



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Revocation of Office Allocation

HEARING DATE: JUNE 9, 2011

Date: June 3, 2011
Current Case No.: **2011.0506B**
Previous Case No.: **2000.1215BEKX**
Project Address: **48 TEHAMA STREET**
Zoning: C-3-0(SD) (Downtown Office, Special Development) District
200-S Height and Bulk District
Block/Lot: 3736 / 084 & 085
Staff Contact: Daniel A. Sider – (415) 558-6697
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Recommendation: **Revoke office allocation**

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PROJECT BACKGROUND

The subject property is a 4,000 square foot surface parking lot located on the northwest side of Tehama Street between 1st and 2nd Streets. In 2001, the Planning Commission approved a project at this site involving an allocation of 49,300 square feet of office space from the Office Development Annual Limit Program. As part of the approval, construction was required to commence within 18-months. The Planning Department is unaware of any steps made to carry the project diligently forward toward completion.

This project is before the Planning Commission so that it may consider the revocation of allocation of office square footage under the Office Development Annual Limit Program pursuant to [1] Planning Code Section 321(d)(2) which requires construction to commence within 18-months of approval, [2] the project's Conditions of Approval contained in Planning Commission Motion 16235 which echo the 18-month construction commencement period, and [3] Planning Commission policy set forth in Planning Commission Resolution 17846A which directed revocation proceedings for this project to take place.

PROCEDURAL BACKGROUND

On May 30, 2002, the Planning Commission adopted Resolution No. 16418, a policy stating that the Commission would monitor office development annual limit projects, but would not seek to revoke approvals of projects which have exceeded the construction commencement date. The policy also encourages unbuilt projects to apply for extensions or re-authorizations of entitlements, and sets specific standards for actions that constitute "commencement of construction". In adopting this Resolution, the Planning Commission cited dramatic changes in conditions affecting land use development due to the downturn in the economy which led to a high office vacancy rate and difficulty in obtaining commercial financing for new construction.

On March 26, 2009, the Planning Commission adopted Resolution Number 17846A, establishing a policy regarding the extension of project authorizations under the Office Development Annual Limit Program (Planning Code Sections 320-325). With respect to unbuilt office developments, Section 321(d)(2)

specifically states that, "Construction of an office development shall commence within eighteen (18) months of the date the project is first approved. Failure to begin work within that period, or thereafter to carry the development diligently to completion, shall be grounds to revoke approval of the office development" [emphasis added]. Under this requirement, which is typically a condition of approval for Office Development Annual Limit projects, projects that do not commence construction are not automatically revoked. Rather, the Commission has the right to revoke such projects through a publicly noticed hearing.

In adopting Motion 17846A, the Commission reaffirmed the policies of the previous Resolution Number 16418, but instructed the Planning Department to schedule revocation hearings for a number of previously-approved projects that had exceeded the 18-month performance timeline by more than five years and did not appear to be actively seeking completion, including the approved office development located at 48 Tehama Street.

PROJECT HISTORY

On September 13, 2001, the Planning Commission approved the construction of a new, 194-foot tall mixed-use building at the subject property. The proposed 67,750 square-foot structure would have contained approximately 49,300 gross square feet of office space, seven off-street parking spaces, and approximately 10,500 gross square feet of residential space divided into three full-floor dwelling units on the top floors. The Commission's approvals included an allocation under the Office Development Annual Limit Program for 49,300 square feet of office space. The project sponsor did not subsequently pursue building permits for the project and the Department is unaware of any other steps to move this project forward to completion.

In September of 2005, a new environmental review application was filed with the Planning Department for a modified project which would offer no office space but instead would accommodate 63 dwelling units. In July of 2006 a building permit application was filed to construct the modified project but in August of 2008 it was withdrawn. The associated environmental review application remains incomplete.

REQUIRED COMMISSION ACTION

The Commission may elect to revoke the office allocation for the previously-approved office allocation.

BASIS FOR RECOMMENDATION

- The Department is aware of no efforts to proceed with the development of the office project.
- There have been more recent efforts, including the filing of CEQA and Building Permit Applications, to develop a residential project in-lieu of the approved office project.
- The subject property is a centrally-located site for the development of office or residential uses, however, it appears unlikely that the presently-entitled office project will come to fruition.

Attachments:

1. Draft Motion to Revoke Previous Office Allocation.
2. Motion No. 16235 from September 2001 allocating office space at 48 Tehama Street
3. Resolution No. 17846A from March 2009 regarding approved, unbuilt office allocations



SAN FRANCISCO PLANNING DEPARTMENT

Subject to: (Select only if applicable)

- Inclusionary Housing (Sec. 315)
- Jobs Housing Linkage Program (Sec. 313)
- Downtown Park Fee (Sec. 139)
- First Source Hiring (Admin. Code)
- Child Care Requirement (Sec. 314)
- Other

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Planning Commission Draft Motion

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Recommendation: **Revoke office allocation**

REVOKING THE OFFICE ALLOCATION FOR A PREVIOUSLY-APPROVED PROJECT WHICH WOULD CONSTRUCT A 194-FOOT TALL BUILDING CONTAINING 49,300 GROSS SQUARE FEET OF OFFICE SPACE AND THREE DWELLING UNITS ON A SURFACE PARKING LOT, LOCATED AT 48 TEHAMA STREET, ASSESSOR'S BLOCK 3736, LOTS 084 AND 085, WITHIN THE C-3-O(SD) ZONING DISTRICT AND THE 200-S HEIGHT AND BULK DISTRICT.

PREAMBLE

On November 20, 2000, Andrew J. Junius, Esq., of Reuben & Alter (“Applicant”), on behalf of Gordon Development Company (“Project Sponsor”), filed an application with the Planning Department (“Department”) for Environmental Evaluation (Case No. 2000.1215BEKX) of a proposal to construct a new mixed-use building with a 75-foot element on Howard Street and a 200-foot element on Tehama Street on a 6,125-square-foot project site (Lots 84, 85 and 110 in Assessor’s Block 3736). The proposed 79,525-gross-square-foot building would have contained approximately 49,500 gross square feet of office space, 1,650 gross square feet of retail space, ten off-street parking spaces, and approximately 19,600 gross square feet of residential space divided into nine dwelling units, at 48 Tehama Street and 547 Howard Street.

On December 20, 2000, the Applicant, on behalf of the Project Sponsor, filed Application No. 2000.1215BEKX with the Department in which the Project Sponsor requested authorization for office space in excess of 25,000 square feet but less than 50,000 square feet under Section 321 of the Planning Code to permit the creation of 49,300 square feet of new-construction office space.

On April 4, 2001, the Applicant, on behalf of the Project Sponsor, filed Application No. 2000.1215BEKX for a project which was modified from that proposed in the November 20, 2000 Environmental Evaluation application. Specifically, changes to the originally-proposed project included the elimination of the 75-foot-tall Howard Street building element, and Lot 110 upon which it was to have been situated, and the reduction of the residential portion of the project to 10,500 square feet ("Project"). This new application, filed under Planning Code Section 309, requested a Determination of Compliance for a building exceeding 75 feet in height and for the granting of exceptions to the Code requirements for (1) rear-yard area (Section 134) and (2) ground-level wind currents (Section 148), with respect to a proposal to construct a new building of approximately 194 feet in height (with an additional 21 feet of mechanical equipment for a total height of up to 216 feet), containing a total floor area of 67,750 gross square feet, with a gross floor area under Code Section 102.9 of 59,750 gross square feet. The building would include up to 49,300 square feet of office space and up to 10,500 gross square feet of residential space divided into three dwelling units (on the top three floors). The project would provide approximately seven off-street parking spaces (where no spaces are required by the Code).

