



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Conditional Use

HEARING DATE: SEPTEMBER 6, 2012

Date: August 23, 2012
Case No.: 2012.0110CEV
Project Address: 2175 MARKET STREET
Zoning: Upper-Market Street Neighborhood Commercial Transit District
65-X/40-X Height and Bulk District
Block/Lot: 3543/011
Project Sponsor: Katie O'Brien
FC 2175 Market, LLC
875 Howard Street, Suite 330
San Francisco, CA 94103
Staff Contact: Michael Smith – (415) 558-6322
michael.e.smith@sfgov.org
Recommendation: **Approval with Conditions**

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PROJECT DESCRIPTION

The Project Sponsor proposes to demolish an existing gas station and construct a new 65-foot-tall, six-story, 79,945-gross-square-foot (104,413 -square-foot including parking), mixed-use building containing 88 rental dwelling units, 13 of which will be affordable, and approximately 6,286-square-feet of retail space at the ground floor, a portion of which would be occupied by a yet to be determined restaurant use as defined in Section 790.91 of the Code. The residential portion of the project would include 34 two-bedroom units, and 54 “junior” one-bedroom units, and 45 Class 1 bicycle parking spaces. The portion of the building fronting on 15th Street would be approximately 40-feet in height. The proposed building would contain 44 off-street parking spaces within an underground parking garage with ingress and egress from 15th Street and provide approximately 7,100 square feet of common usable open space.

In order for the project to proceed, the Commission must grant conditional use authorization pursuant to Planning Code Sections: 207.6, for an exception to the dwelling mix requirement; 733.11, to develop a lot exceeding 9,999 square feet; 733.44, to establish a Restaurant use; and 303.

SITE DESCRIPTION AND PRESENT USE

The project site is located on the southeast corner of Market and 15th Streets; Lot 011 in Assessor’s Block 3543. The triangular-shaped property is 18,525-square feet in area and is occupied by an approximately 1,487-square-foot, single-story nonconforming automotive gas and service station, constructed in 1970. The current development on the property includes one enclosed retail/service building with two automotive service bays, two gasoline pump islands with canopies, associated underground storage tanks, and 11 car share spaces. Ingress and egress to the gas station is from curb cuts along Market Street.

The parcel is located with the Market and Octavia Plan Area and was included in the fall 2007 Upper Market Community Design Plan as a potential site to be redeveloped with a mixed-use building.

SURROUNDING PROPERTIES AND NEIGHBORHOOD

The subject property is located within the Upper Market Street Neighborhood Commercial District, which extends along Market Street from Church to Castro, and on side streets off Market, and is situated at the border of the Eureka Valley, Buena Vista, and Duboce Triangle neighborhoods. Upper Market Street is a multi-purpose commercial district that provides limited convenience goods to adjacent neighborhoods, but also serves as a shopping street for a broader trade area. A large number of offices are located on Market Street within easy transit access to downtown. The width of Market Street and its use as a major arterial diminish the perception of the Upper Market Street District as a single commercial district. The street appears as a collection of dispersed centers of commercial activity, concentrated at the intersections of Market Street with secondary streets.

Some areas of the District are noticeably low-rise, automobile oriented lots, with gas stations and single-story commercial establishments with surface parking lots. Just off Market Street there are small-scale residential streets that support the district. In general, the district is a full-service shopping area providing a variety of uses within easy walking distance.

The Upper Market Street district controls are designed to promote moderate-scale development that contributes to Market Street's design and character. They are also intended to preserve the existing mix of commercial uses and maintain the livability of the district and its surrounding residential areas. Large-lot and use development is reviewed for consistency with existing development patterns. Rear yards are protected at residential levels. To promote mixed-use buildings, most commercial uses are permitted with some limitations above the second story. In order to maintain continuous retail frontage and preserve a balanced mix of commercial uses, ground-story neighborhood-serving uses are encouraged, and eating and drinking, entertainment, and financial service uses are limited. Continuous frontage is promoted by prohibitions of most automobile and drive-up uses. Housing development in new buildings is encouraged above the second story. Existing upper-story residential units are protected by limitations on demolitions and upper-story conversions.

