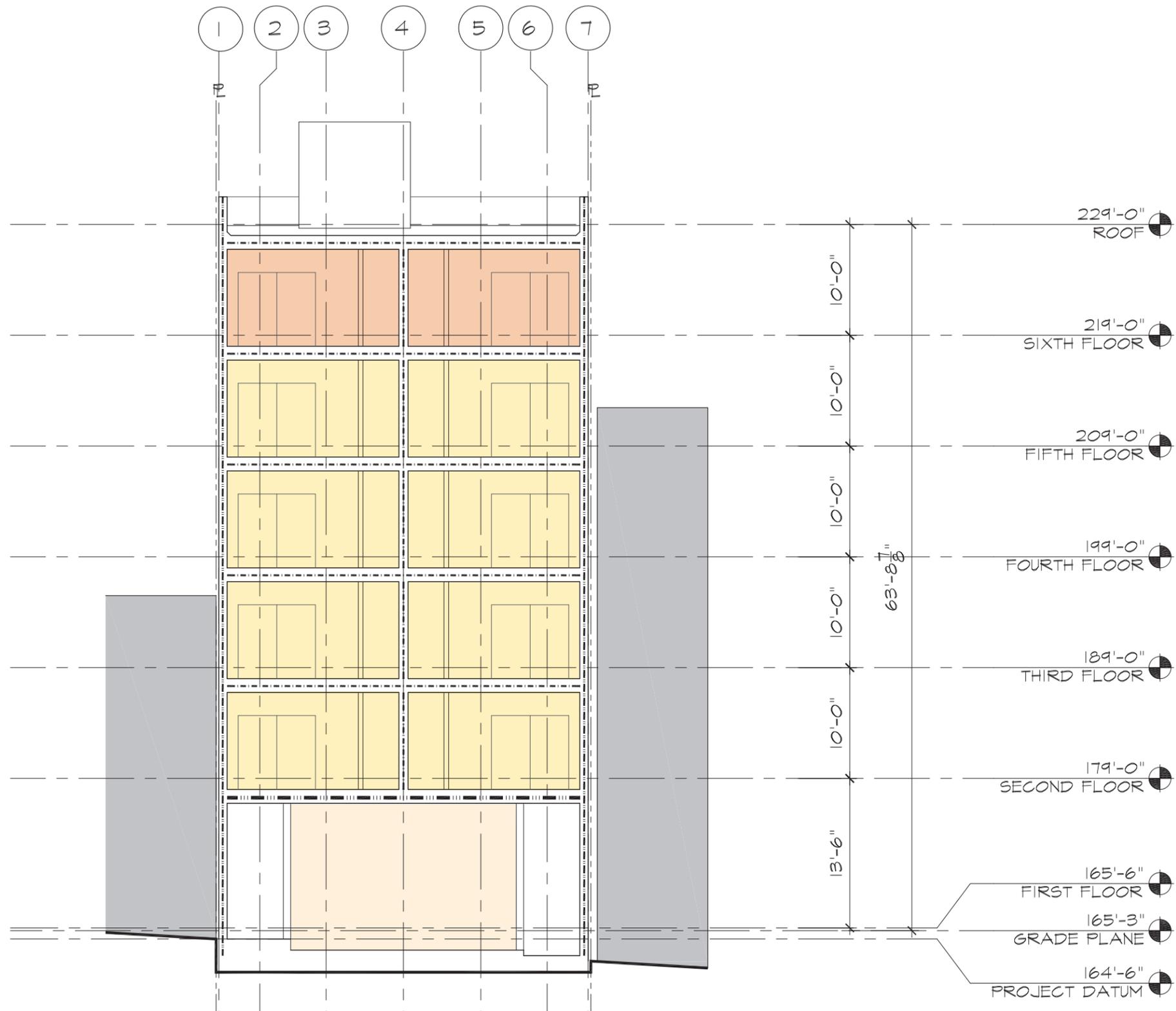
**PLANS**  
SCALE: 1/16" = 1' - 0"