On July 7, 2001, the Department published a Preliminary Negative Declaration for Case No. 2000.1215BEKX. That document was not appealed and on July 30, 2001, the Department adopted and issued a Final Negative Declaration ("FND") for that case.

On August 16, 2001, the Department published an Addendum to the aforementioned FND to reflect the modifications to the project contained in The April 4, 2001 application under Planning Code Section 309. It concludes and determines that the findings contained in the FND "remain valid and that no supplemental environmental review is required."

On September 13, 2001, the Commission conducted a duly-noticed public hearing for the requested entitlements associated with the Project, including an Office Allocation for 49,300 gross square feet. The Commission adopted Motion Number 16235 in order to approve the requested approvals and allocations.

On May 30, 2002, the Commission adopted Resolution 16418 which states that "the Planning Commission hereby adopts a policy that it will closely monitor projects, but will not seek at this time to revoke the approvals of projects which have exceeded the construction commencement date, and further, to the extent that formal extensions are necessary, encourages the projects that have specific construction commencement dates to consider applying for extensions or re-authorization." Additionally, through Resolution 16418 the Planning Commission adopted policies on office allocation revocations which included (1) required submittal of project schedules and status reports, (2) a stated inclination to approve additional 18-month extensions when necessary, (3) a clear definition of a 'commencement of construction.'

In March of 2003, the 18-month construction commencement window applicable to the Project both through Planning Code Section 321(d)(2) and the Project's Conditions of Approval contained in Planning Commission Motion 16235 expired without the actual commencement of construction or any other apparent activity to move the project forward.

In September of 2005 a new environmental review application was filed for a modified project which would offer no office space but instead would accommodate 63 dwelling units. In July of 2006 a building permit application was filed to construct the modified project but in August of 2008 it was withdrawn. The associated environmental review application remains incomplete.

On March 26, 2009, the Commission adopted Resolution 17846A in which it recognized “that the current global economic crisis has exceeded the depth and breadth of recent economic downturns, resulting in a profound impact on the liquidity and stability of credit markets and the availability of financing for a range of land-use development projects.... The Planning Commission believes that a policy of monitoring projects authorized under Planning Code Section 321 (Office Development Annual Limit), but not yet under construction, and ensuring that those projects under construction proceed as expeditiously as possible under the circumstances, serves the City well; however, the Planning Commission believes that authorized projects that are not diligently pursued should be revoked.” It also reaffirmed the policies of Resolution 16418 in that it will “closely monitor Office Development Annual Limit projects, but will not seek at this time to revoke the approvals of active projects which have exceeded the construction commencement date.” Resolution 17846A also instructed the Planning Department schedule Annual Limit Program projects that had exceeded the 18-month performance timeline by more than 5 years and that did not appear to be actively seeking completion of their entitlements for revocation. The 48 Tehama Street Project was such a project.

The Department continues to be unaware of any meaningful steps to begin work or carry the development diligently to completion to this date.

On June 9, 2011, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting on Case No. 2011.0503B. 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.

Revocation of the entitlements for the Project is exempt from environmental review, as set forth in Public Resources Code section 21080(b)(5), and CEQA Guidelines Section 150601 (b)(4) and 15270.

MOVED, that the Commission hereby revokes the previously approved office allocation under the Office Development Annual Limit program for the Project (Case No. 2000.1215BEKX, Motion No. 16235), 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 Site is located on the northwest side of Tehama Street, between First and Second Streets, Block 3736, Lots 084 and 085. The property is located within the C-3-0(SD) (Downtown Office, Special Development) District and the 200-S Height and Bulk District. The property is developed with a surface parking lot.
3. **Surrounding Properties and Neighborhood.** The Project Site is located within the Downtown Core, an area which consists of a wide variety of office, retail, hotel, and residential uses. The Transbay Terminal is located two blocks north of the project site. A number of bar, restaurant, and other entertainment uses are located in the vicinity. High density residential uses are located nearby along First Street within the Rincon Hill area. Older buildings in the area are typically four stories in height, while recent residential and office buildings are generally mid- to high-rise.
4. **Project Description.** The matter which is the subject of this Motion is the revocation of an office allocation for a previously approved project which includes the construction of a new, 194-foot tall mixed-use building at the subject property. The proposed 67,750 square-foot structure would contain approximately 49,300 gross square feet of office space, seven off-street parking spaces, and approximately 10,500 gross square feet of residential space divided into three full-floor dwelling units on the top floors. The Project includes an allocation under the Office Development Annual Limit program for 49,300 square feet of office space.
5. **Public Comment.** To date, staff has received no correspondence regarding the revocation of the office allocation.
6. Requirements for the project to commence construction prior to March of 2003 are set forth in two manners: [1] Planning Code Section 321(d)(2) which requires construction of all Office Annual Limit Projects to commence within 18-months of approval and [2] the Project's Conditions of Approval contained in Planning Commission Motion 16235 which echo the 18-month construction commencement timeline.
7. Through Planning Commission Resolution 17846A, the Department was directed to schedule revocation hearings for a number of previously-approved Office Annual Limit Projects that had exceeded the aforementioned 18-month performance timeline by more than five years and did not appear to be actively seeking completion, including the Project.
8. Generally, the purpose of conditions such as those identified in Number 6, above, is to prevent the reservation of land for future purposes when the permit holder has no good faith intention to promptly commence the execution of the proposed use. Through these conditions, the Commission typically seeks to preclude 'land banking' in cases where an entitled development is unlikely to occur.

9. Based on the review of the records of the City and County of San Francisco, the Commission finds that the Project Sponsor has not made diligent, good-faith efforts to proceed with the development of the Project. Specifically, no building permit application has been filed in order to execute the Project nor is the Department aware of any other meaningful steps to advance the construction of the Project. The Commission finds that such actions are necessary to demonstrate an intent to move the Project forward.
10. Subsequent applications were filed with the City for a modified project which did not propose any office space whatsoever. While the applications evidence some intent to abandon the office allocation associated with the Project, these more recent applications, too, were not diligently pursued.
11. The Commission finds that the subject property is an important site suitable for high intensity development of office or residential uses. It appears unlikely that the entitled Project will come to fruition.
12. The Commission finds that the preservation of existing entitlements for the Project is not consistent with and would not promote the general and specific purposes of the Planning Code provided under Section 101.1(b).
13. On balance, the Commission hereby finds that preserving the existing entitlements for the Project in this case would not promote the health, safety, and welfare of the City.

DECISION

That based upon the Record, the submissions by 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 **REVOKES** the previously-approved office allocation under the Office Development Annual Limit program for the Project (Case No. 2000.1215BEKX, Motion No. 16235).

APPEAL AND EFFECTIVE DATE OF MOTION: Any aggrieved person may appeal this revocation of the allocation under the Office Development Annual Limit program to the Board of Appeals within fifteen (15) days after the date of this Motion No. _____. The effective date of this Motion shall be the date of this Motion if not appealed (After the 15-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 94012.