The adjacent property to the east of the subject property is occupied by a two-story commercial building occupied by Walgreens and 24 Hour Fitness. The property has full lot coverage with underground parking that is accessed from Market Street and exits onto 15th Street. To the west across 15th Street is a four-story mixed building that was constructed in 2002. To the south of the subject property on the opposite side of 15th Street is a three-story over basement, Edwardian era apartment building with 12 dwellings surrounded by two- and three-story, low-density Edwardian era, multi-family dwellings. The context to the south of the subject property is within the RTO Zoning District and decidedly fine grain residential that is typified by the buildings on Sharon Street which runs perpendicular to 15th Street behind the subject property.

Development to the north, across Market Street, includes a vacant lot that was once occupied by a gas station, the Swedish American Hall, and a row of one- to four-story Edwardian era mixed use and residential buildings. There is one restaurant use located within the 2100 block of Market Street.

ENVIRONMENTAL REVIEW

Pursuant to Section 21083.3 of the California Environmental Quality Act Public Resources Code Section 21000, et seq.)("CEQA") and Section 15183 of the CEQA Guidelines (14 California Code of Regulations Section 15000, et seq.), projects that are consistent with the development density set forth in a community plan for which an Environmental Impact Report (EIR) was certified are exempt from environmental review under CEQA, except as might be necessary to examine whether there are project-specific effects that are peculiar to the project or its site.

The Project is within the boundaries of the Market and Octavia Better Neighborhoods Area Plan ("Market and Octavia Plan"). The EIR for the Market and Octavia Plan (Case No. 2003.0347E; State Clearinghouse No, 2004012118) was certified on April 5, 2007.

The Planning Department has determined that the Project is consistent with the Market and Octavia Plan and the allowable development density established therein and is, therefore, eligible for a Community Plan Exemption ("CPE") under CEQA Section 21083.3 and CEQA Guidelines Section 15183.

The Planning Department prepared a Community Plan Exemption Checklist dated August 15, 2012 to evaluate the potential environmental effects of the Project and to determine whether the Project would have environmental effects that (1) are peculiar to the Project or parcel on which the Project would be located, or (2) were not analyzed as significant effects in the Market & Octavia Plan EIR, or (3) are potentially significant off-site impacts or cumulative impacts that were not discussed in the Market & Octavia Plan EIR, or (4) are more severe adverse impacts than were analyzed in the Market & Octavia Plan EIR. In a Certificate of Determination dated August 15, 2012 (the "CPE Certificate"), the Planning Department concluded that, with the exception of archaeological resources and hazardous materials, the Project would not result in any new potentially significant environmental effects peculiar to the Project, any off-site or cumulative impacts, or effects of greater severity than were already analyzed and disclosed in the Market and Octavia Plan EIR.

In order to evaluate the Project's impacts related to hazardous materials, the Planning Department prepared an Initial Study/Mitigated Negative Declaration. On August 15, 2012, the Draft Initial Study/Mitigated Negative Declaration was published for public review.

On September 5, 2012, the Planning Department reviewed and considered the Final Mitigated Negative Declaration (FMND) and found that the contents of the FMND and the procedures through which the FMND was prepared, publicized, and reviewed complied with CEQA the CEQA Guidelines and Chapter 31 of the San Francisco Administrative Code ("Chapter 31"). The Planning Department found the FMND was adequate, accurate and objective, reflected the independent analysis and judgment of the Planning Department, and approved the FMND for the Project in compliance with CEQA, the CEQA Guidelines and Chapter 31.

Planning Department staff prepared a Mitigation Monitoring and Reporting Program (MMRP) setting forth measures to reduce potential environmental effects, including mitigation measures identified in the Market and Octavia Plan EIR that are applicable to the Project, as well as new mitigation measures developed as part of the FMND. These mitigation measures reduce all potential significant impacts to

less than significant levels, and are set forth in their entirety in the MMRP attached to the draft Motion as Exhibit C.

HEARING NOTIFICATION

TYPE	REQUIRED PERIOD	REQUIRED NOTICE DATE	ACTUAL NOTICE DATE	ACTUAL PERIOD
Classified News Ad	20 days	August 17, 2012	August 15, 2012	22 days
Posted Notice	20 days	August 17, 2012	August 16, 2012	21 days
Mailed Notice	20 days	August 17, 2012	August 16, 2012	21 days

The proposal requires a Section 312-neighborhood notification, which was conducted in conjunction with the conditional use authorization process.