RETAIL SPACE 1-BED 2-BED

832 SUTTER STREET



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Project Sponsor:  
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Date of Package:  
 February 19, 2014

**TRANSVERSE SECTION**

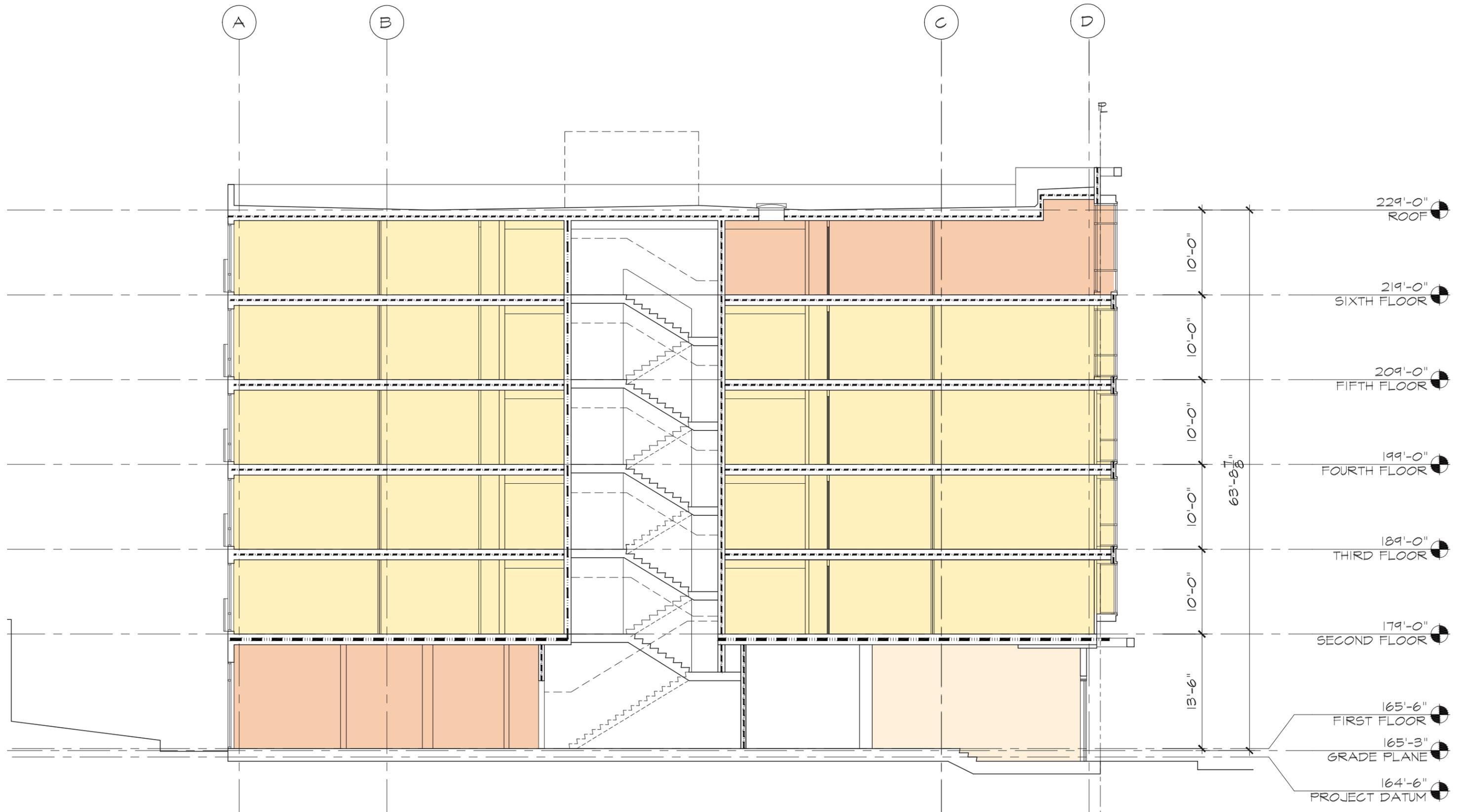
SCALE: 3/32" = 1' - 0"