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on June 9, 2011.

Linda Avery

Commission Secretary

AYES:

NAYS:

ABSENT:

ADOPTED: June 9, 2011

SAN FRANCISCO
PLANNING COMMISSION
MOTION NO. 16235

ADOPTING FINDINGS RELATED TO APPROVAL BY THE PLANNING COMMISSION OF A PROPOSED OFFICE PROJECT LOCATED AT 48 TEHAMA STREET PURSUANT TO SAN FRANCISCO PLANNING CODE SECTIONS 320 THROUGH 324, LOTS 84 AND 85 IN ASSESSOR'S BLOCK 3736, IN A C-3-O (SD) (DOWNTOWN OFFICE -- SPECIAL DEVELOPMENT) DISTRICT AND A 200-S HEIGHT AND BULK DISTRICT.

RECITALS

1. On November 20, 2000, Andrew J. Junius, Esq., of Reuben & Alter (hereinafter "Applicant"), on behalf of Gordon Development Company (hereinafter "Project Sponsor"), filed an application with the Planning Department (hereinafter "Department") for Environmental Evaluation (Case No. 2000.1215BEKX) of a proposal to construct a new mixed-use building with a 75-foot element on Howard Street and a 200-foot element on Tehama Street on a 6,125-square-foot project site (Lots 84,85 and 110 in Assessor's Block 3736). The proposed 79,525-gross-square-foot building would have contained approximately 49,500 gross square feet of office space, 1,650 gross square feet of retail space, ten off-street parking spaces, and approximately 19,600 gross square feet of residential space divided into nine dwelling units, at 48 Tehama Street and 547 Howard Street. The Department published a Preliminary Negative Declaration of Environmental Impact for Case No. 2000.1215BEKX on July 7, 2001. That document was not appealed and on July 30, 2001, the Department adopted and issued a Final Negative Declaration (hereinafter "FND") for that case.
2. On August 16, 2001, the Major Environmental Analysis section of the Department published an Addendum to the aforementioned FND. This Addendum reflects changes to the originally-proposed project including elimination of the 75-foot-tall Howard Street building element, and Lot 110 upon which it was to have been situated, and the reduction of the residential portion of the project to 10,500 square feet. It concludes and determines that the findings contained in the FND "remain valid and that no supplemental environmental review is required." The project, as revised, is that which is the subject of this document (see below).
3. On December 20, 2000, the Applicant, on behalf of the Project Sponsor, filed Application No. 2000.1215BEKX with the Department. Pursuant thereto, the Project Sponsor requests authorization for office space in excess of 25,000 square feet but less than 50,000 square feet under **Section 321** of the Planning Code to permit

creation of new-construction office space, not to exceed 49,300 square feet of office space. The project is within a C-3-O(SD) (Downtown Office-Special Development) District and a 200-S Height and Bulk District. (Case No. 2000.1215BEKX).

4. On April 4, 2001, the Applicant, on behalf of the Project Sponsor, filed Application No. 2000.1215BEKX with the Department requesting, under Planning Code (hereinafter "Code") **Section 309** Determination of Compliance for a building exceeding 75 feet in height and for the granting of exceptions to the Code requirements for (1) rear-yard area (**Section 134**) and (2) ground-level wind currents (**Section 148**), with respect to a proposal to construct a new building, approximately 194 feet in height (with an additional 21 feet of mechanical equipment for a total height of up to 216 feet), containing a total floor area of 67,750 gross square feet, with a gross floor area under Code **Section 102.9** of 59,750 gross square feet. The building would include up to 49,300 square feet of office space and up to 10,500 gross square feet of residential space divided into three dwelling units (on the top three floors). The project would provide approximately seven off-street parking spaces (where no spaces are required by the Code). This proposal as so described, as further described in the Application materials, and as shown on plans on file with the Application labeled "Exhibit B" is hereinafter the "Project".
5. On September 6, 2001, the Commission conducted a duly-noticed public hearing for the Project on the request for approval pursuant to Code **Sections 309** and **321**.
6. **MOVED**, That the Commission hereby makes the Determination of Compliance and authorizes the two exceptions requested in Application No. 2000.1215BEKX subject to the conditions contained in "Exhibit A", attached hereto and incorporated herein by reference thereto, based on the following findings:

FINDINGS

Having reviewed all of the materials submitted by the Project Sponsor and having heard all testimony and arguments, this Commission finds, concludes and determines that:

1. Project Site. The Project site consists of Assessors Block 3736, Lots 84 and 85 (hereinafter "Project Site") and covers an area of 4,000 square feet. The Project Site is located at 48 Tehama Street, northeast side between First and Second Streets in the South of Market Area.
2. Existing Use. The Project Site is vacant. It has been used, most recently, as a surface parking lot.
3. Surrounding Development. The Project Site is surrounded by buildings of varying height. A two-story building lies immediately to the north on Howard Street. Immediately to the east along both Tehama and Howard Streets is the 38-44

Tehama Street building (also known as 543 Howard Street) which is owned by the current Project Sponsor and which was approved by the Commission in September of 2000 for the addition of two floors (for a total of 73,000 square feet of floor area and five floors) and the devotion of 49,500 of those square feet to office use. Several high-rise office buildings are located within a two-to-three block radius of the Project Site. The proposed 1.1 million-square-foot Wilson/Cornerstone Foundry Square) office project (three of four buildings of which were recently approved by the Commission) will be located at all four corners of the intersection of First and Howard Streets, one-half block to the east of the Project Site. The Project Site is approximately one block from the Transbay Terminal.

- 4.4. Requirement of Project Approval Pursuant to Code Sections 320 through 324. **Sections 320** through **324** of the Code require that new office space in excess of 25,000 square feet be subject to the Office Development Program. Because the Project proposes 49,300 square feet of new office space, an amount in excess of 25,000 square feet, it is subject to the Office Development Program, and must be approved by the Commission as set forth in **Section 321** of the Code and in accord with Commission Resolution No. 16185 (adopted July 12, 2001). Therefore, a total of 49,300 square feet of office space would count against the Office Development Annual Limit Program.
5. Compliance with Office Development: Annual Limit – Code Section 321. In determining if the Project would promote the public welfare, convenience and necessity, the Commission has considered the seven criteria contained in **Section 321(b)(3)** of the Code and the application of those criteria under Annual Limit Rules adopted by the Commission on July 12, 2001. The Commission hereby finds as follows:
- A. APPORTIONMENT OF OFFICE SPACE OVER THE COURSE OF APPROVAL PERIOD IN ORDER TO MAINTAIN A BALANCE BETWEEN ECONOMIC GROWTH, ON THE ONE HAND AND HOUSING, TRANSPORTATION AND PUBLIC SERVICES, ON THE OTHER --
- (i) There currently exists approximately 243,909 square feet of office space available for office development exceeding 25,000 square feet, but less than 50,000 square feet. If the Commission approves this 49,300-square-foot project, against the Office Limitation Program, there would be a surplus of approximately 194,609 square feet of office development space available for allocation to projects in that size range. On October 17, 1999, 75,000 square feet of office space were added to the Annual Limit for this size project. On October 17, 2000, and on October 17 of each succeeding year, 75,000 square feet of office space will become available for allocation specifically to buildings exceeding 25,000 square feet but less than 50,000 square feet of office space.