PUBLIC COMMENT

- The Department received a letter of support from the Merchants of Upper Market and Castro (MUMC). No other public comment has been received.

ISSUES AND OTHER CONSIDERATIONS

- During the fall of 2007, the Planning Department, in conjunction with then Supervisor Bevan Dufty, initiated a series of community workshops in response to development pressures and opportunities in the Upper Market corridor. The workshop identified a number of underutilized sites in the area that could be redeveloped with larger mixed-use buildings. The Project Site was one of several properties investigated during that process and was considered a good site for a more intensive mixed-use development. The design of the project complies with the Upper Market Development Design Guidelines.
- The gas station on the Project Site is an unattractive nonconforming use, and underutilizes the property. The demolition of the gas station will allow full use of the site and will not appreciably diminish access to automotive fuels and services. The Project Site is located on a major transit corridor and is appropriate for a more substantial development than the existing gas station. Elimination of the gas station supports the City's transit first policy. In acknowledgement of this policy, legislation that will become effective September 4, 2012, removes the conditional use requirement for the removal of a gas station on a transit preferential street.
- The proposed project would require variances from Planning Code Sections: 134, for rear yard; 145.1, for a ground floor non-residential ceiling height that is less than 14-feet in height; 135, for open space exposure; and 140, for dwelling unit exposure. If the rear yard requirements were to be applied it would require a 25% rear yard at the back of the property at the 15th Street frontage where the three-story residential component is proposed to be located. Less than 25% of the frontage along Market Street has a height of less than 14' and it is all located within the corner retail space which also has a double height ceiling. The project complies with the amount of open space required by the Code but the narrower portions of the open space at the east and west ends

of the podium level do not meet exposure requirements due to the height the surrounding walls. The dwellings at the lower levels at these same locations do not meet exposure requirements because of the pinched dimension of the open space.

- The General Plan discourages an over-concentration of eating and drinking establishments as outlined in the Guidelines for Specific Uses. For eating and drinking establishments, the Guidelines state, “the balance of commercial uses may be threatened when eating and drinking establishments occupy more than 20% of the total occupied commercial frontage.” Planning staff has performed a site survey of the subject District and confirmed that including the subject tenant space, approximately 19% of the commercial frontage in Upper Market Street NCT/NCD District is dedicated to eating and drinking establishments, which is below the 20% threshold established by the General Plan and the 25% threshold established under Planning Code Section 303(p).
- The Project Sponsor proposes the dwelling to be rental units including the required inclusionary units which will be located on-site. Due to the requested number and type of variances from the Planning Code being sought by the sponsor, the Department has determined that the project qualifies for an exception to the Costa Hawkins Act. The draft Costa Hawkins Agreement is attached.
- Pursuant to Section 207.6 of the Planning Code, no less than 40 percent of the total number of proposed dwelling units shall contain at least two bedrooms or no less than 30 percent of the total number of proposed dwelling units shall contain at least three bedrooms. The Project proposes 38.6% (34) of the total number of proposed dwelling units to be two bedrooms; therefore, the Project Sponsor has requested a minor modification of the 40% requirement, pursuant to Planning Code Section 207.6.
- To meet the Better Streets requirement the project will include a new bulb out at the southeast corner of Market and 15th Streets.

REQUIRED COMMISSION ACTION

In order for the project to proceed, the Commission must grant conditional use authorization pursuant to Planning Code Sections: 207.6, for an exception to the dwelling mix requirement; 733.11, to develop a lot exceeding 9,999 square feet; 733.44, to establish a Restaurant use; and 303.

BASIS FOR RECOMMENDATION

- The project creates 88 new one-and two-bedroom dwelling units and 6,286 square feet of new commercial space to expand housing opportunities and enhance the District.
- The project provides needed rental housing including thirteen new affordable dwelling units for rental on-site.
- The project complies with the Upper Market Development Design Guidelines.
- The project meets all applicable requirements of the Planning Code and General Plan with the requested Conditional Use Authorization and variances.
- The project is consistent with the objectives and policies of the General Plan.
- The project is desirable for, and compatible with the surrounding neighborhood.