RETAIL SPACE
  1-BED
  2-BED

832 SUTTER STREET



Ian Birchall and Associates  
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Project Sponsor:  
 832 Sutter LLC  
 414 Pinehill Road  
 Hillsborough, CA 94010  
 Tel: 415.533.4953

Date of Package:  
 February 19, 2014

**LONGITUDINAL SECTION**

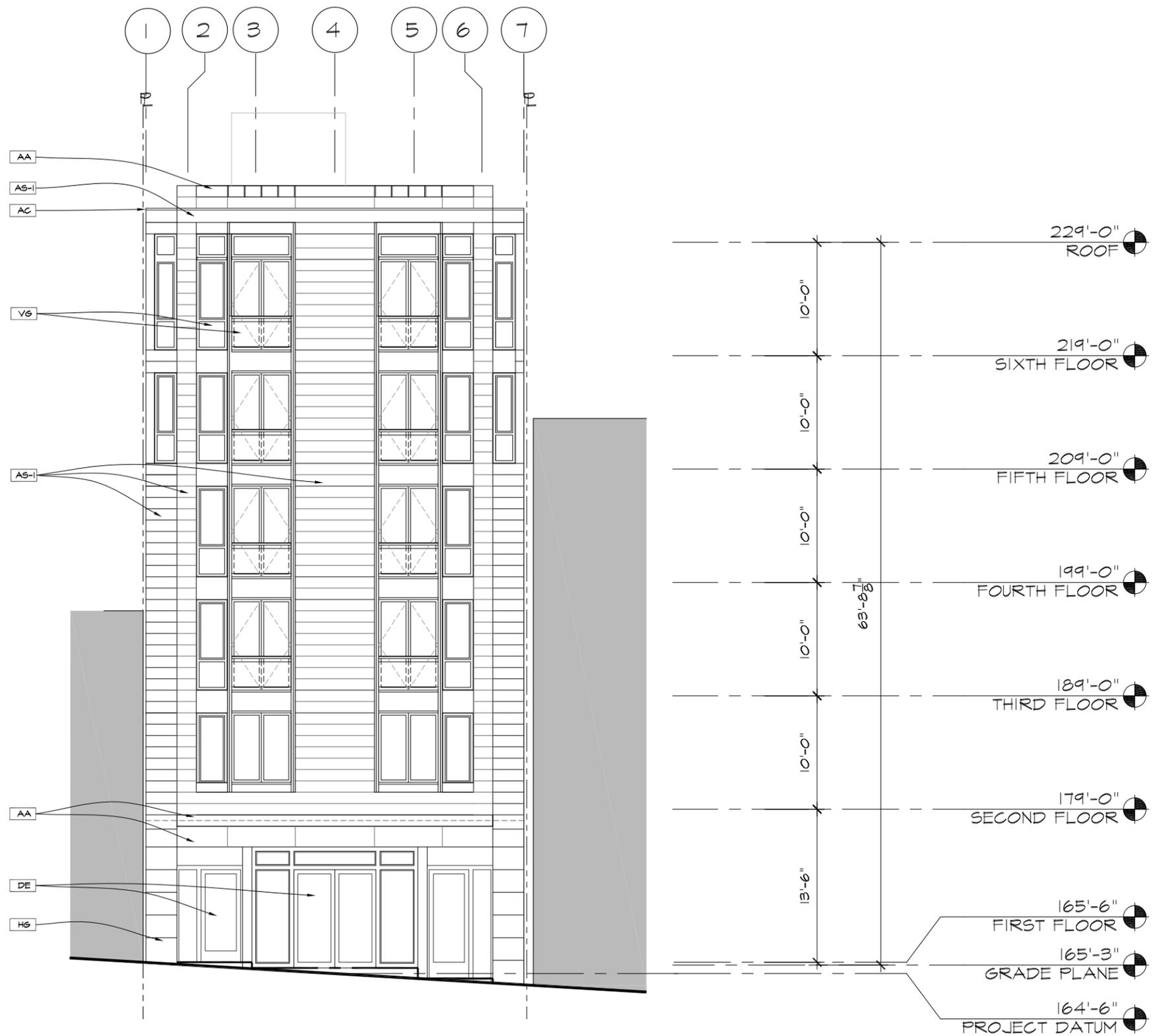
SCALE: 3/32" = 1' - 0"