- (ii) The Project would provide 49,300 gross square feet of office space to the existing supply in this C-3-O (SD) Zoning District. The Project would furnish new office space that would enhance the desirability of nearby retail uses. Additional office space would draw more commercial and professional services into the area surrounding the Project Site, thereby encouraging economic growth.
- (iii) In seeking approval of 49,300 square feet of office space, the Project Sponsor proposes to meet the requirement for affordable housing by contributing \$559,062 to the development of affordable housing pursuant to the Jobs-Housing Linkage Program (hereinafter "J-HLP"). In addition, three market-rate dwelling units would be built on site.
- (iv) MUNI lines run along Howard, First, Second, and Folsom Streets. The Project also is within two blocks of Market Street and all of its public transportation facilities.
- (v) The Commission finds that the allocation of the square footage to the Project would improve the balance between economic growth and housing production, and promote the public welfare, convenience and necessity.

B. THE CONTRIBUTION OF THE OFFICE DEVELOPMENT TO, AND ITS EFFECTS ON, THE OBJECTIVES AND POLICIES OF THE GENERAL PLAN --

In assessing projects, the Planning Commission is required to consider the contribution of the office development to, and its effects on, the objectives and policies of the General Plan. The Commission considered the following factors, with respect to the effects of the development specific to its location:

- (i) Obstruction of significant public views
- (ii) Creation of shadow
- (iii) Creation of wind
- (iv) Housing displacement/creation
- (v) Small business displacement
- (vi) Loss of architectural and/or historical resources
- (vii) Conflicts with transit, traffic or pedestrian movements
- (viii) Impediment to freight loading

The Project would advance the objectives and policies of the Transportation, Urban Design and Downtown Plan Elements of the General Plan, and it has no significant conflicts with other Plan elements. There are no significant negative effects of the project specific to its location. The Project does not

obstruct any significant public views and does not create significant shadows or wind. There is no effect on housing, no small business displacement and no loss of architectural or historical resources. There are no traffic or transit conflicts as the project's few parking spaces are accessed via Tehama Street.

The Project specifically advances the Objectives and Policies of the General Plan as set forth below in Section 7.

C. THE QUALITY OF THE DESIGN OF THE PROPOSED OFFICE DEVELOPMENT--

The Planning Commission considered the quality of the design of the proposed office development in three separate components: (1) design quality of the building, (2) design quality of the open space, and (3) quality of the art concept.

1. Design Quality of The Building:

The Project is designed to be built of reinforced concrete, the primary building material of the neighborhood for the last 100 years. Unlike steel towers, which need a cladding, concrete buildings are both structure and skin, giving the resulting building a sculptural quality. The overall effect is a slim, yet articulated contemporary tower, to be finished in a high-quality manner. The Project design will blend with both the many new office projects in the area as well as the older traditional buildings in the neighborhood, making a contribution to the South of Market area, and adding to the downtown core of architecturally significant buildings. At the upper levels of the tower, balconies and reveals maximize light and air between levels, and articulate and add texture to the building's form.

The ground-level entrance doors are 12 feet high to continue the building's vertical emphasis. Sculptural *bas-relief* in concrete designed by an artist is proposed for incorporation as part of the design of the façade at ground level on the main vertical building element flanking the entrance.

2. Design Quality of the Open Space:

The open space proposed for the Project is of two varieties. First, public open space is to be situated atop the adjoining building (above the fifth floor) at 38-44 Tehama Street along with the public open space for that building (which is also owned by the owner of the

Project Site). Second, approximately 1,000 square feet of space are proposed for the roof of the subject building for the use of building occupants. Both of these spaces would be attractive and desirable additions to the city's open space. They meet the guidelines for downtown open space.

3. Quality of the Art Concept:

The Commission considered the following criteria in reviewing the Project's art concept: (1) whether the art is located where public benefit and enjoyment is maximized, (2) whether its placement is appropriate to the scale and nature of the artwork being considered and (3) whether it is likely that the artwork, assuming it has intrinsic artistic value, will complement and enhance the architecture and/or the spaces in which it is located.

The Project Sponsor proposes to incorporate as part of the design of the façade at ground level, sculptural *bas-relief* in concrete, designed by an artist not yet identified, on the main vertical building element flanking the entrance. The artwork would be highly visible and accessible and would enhance the site.

D. THE SUITABILITY OF THE PROPOSED OFFICE DEVELOPMENT FOR ITS LOCATION, AND ANY EFFECTS OF THE PROPOSED OFFICE DEVELOPMENT SPECIFIC TO THAT LOCATION--

The Planning Commission is required to consider the suitability of the Project in relation to its location. The analysis consists of two parts: (1) the suitability of the development for its location and (2) the effects of the development specific to its location.

1. Suitability for Location.

(i) Use: The Project is within the downtown core, which both the Code and General Plan have designated as the primary location for high-density office use. The location is also suitable because of its close proximity to public transit. The Project is located in the C-3-O (SD) District, and the 200-S Height and Bulk District, which are specifically designed for buildings of this type.

(ii) Transit Accessibility: The Project is within easy walking distance to regional transit carriers and many MUNI lines. The Project Site is two blocks from the Transbay Terminal, and is

well served by MUNI lines. Specifically, MUNI lines 12 and 76 run along Howard Street just north of the Project Site. MUNI line 10 runs along First Street crossing Howard and Tehama Streets. In addition, the Project Site is located three blocks from Market Street where employees and visitors of the Project can access BART. At the Transbay Terminal, the following MUNI bus lines are available (among others): 5-Fulton, 12-Folsom; 38-Geary (including 38-L Geary Limited); 10-Townsend; and F-Market. Golden Gate Transit and AC Transit also use the Transbay Terminal as a San Francisco hub. A SamTrans stop is located on Mission Street east of First Street and west of Second Street. MUNI bus service along Mission Street includes the 14-Mission downtown trunk line, the 14-L Mission limited stop service, and the 14-X Mission express service. Northbound service on the 12 and 10 bus lines is available on Fremont Street, one and one-half blocks east of the Project site. The 15-Third Street line operates on Second Street, one block east of the site.

- (iii) Open Space Accessibility: The Project proposes to provide new publicly-accessible open space to accommodate the additional demand it would generate.

Historically, the area surrounding the site has not been characterized by a large amount of open space. However, the neighborhood is in transition from low-rise commercial uses to high-density office and residential uses that are required to provide publicly accessible open space. Recent development in the area surrounding the Project Site has established new open space, and new projects will provide additional open space. Notably, Wilson / Cornerstone is in the process of constructing a substantial four-building office complex that will encompass properties on all four corners of the intersection at First and Howard Street, one block to the east of the Project site. The Wilson / Cornerstone project will certainly provide a considerable amount of new open space in this area.

- (iv) Urban Design: The height, massing and visual texture of the building relate to adjacent structures, contributing in significant ways to a positive contextual relationship. The overall form of the building fits into the skyline. The Commission has reviewed each of the following five factors in its consideration of the Project's urban design qualities:

1. Coherence: The Project would contribute to a visually-coherent streetscape. By replacing an underutilized and unsightly parking lot with a new building that compliments the buildings surrounding the Project site, the Project will contribute to a visually coherent streetscape. The proposed finish and facing materials are be similar to finishes and textures existing on other buildings in the area. The massing of the building also would ensure its compatibility with the other buildings comprising the neighborhood skyline. Moreover, the sculptural bas-relief on the main vertical building element flanking the entrance will enhance the visual aesthetics of the Tehama Street streetscape.