RECOMMENDATION: Approval with Conditions

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 checked="" 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 | <input type="checkbox"/> Wireless Telecommunications Materials |
| <input checked="" type="checkbox"/> Sanborn Map | <input type="checkbox"/> Health Dept. review of RF levels |
| <input checked="" type="checkbox"/> Aerial Photo | <input type="checkbox"/> RF Report |
| <input checked="" type="checkbox"/> Context Photos | <input type="checkbox"/> Community Meeting Notice |
| <input checked="" type="checkbox"/> Site Photos | <input checked="" type="checkbox"/> Housing Documents |
| | <input checked="" type="checkbox"/> Inclusionary Affordable Housing Program: Affidavit for Compliance |
| | <input checked="" type="checkbox"/> Residential Pipeline |
| | <input checked="" type="checkbox"/> Draft Costa Hawkins Agreement |

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

_____MES_____
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 Motion XXXXX

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ADOPTING FINDINGS RELATING TO THE APPROVAL OF CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 207.6, 733.11, 733.44 AND 303 OF THE PLANNING CODE TO DEMOLISH AN EXISTING GASOLINE SERVICE STATION AND CONSTRUCT A SIX-STORY, 65 FOOT TALL MIXED USE BUILDING WITH 88 DWELLING UNITS, 44 OFF-STREET PARKING SPACES, AND APPROXIMATELY 6,286 SQUARE FEET OF GROUND FLOOR COMMERCIAL SPACE ON A PROPERTY LOCATED WITHIN THE UPPER MARKET STREET NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT AND A 40-X/65-X HEIGHT AND BULK DISTRICT, THE MARKET AND OCTAVIA PLAN AREA, AND ADOPTING FINDINGS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

PREAMBLE

On June 1, 2012, Katie O'Brien of Forest City (hereinafter "Project Sponsor") filed an application with the Planning Department (hereinafter "Department") for Conditional Use Authorization under Planning Code Sections 207.6, 733.11, 733.44, and 303 to allow the demolition of an existing gasoline service station on the property and construction of a six-story, 65 foot tall mixed use building with 88 dwelling units, 44 off-street parking spaces, and approximately 6,286 square feet of ground floor commercial space for a property located within the Upper Market Street Neighborhood Commercial Transit District and a 40-X/65-X Height and Bulk District and the Market and Octavia Plan Area.

On June 1, 2012, the Project Sponsor filed an application for variances from Planning Code Sections: 134, for rear yard; 145.1, for a ground floor non-residential ceiling height that is less than 14-feet in height; 135, for open space exposure; and 140, for dwelling unit exposure.

On September 6, 2012, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2012.0110CEV.

Pursuant to Section 21083.3 of the California Environmental Quality Act Public Resources Code Section 21000, et seq.)("CEQA") and Section 15183 of the CEQA Guidelines (14 California Code of Regulations Section 15000, et seq.), projects that are consistent with the development density set forth in a community plan for which an Environmental Impact Report (EIR) was certified are exempt from environmental review under CEQA, except as might be necessary to examine whether there are project-specific effects that are peculiar to the project or its site.

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The Planning Department has determined that the Project is consistent with the Market and Octavia Plan and the allowable development density established therein and is, therefore, eligible for a Community Plan Exemption ("CPE") under CEQA Section 21083.3 and CEQA Guidelines Section 15183.

The Planning Department prepared a Community Plan Exemption Checklist dated August 15, 2012 to evaluate the potential environmental effects of the Project and to determine whether the Project would have environmental effects that (1) are peculiar to the Project or parcel on which the Project would be located, or (2) were not analyzed as significant effects in the Market & Octavia Plan EIR, or (3) are potentially significant off-site impacts or cumulative impacts that were not discussed in the Market & Octavia Plan EIR, or (4) are more severe adverse impacts than were analyzed in the Market & Octavia Plan EIR. In a Certificate of Determination dated August 15, 2012 (the "CPE Certificate"), the Planning Department concluded that, with the exception of archaeological resources and hazardous materials, the Project would not result in any new potentially significant environmental effects peculiar to the Project, any off-site or cumulative impacts, or effects of greater severity than were already analyzed and disclosed in the Market and Octavia Plan EIR.

In order to evaluate the Project's impacts related to archaeological resources and hazardous materials, the Planning Department prepared an Initial Study/Mitigated Negative Declaration. On August 15, 2012, the Draft Initial Study/Mitigated Negative Declaration was published for public review.