RETAIL SPACE
  1-BED
  2-BED

832 SUTTER STREET



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**Elevation Keynotes**

|      |  |    |  |    |                                  |
|------|--|----|--|----|----------------------------------|
| AA   | Anodized Aluminum                                | EP | Exterior Plaster   | DE | Door Exterior Per Schedule       |
| AC   | Aluminum Coping - LT Gray with Clear Coat Finish | HG | Honed Granite Tile   | VG | Vision Glass - 100% Transparency |
| AS-1 | Resysta Siding Rain Screen                       | MS | Metal Siding or Hardi-Board at Concealed Property Line Condition | SD | Stucco                           |
| BR-1 | Railing  | OW | Operable Window  |    |                                  |

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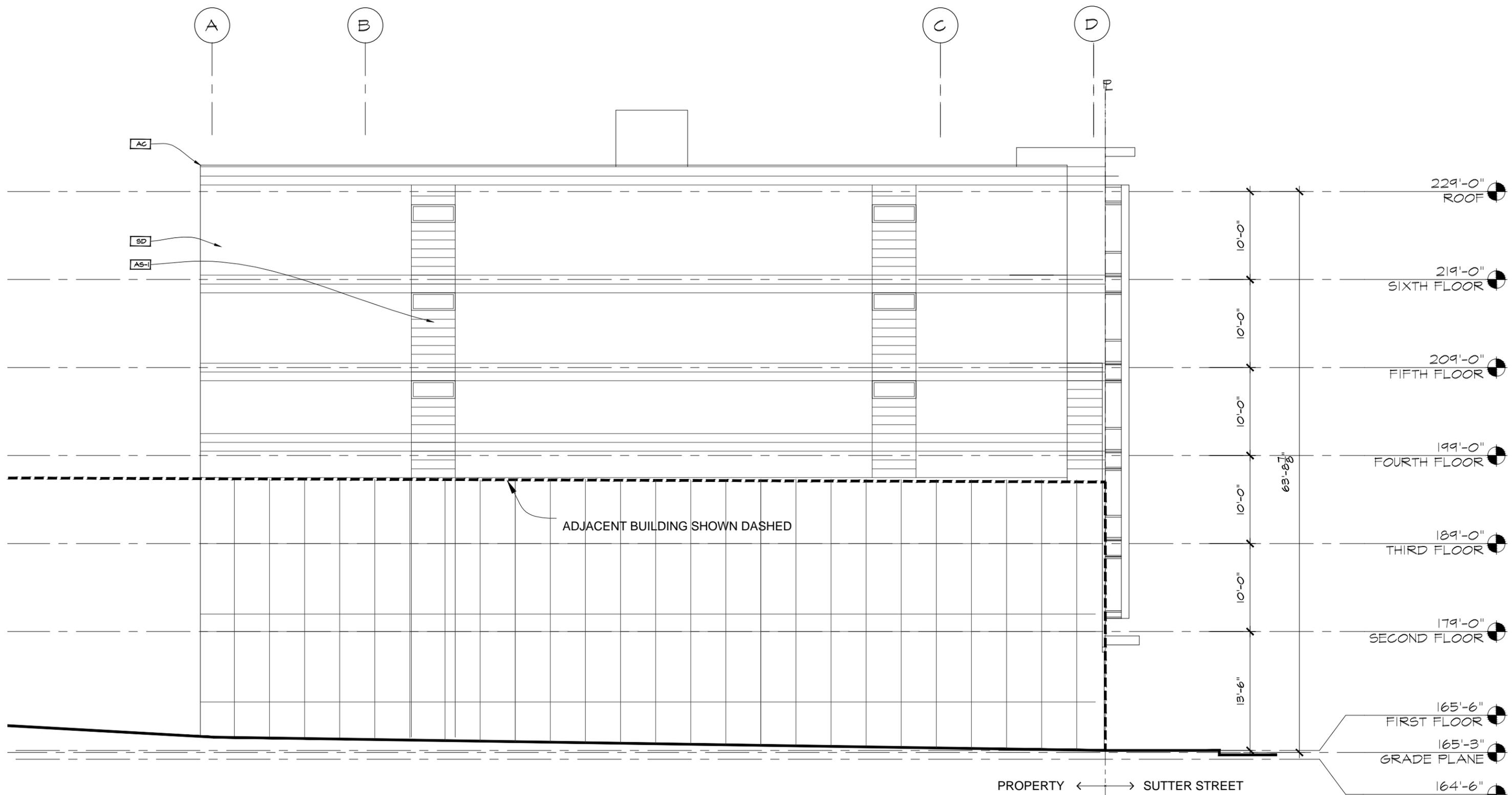
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**SOUTH ELEVATION**  
SCALE: 3/32" = 1' - 0"