2. Spatial Definition: The Project's design contributes to proportioned and defined street space for pedestrians. The Project Sponsor expects to make streetscape improvements along the Tehama Street frontage. The Project Sponsor proposes to plant trees along the Tehama Street frontage in attractively-landscaped areas. In addition, the Project Sponsor is proposing appropriate paving treatments to improve the pedestrian experience along Tehama Street.

To enhance the aesthetic impact and community importance of the Project, works of art would be incorporated as part of the design, such as sculptural *bas-relief* at the ground-floor level. The art would be located in prominent areas within the Project to encourage public interaction and will be integrated with architectural features of the building so that the art is appreciated as an organic element of the environment and not as merely an afterthought to the Project.

The streetscape improvements and the public art would make a significant contribution to a proportioned and defined street space for pedestrians.

3. Scale: The Project's massing and design detail create a comprehensible building size in relation to adjacent scale of structures. The Project Sponsor and the architect have developed a design that makes beneficial, efficient and productive use of the relatively small lot size. The building design achieves a balance

between newer tall structures in the area and remaining structures that have a smaller scale. Moreover, the building's overall height and volumetric composition relate well to neighboring buildings, while providing a continuity to the overall shape of downtown as it scales down to the south of Market Street.

4. Context for Preservation: The Project provides a supportive context for noteworthy buildings in the area. The Project Sponsor and the architect have designed a slim tower contrasting between crisp lines of glass and metal curtain wall with textured, exposed cast-in place and precast concrete. While the design is contemporary, it is also designed to harmonize with the older traditional buildings in San Francisco. The clean lines of the building blend with both the many new office projects in the area as well as the architecturally-significant buildings in the neighborhood.
 5. Composition in City Scape: The Project fits into the skyline with grace and harmony. The Project's tower design contributes to the overall context of downtown, and provides an element of continuity as the downtown skyline scales down to the south and west. The massing at the top of the building uses the required mechanical and stair elements, articulating them in sculptural shapes that will provide an interesting, well-defined silhouette against the sky.
- (v) Seismic Safety: In the event of a major earthquake, intensity of ground shaking would be strong but no potential exists for ground failure and/or many buildings in the general area meet contemporary earthquake standards. The Project's structural design is based on the 1997 edition of the Uniform Building Code, and California Amendments, and would be constructed to resist seismic loads. The Project would conform to the structural and seismic requirements of the Building Code.

2. Project Effects Specific to its Location:

As discussed above in Section B., the Commission finds that the Project would have no adverse effects as a result of its location.

E. THE ANTICIPATED USES OF THE PROPOSED OFFICE DEVELOPMENT

IN LIGHT OF EMPLOYMENT OPPORTUNITIES TO BE PROVIDED, NEEDS OF EXISTING BUSINESSES, AND THE AVAILABLE SUPPLY OF SPACE SUITABLE FOR SUCH ANTICIPATED USES.

1. Anticipated Employment Opportunities

The Project would make a significant contribution to the employment of women, minorities and San Francisco residents by its participation in San Francisco's First Source Hiring Program (hereinafter "FSHP"). During the construction period, there would be up to 25 construction-related workers on site each day. Available entry-level construction jobs would be processed through the FSHP and would benefit economically disadvantaged persons. Upon the completion of construction, the Project would be occupied by one or more tenants that would create up to 200 additional new jobs. Available entry-level jobs offered by these businesses must be processed through the FSHP and would benefit economically disadvantaged persons. Because of its magnitude, and the large number of total jobs created (construction-related and permanent jobs) the Project has the potential to make a significant contribution to the employment of minorities, women and San Francisco residents.

2. Needs of Existing Businesses.

As evidence of the Project Sponsor's ability to arrange sufficient debt and equity financing to proceed with construction of the Project, the Project Sponsor has provided the Commission with financial documentation including a letter from his lender. The Project Sponsor previously sought and received approval for the renovation and expansion of the adjacent building at 38-44 Tehama Street. Immediately upon receipt of approval, the Project Sponsor initiated construction of that project. The Project Sponsor is prepared to begin construction of the Project without delay.

The Project would supply valuable new office space downtown, and would thereby attract and maintain a diverse employment base in the City.

3. The Available Supply of Space Suitable for the Anticipated Uses.

The Project would provide space that would meet demand for space suitable for anticipated uses and the anticipated uses within the Project would make an outstanding contribution to strengthening the City's role as a business center. The Project's South Financial District location, amenities, floor plate sizes and efficiencies would

make it highly attractive to multimedia, financial service and design firms alike. Moreover, new office space of this size and at this location is necessary to keep the city competitive within the larger Bay Area office Market.

F. THE EXTENT TO WHICH THE PROPOSED DEVELOPMENT WILL BE OWNED OR OCCUPIED BY A SINGLE ENTITY --

The Project presents an opportunity for small and mid-size employers planning a new move to San Francisco, or for existing employers looking to consolidate their operations in the City. This building is designed for multi-tenant use to encourage small businesses that need full-floor identity.

G. THE USE, IF ANY, OF TDR's BY THE PROJECT SPONSOR--

The Project will require approximately 36,000 square feet of TDR's.

6. **Compliance with Section 101.1.** Section 101.1 of the Code requires consistency with the eight priority policies listed therein. The Commission hereby finds the Project is consistent with these eight policies in the following ways:

- A. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced.
 - *The Project is vacant and is located with a C-3-O (SD) District. Thus, no neighborhood-serving use would be displaced by the Project. Users of the new commercial and residential space proposed by the Project would patronize (and, thereby, enhance) existing neighborhood businesses.*
- B. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods.
 - *No housing exists on the Project Site and, therefore, no housing would be adversely affected. The Project would improve neighborhood character by adding new office space and housing.*
 - *In addition, pursuant to Code **Section 313**, the Project Sponsor would contribute \$559,062 to the City's housing development fund as a result of the Project.*
- C. That the City's supply of affordable housing to be preserved and enhanced.