On September 5, 2012, the Planning Department reviewed and considered the Final Mitigated Negative Declaration (FMND) and found that the contents of the FMND and the procedures through which the FMND was prepared, publicized, and reviewed complied with CEQA the CEQA Guidelines and Chapter 31 of the San Francisco Administrative Code ("Chapter 31"). The Planning Department found the FMND

was adequate, accurate and objective, reflected the independent analysis and judgment of the Planning Department, and approved the FMND for the Project in compliance with CEQA, the CEQA Guidelines and Chapter 31.

Planning Department staff prepared a Mitigation Monitoring and Reporting Program (MMRP) setting forth measures to reduce potential environmental effects, including mitigation measures identified in the Market and Octavia Plan EIR that are applicable to the Project, as well as new mitigation measures developed as part of the FMND. These mitigation measures reduce all potential significant impacts to less than significant levels, and are set forth in their entirety in the MMRP attached to the draft Motion as Exhibit C.

MOVED, that the Commission hereby adopts the FMND and the MMRP and authorizes the Conditional Use requested in Application No. 2012.0110CEV, 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 site is located on the southeast corner of Market and 15th Streets; Lot 011 in Assessor's Block 3543. The triangular-shaped property is 18,525-square feet in area and is occupied by an approximately 1,487-square-foot, single-story nonconforming automotive gas and service station, constructed in 1970. The current development on the property includes one enclosed retail/service building with two automotive service bays, two gasoline pump islands with canopies, associated underground storage tanks, and 11 car share spaces. Ingress and egress to the gas station is from curb cuts along Market Street. The parcel is located with the Market and Octavia Plan Area and was included in the fall 2007 Upper Market Community Design Plan as a potential site to be redeveloped with a mixed-use building.
3. **Surrounding Properties and Neighborhood.** The subject property is located within the Upper Market Street Neighborhood Commercial District, which extends along Market Street from Church to Castro, and on side streets off Market, and is situated at the border of the Eureka Valley, Buena Vista, and Duboce Triangle neighborhoods. Upper Market Street is a multi-purpose commercial district that provides limited convenience goods to adjacent neighborhoods, but also serves as a shopping street for a broader trade area. A large number of offices are located on Market Street within easy transit access to downtown. The width of Market Street and its use as a major arterial diminish the perception of the Upper Market Street District as a single commercial district. The street appears as a collection of dispersed centers of commercial activity, concentrated at the intersections of Market Street with secondary streets.

Some areas of the District are noticeably low-rise, automobile oriented lots, with gas stations and single-story commercial establishments with surface parking lots. Just off Market Street there are small-scale residential streets that support the district. In general, the district is a full-service shopping area providing a variety of uses within easy walking distance.

The Upper Market Street district controls are designed to promote moderate-scale development that contributes to Market Street's design and character. They are also intended to preserve the existing mix of commercial uses and maintain the livability of the district and its surrounding residential areas. Large-lot and use development is reviewed for consistency with existing development patterns. Rear yards are protected at residential levels. To promote mixed-use buildings, most commercial uses are permitted with some limitations above the second story. In order to maintain continuous retail frontage and preserve a balanced mix of commercial uses, ground-story neighborhood-serving uses are encouraged, and eating and drinking, entertainment, and financial service uses are limited. Continuous frontage is promoted by prohibitions of most automobile and drive-up uses. Housing development in new buildings is encouraged above the second story. Existing upper-story residential units are protected by limitations on demolitions and upper-story conversions.

The adjacent property to the east of the subject property is occupied by a two-story commercial building occupied by Walgreens and 24 Hour Fitness. The property has full lot coverage with underground parking that is accessed from Market Street and exits onto 15th Street. To the west across 15th Street is a four-story mixed building that was constructed in 2002. To the south of the subject property on the opposite side of 15th Street is a three-story over basement, Edwardian era apartment building with 12 dwellings surrounded by two- and three-story, low-density Edwardian era, multi-family dwellings. The context to the south of the subject property is within the RTO Zoning District and decidedly fine grain residential that is typified by the buildings on Sharon Street which runs perpendicular to 15th Street behind the subject property.