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**Elevation Keynotes**

|      |  |    |  |    |                                  |
|------|--|----|--|----|----------------------------------|
| AA   | Anodized Aluminum                                | EP | Exterior Plaster   | DE | Door Exterior Per Schedule       |
| AC   | Aluminum Coping - LT Gray with Clear Coat Finish | HG | Honed Granite Tile   | VG | Vision Glass - 100% Transparency |
| AS-1 | Resysta Siding Rain Screen                       | MS | Metal Siding or Hardi-Board at Concealed Property Line Condition | SD | Stucco                           |
| BR-1 | Railing  | OW | Operable Window  |    |                                  |

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**WEST ELEVATION**  
SCALE: 3/32" = 1' - 0"

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**Elevation Keynotes**

|      |  |    |  |    |                                  |
|------|--|----|--|----|----------------------------------|
| AA   | Anodized Aluminum                                | EP | Exterior Plaster   | DE | Door Exterior Per Schedule       |
| AC   | Aluminum Coping - LT Gray with Clear Coat Finish | HG | Honed Granite Tile   | VG | Vision Glass - 100% Transparency |
| AS-1 | Resysta Siding Rain Screen                       | MS | Metal Siding or Hardi-Board at Concealed Property Line Condition | SD | Stucco                           |
| BR-1 | Railing  | OW | Operable Window  |    |                                  |