- *The Project would not diminish the City's supply of affordable housing. No housing exists on the Project Site and, as a result, no housing would be displaced as a result of the Project. The Project would comply with the J-HLP by paying \$559,062 and it would result in the creation of three new on-site dwelling units.*
- D. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking.
 - *The Project Site is located two blocks away from the Transbay Terminal and is well-served by MUNI lines. Specifically, MUNI Lines 12 and 76 run along Howard Street directly in front of the Project Site. MUNI Line 10 runs along First Street and MUNI Line 15 runs along Second Street, both lines crossing Howard and Tehama Streets. In addition, the Project Site is located three blocks from Market Street where employees and visitors of the Project can access BART. Moreover, only seven off-street parking spaces would be provided as part of the Project and, therefore, it is anticipated that the large majority of employees employed as part of the complete Project would utilize public transit in traveling to and from the Project Site.*
- E. That 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 of these sectors be enhanced.
 - *The Project Site is located within the C-3-O (SD) Zoning District, within which office use is a principally permitted and predominant use. Moreover, this district is the designated "magnet" area for new office uses, especially those using "TDR" from North-of-Market locations (such as and including the subject project).*
 - *The Project, providing 49,300 square feet of office space, would provide many forms of employment opportunities for local residents.*
- F. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.
 - *The Project would conform to the structural and seismic safety requirements of the San Francisco Building Code.*
- G. That landmarks and historic buildings be preserved.
 - *No building currently exists on the Project Site. As a result, the Project would have no impact on a landmark or historically significant structure.*

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

- *The Project would not cast new shadows on any park or open space within the meaning of this policy. Moreover, the Project would not hinder any park vistas.*

7. Compliance with the Objectives and Policies of the General Plan The Commission hereby finds that the Project will comply with or affirmatively promote the following Objectives and Policies of the General Plan (*Project specific findings are in italics*):

Downtown Area Plan

Space for Commerce

Objective 2: Maintain and Improve San Francisco's Position as A Prime Location for Financial, Administrative, Corporate, and Professional Activity.

Policy 1: Encourage prime downtown office activities to grow as long as undesirable consequences of such growth can be controlled.

The Project would increase commercial activity in the Downtown Area by providing needed office space. The Project would help maintain and improve San Francisco's position as a leader in providing financial, multimedia, and other professional services. The Project encourages prime downtown office activities to grow while controlling undesirable consequences of such growth. In building on a vacant lot, the Project makes more efficient use of scarce downtown land resources in carrying out the economic, fiscal and employment objectives of the General Plan. The Project would replace an underutilized surface parking lot with a mixed-use building that would put the site to maximum economic use. Furthermore, the unique size, shape and height of the Project would provide a rare commodity in the downtown office market -- small floor plates with open floor plans and views for small businesses that desire the benefits of full-floor identity.

Objective 5: Retain a diverse base of support of commercial activity in and near downtown.

Policy 1: Provide space for support for commercial activities within the downtown and in adjacent areas.

The Project provides an attractive location for new office use due to its accessibility to transit and its proximity to downtown and supporting activities in the immediate vicinity.

Space for Housing

Objective 7: Expand the supply of housing in and adjacent to downtown.

Policy 1: Promote the inclusion of housing in downtown commercial developments.

The Project includes three on-site dwelling units.

Open Space

Objective 9: Provide Quality Open Space in Sufficient Quantity and Variety to Meet the Needs of Downtown Workers, Residents, and Visitors.

Policy 1: Require usable indoor and outdoor open space, accessible to the public, as part of new downtown development.

At least 986 square feet of open space would be provided as part of the Project. The Project Sponsor proposes to provide this space along with the required space for his next-door building at 38-44 Tehama Street atop that adjoining structure. This space would be in the form of a roof deck, which would be accessible to all occupants of the building and the public via an elevator and a stairway. In addition, the applicant would provide a roof deck of at least 1,000 square feet in area on the top of the proposed building. This deck would be available to the occupants (both residential and commercial) of the building only.

Urban Form

Objective 16: Create and maintain attractive, interesting urban streetscapes.

Policy 1: Conserve the traditional street-to-building relationship that characterizes downtown San Francisco.

Policy 4: Use designs and materials and include activities at the ground floor to create pedestrian interest.

The Project would contribute its unique design to this portion of the downtown core. The visual characteristics of the buildings in the vicinity of the Project Site are varied, reflecting changing development patterns as well as a variety of land-use patterns and architectural styles over the past one hundred years. The immediate area is characterized predominantly by elevated vehicular ramps connecting to the Transbay Terminal, surface parking lots and a collection of older, low-rise, stocky concrete and brick commercial structures. In contrast, the proposed building would be a slender tower of reinforced concrete and large, warehouse-style windows. This new tower would provide a dynamic counterpoint to the wide, massive buildings surrounding it including Foundry Square at First and Howard Streets, the new Schwab headquarters at 215 Fremont Street, and the new

CNET headquarters at 246 Second Street. Due to the wide variety of building heights and scales in the general area, the Project would be virtually indistinguishable in long-range views of the site and would blend into the densely-built urban fabric of the area. New high-rises up to 350 feet in height have been built recently within two blocks of the Project Site., including 201 Second Street and 199 Fremont Street. Fifty-five Second Street and 650 Mission Street are new large high-rises currently under construction also within two blocks of the Project Site.

While viewing the Project from the east, the proposed building would blend in among the other tall buildings to the west of the site, on and around Howard Street, such as 101 Second Street, 201 Second Street, the residential tower at 246 Second Street, the Marriott Courtyard Hotel at 299 Second Street, the W Hotel at Third and Howard Streets, and the recently approved sixteen-story building project at 199 New Montgomery Street. From the west, the Project would blend into the backdrop created by high-rise buildings such as 100 First Street and 199 Fremont Street to the east of the site. When viewing the Project from the south, the proposed building would practically vanish into the skyline of the downtown core.

Moving About

Objective 18: Ensure that the number of auto trips to and from downtown will not be detrimental to the growth or amenity of downtown.

Policy 2: The Project will further provide incentives for the use of transit, carpools, and vanpools, to reduce the need for new or expanded automobile parking facilities.

No parking is required as part of the Project and the Project Sponsor proposes to provide seven off-street parking spaces. The Project Site is located in an area that is well-served by public transit and employees would be encouraged utilize public transit resources.

The C-3 Districts constitute the area of the City that is appropriate for large-scale office development.

Objective 22: Improve the downtown pedestrian circulation system, especially within the core, to provide for efficient, comfortable, and safe movement.

Policy 1: Provide sufficient pedestrian movement space.

Policy 5: Improve the ambience of the pedestrian environment.

The Project Site allows for sufficient pedestrian movement. The Project involves the construction of a new building including office space and three dwelling units. The new activity resulting from these changes would improve the ambience of the pedestrian

environment by creating, approximately, 986 square feet of roof deck accessible to the public.

Seismic Safety

Objective 23: Reduce hazards to life safety and minimize property damage and economic dislocation resulting from future earthquakes.

Policy 2: Initiate orderly abatement of hazards from existing buildings and structures, while preserving the architectural and design character of important buildings.

The Project would reduce hazards to life safety and minimize property damage and economic dislocation resulting from future earthquakes through building design and construction in compliance with current structural and seismic codes.

Commerce and Industry Element

Objective 1: Manage Economic Growth and Change to Ensure Enhancement of the Total City Living and Working Environment.

Policy 1: Encourage development which provides substantial net benefits and minimizes undesirable consequences. Discourage development which has substantial undesirable consequences that cannot be mitigated.

The Project is consistent with Objective 1, Policy 1 of the Commerce and Industry Element by encouraging a development that provides substantial net benefits and minimizes undesirable consequences. The addition of 49,300 square feet of office space provides the City with highly desirable, prime South Financial District office space without further exacerbating the level of existing public transit use in the downtown core. The Project would furnish new vacant office space in an area that is well-served by public infrastructure and transit. The C-3-O (SD) District was designed as a "magnet" area for new downtown office development. The Project proposal is entirely consistent with this goal.

Policy 3: Locate commercial and industrial activities according to a generalized commercial and industrial land use plan.