Development to the north, across Market Street, includes a vacant lot that was once occupied by a gas station, the Swedish American Hall, and a row of one- to four-story Edwardian era mixed use and residential buildings. There is one restaurant use located within the 2100 block of Market Street.

- 4. Project Description.** The Project Sponsor proposes to demolish an existing gas station and construct a new 65-foot-tall, six-story, approximately 79,945-gross-square-foot (104,413 -square-foot including parking), mixed-use building containing 88 rental dwelling units, 13 of which will be affordable, and approximately 6,286-square-feet of retail space at the ground floor, a portion of which would be occupied by a yet to be determined restaurant use as defined in Section 790.91 of the Code. The residential portion of the project would include 34 two-bedroom units, and 54 "junior" one-bedroom units, and 45 Class 1 bicycle parking spaces. The portion of the building fronting on 15th Street would be approximately 40-feet in height. The proposed building would contain 44 off-street parking spaces within an underground parking garage with ingress and egress from 15th Street and provide 7,100 square feet of common usable open space.

5. **CEQA Findings.** The Planning Commission has independently reviewed and considered the CPE Certificate and the FMND prepared for the Project and hereby adopts the following findings:
 - A. In reviewing the CPE Certificate and the FMND, the Planning Commission has had available for its review and consideration all information pertaining to the Project in the Planning Department's case file.
 - B. The Planning Commission finds that the Project is consistent with the Market and Octavia Plan for purposes of CEQA Section 21083.3 and CEQA Guidelines Section 15183 and is therefore eligible for a CPE.
 - C. The Planning Commission finds that, except with respect to archaeological resources and hazardous materials, the Project would not result in any new significant environmental effects peculiar to the Project, any off-site or cumulative impacts, or effects of greater severity than were already analyzed and disclosed in the Market and Octavia Plan EIR, as shown in the analysis of the Certificate of Determination for the CPE.
 - D. With respect to archaeological resources and hazardous materials, the Planning Commission finds that, with the implementation of the mitigation measures set forth in the MMRP ("Exhibit C") all potential environmental effects of the Project would be reduced to less than significant levels.
 - E. The Planning Commission finds that the contents of the CPE Certificate and the FMND and the procedures through which they were prepared, issued, publicized and reviewed comply with CEQA, the CEQA Guidelines and Chapter 31 of the San Francisco Administrative Code.
 - F. The Planning Commission finds that the CPE Certificate and the FMND are adequate, accurate and objective and reflects the independent analysis and judgment of the Department of City Planning and Planning Commission.
 - G. The mitigation measures listed in the MMRP ("Exhibit C") were identified in the FMND as reducing or eliminating potential environmental impacts of the proposed project. The Planning Commission hereby adopts the MMRP, including all of the mitigation measures identified in Exhibit C.
 - H. The Planning Commission finds that the proposed project could not have a significant effect on the environment, as shown in the analysis of the CPE Certificate and FMND.
6. **Public Comment.** The Department received a letter of support from the Merchants of Upper Market and Castro (MUMC). No other public comment has been received.
7. **Planning Code Compliance:** The Commission finds that the project is consistent with the relevant provisions of the Planning Code in the following manner:
 - A. **Restaurant Use.** Planning Code Section 733.44 requires Conditional Use Authorization to establish a restaurant use as defined in Section 790.91 of the Planning Code.

(1) **Additional Conditional Use Criteria Applicable to Eating and Drinking Uses.** Under Planning Code Section 303(p), with regard to a conditional use authorization application for a Restaurant, Limited-Restaurant and Bar uses in Neighborhood Commercial Districts or Mixed Use Districts, the Planning Commission shall consider, in addition to the criteria set forth in Subsection 303(c):

(A) The existing concentration of eating and drinking uses in the area. Such concentration should not exceed 25% of the total commercial frontage as measured in linear feet within the immediate area of the subject site. For the purposes of this Section of the Code, the immediate area shall be defined as all properties located within 300' of the subject property and also located within the same zoning district.