Project Sponsor:  
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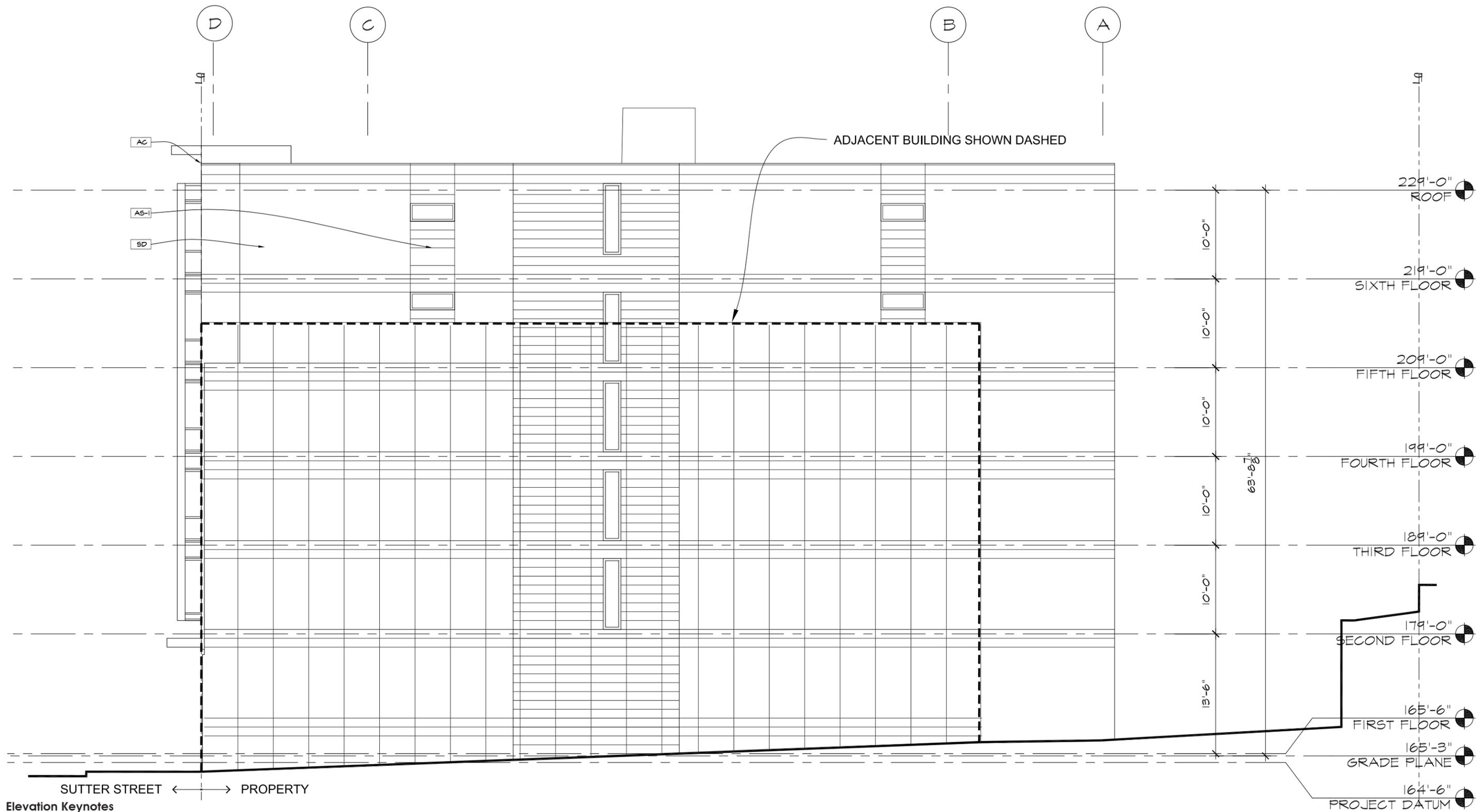
Date of Package:  
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**NORTH ELEVATION**  
SCALE: 3/32" = 1' - 0"

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**Elevation Keynotes**

|      |  |    |  |    |                                  |
|------|--|----|--|----|----------------------------------|
| AA   | Anodized Aluminum                                | EP | Exterior Plaster   | DE | Door Exterior Per Schedule       |
| AC   | Aluminum Coping - LT Gray with Clear Coat Finish | HG | Honed Granite Tile   | VG | Vision Glass - 100% Transparency |
| AS-1 | Resysta Siding Rain Screen                       | MS | Metal Siding or Hardi-Board at Concealed Property Line Condition | SD | Stucco                           |
| BR-1 | Railing  | OW | Operable Window  |    |                                  |

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**EAST ELEVATION**  
SCALE: 3/32" = 1' - 0"

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