The Project proposes to locate commercial activity according to the generalized land use plan to increase the efficiency of this area as a specialized center for commercial uses and to minimize distances to transit-ways and traffic systems. The proposed new structure is an urban- infill project that would be built to the maximum allowable building density..

Objective 2: Maintain and Enhance a Sound and Diverse Economic Base and Fiscal Structure for the City.

The Project would add desirable new office space for small businesses while providing three dwelling units at the site, thereby maintaining a diverse economic base.

Policy 1: Seek to retain existing commercial and industrial activity and to attract new such activity to the City.

By contributing 49,300 gross square feet of new office space with small floor-plates, the Project Sponsor seeks to retain small businesses and attract commercial activity to the city.

Residence Element

The Project furthers the objectives and policies of the Residence Element by contributing funds to the development of affordable housing. The Project Sponsor expects to contribute approximately \$559,062 to the development of affordable housing through the J-HLP of the City of San Francisco.

Urban Design Element

City Pattern

Objective 1: Emphasis on the Characteristic Patterns which Give the City and its Neighborhoods an Image, a Sense of Purpose, and a Means or Orientation.

Policy 3: Recognize that buildings, when seen together, produce a total effect that characterizes the city and its districts.

The Project recognizes that buildings, when seen together, produce a total effect that characterizes the City and its districts. The height, massing, color, and shape of the proposed building would ensure its compatibility with the other buildings comprising the San Francisco skyline.

Objective 3: Moderation of Major New Development to Complement the City Pattern, the Resources to be Conserved, and the Neighborhood Environment.

Policy 1: Promote harmony in the visual relationships and transitions between new and older buildings.

The proposed building would promote harmony in the visual relationship and transitions between new and older buildings in the neighborhood. The design of the building would

blend with the many new office projects in the area as well as the older traditional buildings in the neighborhood. More importantly, the proposed building material, reinforced concrete, and the operable warehouse-style windows will relate to renovated industrial buildings throughout the area. Thus the proposed building would incorporate the major design elements of nearby existing buildings and would avoid extreme contrasts in color, shape and other characteristics that would make it stand out in excess of its civic importance.

Policy 5: Relate the height of buildings to important attributes of the city pattern and to height and character of existing development.

The Project would be consistent with the surrounding streetscape and would be visually compatible with the surrounding buildings. The Project has been designed to respect the vocabulary of the high-rises to the north in the Financial District, and the converted warehouses that immediately surround it. It would, in effect, be a mini-tower rising above its neighbors, yet maintaining their design characteristics— concrete construction, operable windows, and industrial detailing.

8. Jobs-Housing Linkage Program (Section 313): The Project Sponsor would pay the J-HLP Fee as required by Section 313 of the Planning Code. Based on the net addition of up to 49,300 gross square feet of office space, at the current rate of \$11.34 per square feet of office space, the Project will pay an in-lieu fee of \$559,062. The exact fee will be determined based on drawings submitted with the Building Permit Application.
9. Transit Impact Development Fee: The Project Sponsor would pay the Transit Impact Development Fee as required by Chapter 38 of the Administrative Code to provide capital funding for MUNI. Based on the net addition of up to 49,300 gross square feet of office space, at the current rate of \$5 per square feet of office space, the Project will pay an in-lieu fee of approximately \$246,500. The exact fee will be determined based on drawings submitted with the Building Permit Application.
10. Downtown Park Special Fund Fee: The Project Sponsor would pay the Downtown Park Fee as required by **Section 139** of the Planning Code. Based on the net addition of 49,300 gross square feet of office space, at the current rate of \$2 per square feet of office space, the Project will pay an in-lieu fee of approximately \$98,600. The exact fee will be determined based on drawings submitted with the Building Permit Application.

DECISION

The Commission, after carefully balancing the competing public and private interests, both

environmental and otherwise, hereby approves Application No. 2000.1215BEKX for Project authorization under Code **Sections 320** through **324**, subject to the conditions contained in "Exhibit A" appended hereto and incorporated herein by reference thereto as though fully set forth, and in general conformance with the plan drawings stamped as "Exhibit B".

I hereby certify that the foregoing Motion was adopted by the Planning Commission on September 13, 2001.

Linda Avery
Commission Secretary

AYES: Commissioners Theoharis, Baltimore, Chinchilla, Fay, Joe, Lim and Salinas
NOES: None

ABSENT: None

ADOPTED: September 13, 2001

LJM:G:\WP51\TEHAMA48.321

EXHIBIT A

CONDITIONS OF APPROVAL

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

This approval is pursuant to Code **Section 321** (Project Authorization), for the construction of a 19-story mixed-use building containing approximately 49,300 gross square feet of office space and three dwelling units in general conformance with the plans dated August 3, 2001 and stamped "Exhibit B".

1. COMPLIANCE WITH OTHER REQUIREMENTS

A. Compliance with Other Requirements

This decision conveys no right to construct, or to receive a building permit. The Project Sponsor must obtain a project approval under **Section 309**, and satisfy all the conditions thereof, including mitigation measures addressing environmental impacts. The conditions set forth below are additional conditions required in connection with the Project. If these conditions overlap with any other requirement imposed on the Project, the more restrictive or protective condition or requirement, as determined by the Zoning Administrator, shall apply.

B. Mitigation Measures

The Project shall be subject to, and the Project Sponsor shall implement and otherwise comply with, the Mitigation Measures proposed as part of the Project, as outlined in the Project's FND (Case No. 2000.1215BEKX), included as Condition of Approval 2.A. of the Section 309 Motion (Motion No. _____, Case No. 2000.1215BEKX) for the Project (Case No. 2000.1215BEKX), and incorporated herein by this reference.

C. Recordation

Prior to the issuance of any new or amended building permit for the construction of the Project, the Zoning Administrator shall approve and order the recordation of a

notice in the Official Records of the Recorder of the City and County of San Francisco, which notice shall state that construction of the Project has been authorized by and is subject to the conditions of this Motion. From time to time after the recordation of such notice, at the request of the Project Sponsor or the successor thereto, the Zoning Administrator shall affirm in writing the extent to which the conditions of this Motion have been satisfied.

D. Reporting

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

E. Performance

This authorization may be extended at the discretion of the Zoning Administrator only where the failure to issue a permit by the bureau of the Department of Building Inspection to construct the proposed building is caused by a delay by a City, state or federal agency or by any appeal of the issuance of such a permits(s). Pursuant to Code **Section 321(d)(2)**, construction of an office development shall commence within 18 months of the date the project is first approved. Failure to begin work within that period, or thereafter to carry the development diligently to completion, shall be grounds to revoke approval of the office development.

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

A. Housing Fee

The Project Sponsor shall pay to the Controller the J-HLP fee or substitute approved housing credits, under Planning Code **Section 313**. The net addition of gross floor area of office use subject to this requirement shall be determined based on the initial determination made by the Planning Department pursuant to **Section 313.4(b)**.

B. Street Space

If the Project Sponsor requires use of a street for staging or storage of materials for the Project, the Project Sponsor shall request approval from the Department of Parking and Traffic for the utilization of a street.

C. First Source Hiring Program

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

D. Recordation

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

3. CONDITIONS TO BE MET PRIOR TO THE ISSUANCE OF TEMPORARY OR PERMANENT CERTIFICATION OF OCCUPANCY.

A. Transit Impact Development Fee

The Project Sponsor shall pay the Transit Impact Development Fee as required by Chapter 38 of the Administrative Code. The net addition of gross floor area of office use subject to this requirement shall be determined based on drawings submitted with the Building Permit Application. Prior to the issuance of a temporary certificate of occupancy the Project Sponsor shall provide the Director with certification that the fee has been paid.

B. Downtown Park Fee

The Project Sponsor shall pay the Downtown Park Fee as required by **Section 139** of the Code. The net addition of gross floor area of office use subject to this requirement shall be determined based on drawings submitted with the Building Permit Application.



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution No. 17846A

HEARING DATE: MARCH 26, 2009

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Date: March 19, 2009
To: Members, Planning Commission
From: Lawrence B. Badiner, Zoning Administrator
Staff Contact: Scott Sanchez – (415) 558-6326
scott.sanchez@sfgov.org
Re: Policy on Extension of Entitlements for Office Development Annual Limit Projects

PLANNING COMMISSION POLICY ON EXTENSION OF ENTITLEMENT AUTHORIZATIONS FOR OFFICE DEVELOPMENT ANNUAL LIMIT PROJECTS PURSUANT TO PLANNING CODE SECTION 321.

WHEREAS, On September 10, 1985, the Board of Supervisors passed the Downtown Plan Zoning Ordinance, which was signed into law by the Mayor on September 17, 1985 and became effective on October 17, 1985; and

The Downtown Plan Zoning Ordinance established Sections 320 and 321 of the Planning Code, providing a limit on office development of 2.85 million square feet over a 3 year period beginning October 17, 1985; and

In December 1986, Initiative Ordinance Proposition M amended Sections 320 and 321 of the Planning Code to impose further restrictions on the amount of office development that the City could approve; and

Section 321(e) of the Planning Code states that the Planning Commission shall have authority to adopt such rules and regulations as it may determine are appropriate to carry out the purposes and provisions of that section and Sections 320, 322 and 323; and

Planning Code Section 321(d)(2), Unbuilt Projects; Progress Requirement, states: “Construction of an office development shall commence within eighteen (18) months of the date the project is first approved. Failure to begin work within that period, or thereafter to carry the development diligently to completion, shall be grounds to revoke approval of the office development” [Emphasis Added]; and

Under this requirement, which is typically a condition of approval for Office Development Annual Limit projects, projects that do not commence construction are not automatically revoked. Rather the Commission has the right to revoke such projects, but is not compelled to do so. If the Commission chooses to revoke an Office Development Annual Limit authorization, it must revoke at a publicly noticed hearing on the project; and

On May 30, 2002, the Planning Commission adopted Resolution No. 16418, by which it was resolved that the Planning Commission would: 1) closely monitor office development annual limit projects, but would not seek to revoke approvals of projects which have exceeded the construction commencement date, 2) to

the extent that formal extensions were necessary, encourage projects that have specific construction commencement dates to consider applying for extensions or re-authorizations, and 3) define “commencement of construction”; and

Pursuant to Resolution No. 16418, “commencement of construction” was defined as when the following actions have occurred:

- 1) A valid Site or Building Permit has been issued;
- 2) TDRs have been purchased and a Notice of Use has been recorded;
- 3) A valid grading, shoring and excavation addenda has been issued;
- 4) An attractive, solid fence has been erected to City standards;
- 5) Grading, shoring and excavation work has commenced and are being pursued diligently. Such construction activity must be in conformity with any required conditions of approval regarding on-site archeological investigation, excavation and artifact removal.

In adopting Resolution 16418, the Planning Commission cited dramatic changes in conditions affecting land use development due to the downturn in the economy which led to a high office vacancy rate and difficulty in obtaining commercial financing for new construction and noted that under similar conditions in the early 1990s, the Planning Commission adopted such a policy, and when the economy recovered in the late 1990s, a number of projects were already approved and could move forward without undue delay; and

On July 26, 2007, the Planning Commission held a public hearing and received public testimony on the status of the Office Development Annual Limit. At this hearing, the Planning Commission requested additional information on four projects: 1) 350 Bush Street (2000.541B); 2) 500 Pine Street (2000.539B); 3) 801 Market Street (2000.277B); and 4) 3433 3rd Street; and

On October 11, 2007, the Planning Commission received an update on four Office Development Annual Limit Projects. The project sponsors for 350 Bush Street (2000.541B), 500 Pine Street (2000.539B) and 801 Market Street (2000.277B) indicated they intended to diligently pursue their entitlements, while the Planning Department reported that the project at 3433 3rd Street had been abandoned and the office allocation revoked. Since this public hearing, revisions to the building permit application for 350 Bush Street have been submitted and are currently under review by the Department of Building Inspection and the building permit application for 500 Pine Street has been approved; however, the Planning Department has not received a building permit application or any additional communication from the project sponsor for 801 Market Street; and

The Planning Commission recognizes that the current global economic crisis has exceeded the depth and breadth of recent economic downturns, resulting in a profound impact on the liquidity and stability of credit markets and the availability of financing for a range of land-use development projects; and

The Planning Commission believes that a policy of monitoring projects authorized under Planning Code Section 321 (Office Development Annual Limit), but not yet under construction, and ensuring that those projects under construction proceed as expeditiously as possible under the circumstances, serves the City well; however, the Planning Commission believes that authorized projects that are not diligently pursued should be revoked; and

On February 19, 2009, the Planning Commission held a public hearing and received public testimony on the state of the local economy and discussion of this policy; and

On March 26, 2009, the Planning Commission held a public hearing and received public testimony on consideration of this policy. At this hearing, the Planning Department identified two Office Development Annual Limit projects that have exceeded the 18-month performance timeline by more than 5 years and do not appear to be actively seeking completion of their entitlements:

- 1) 801 Market Street (2000.277B) – approved April 19, 2001
- 2) 48 Tehama Street (2000.1215B) – approved September 13, 2001

NOW, THEREFORE BE IT RESOLVED, that the Planning Commission hereby reaffirms the policies of Resolution 16418 in that it will closely monitor Office Development Annual Limit projects, but will not seek at this time to revoke the approvals of active projects which have exceeded the construction commencement date; and

BE IT FURTHER RESOLVED, that the Planning Commission hereby instructs the Planning Department to schedule the following Office Development Annual Limit projects that have exceeded the 18-month performance timeline by more than 5 years and do not appear to be actively seeking completion of their entitlements for revocation pursuant to the requirements of Section 321 of the Planning Code:

- 1) 801 Market Street (2000.277B)
- 2) 48 Tehama Street (2000.1215B)

BE IT FURTHER RESOLVED, that the Planning Commission hereby instructs the Planning Department to schedule the following Office Development Annual Limit projects that have exceeded the 18-month performance timeline for informational presentations to the Planning Commission:

- 1) 524 Howard Street (1998.843B)
- 2) 350 Bush Street (2000.541B)
- 3) 500 Pine Street (2000.539B)
- 4) 120 Howard Street (2006.0616B)

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on March 26, 2009.

Linda D. Avery
Commission Secretary

AYES: Commissioners Borden, Miguel, Moore, Olague and Sugaya

NOES: Commissioners Antonini and Lee

ABSENT: None

ADOPTED: March 26, 2009