The Project Sponsor is requesting conditional use authorization to establish a yet to be determined restaurant use within an approximately 2,365 square-foot ground floor commercial space along Market Street. There is one restaurant use located within the 2100 block of Market Street. Planning staff has performed a site survey of the Upper Market Street NCT District within 300 feet of the property; approximately 19% of the commercial frontage is dedicated to eating and drinking establishments, including the proposed restaurant, which is below the 25% threshold established under Planning Code Section 303(p). The project will not prevent the Upper Market Street NCT District from achieving optimal diversity in the types of goods and services available in the neighborhood.

B. **Open Space.** Planning Code Section 135 requires 60 square feet of private usable open space or 80 square feet of common open space for each dwelling unit.

The project includes 88 dwelling units and is required to provide a total of 5,280 square feet of private open space, 7,040 square feet of common open space, or some equivalent combination of private and common open space. The project proposes 3,270 square feet of common usable open space within the courtyard and 3,830 square feet of common usable open space on a roof deck for a total of approximately 7,100 square feet of common usable open space, in compliance with the amount of usable open space required by the Planning Code. The Planning Code also requires that usable open space located within a courtyard have a minimum dimension of 20-feet and meet minimum exposure requirements. The Project Sponsor is separately requesting a variance for open space exposure because the proposed courtyard would not meet this dimensional requirement due to site constraints.

C. **Streetscape Improvements.** Planning Code Section 138.1 requires streetscape and pedestrian improvements for new developments. One street tree is required for every 20 lineal feet of street frontage. The Section also requires additional streetscape and pedestrian elements for large projects.

The project has 215 feet of frontage on Market and 236 feet of frontage on 15th Street and would provide 12 street trees at the Market Street frontage and 10 street trees at the 15th Street frontage. The size of the project also requires additional streetscape and pedestrian elements to meet the requirements

of the Better Streets Plan. To meet the objectives of the plan, the project will include a bulb out at the southeast corner of Market and 15th Streets.

- D. **Lot Size per Development.** Planning Code Section 733.11 permits development of lots larger than 9,999 square-feet within District with conditional use authorization.

Additional Conditional Use Criteria. Under Planning Code Section 121.1, in addition to the criteria of Section 303(c) of the Planning Code (discussed below), the City Planning Commission shall consider the extent to which the following criteria are met:

- (1) The mass and facade of the proposed structure are compatible with the existing scale of the district.
- (2) The facade of the proposed structure is compatible with design features of adjacent facades that contribute to the positive visual quality of the district.

The Project Sponsor is seeking conditional use authorization to develop an existing 18,525 square-foot lot that is developed with an automobile service station. The project site is much larger than the average lot within the District but it is located on a prominent corner site where a larger development is more appropriate to add emphasis and frame the intersection. The façade of the project will contribute to the positive visual quality of the district, which does not possess a prevailing architectural style. The Market Street façade is articulated into three distinct elements with the most provocative element located at the gore corner. The middle section is the largest of the three elements and its vertical proportions in the form of storefronts and bay windows, helps to further break up the building mass of the middle section. The 15th Street frontage would have what appears to be a separate building that is much shorter at 40' than the Market Street frontage. The character of the 15th frontage responds to the finer grain residential buildings to the south of the site. There is a courtyard open space at the center of the site to give the appearance of two separate structures even though they share the same basement podium. Overall, the building responds well to its varied context.

- E. **Floor Area Ratio.** Section 733.20 of the Planning Code restricts non-residential uses to 3.0 to 1.

55,275 square-feet of non-residential uses are permitted pursuant to this Section of the Code. The project would provide approximately 6,286 square-feet of commercial uses, well within the limit prescribed by the Code.

- F. **Rear Yard.** Section 134 of the Planning Code requires a 25% rear yard opposite the Market Street frontage.

The project sponsor is separately requesting a rear yard variance to develop the southern portion of the lot that could not be developed otherwise, in part because of the triangular shape of the lot.

- G. **Dwelling Unit Exposure.** Planning Code Section 140 requires that each dwelling unit shall face a public street, a Code-compliant rear yard, or another defined open space.

The project provides a large courtyard in the center of the site. As a result of the courtyard's irregular dimensions the lower dwellings at the east and west ends of the courtyard do not meet dwelling unit exposure requirements. The dwellings towards the center of the courtyard comply with the exposure requirements as do the dwellings that front on Market and 15th Streets. The project sponsor is separately requesting a dwelling unit exposure variance for the units that do not comply with the exposure requirement.

- H. **Ground Floor Ceiling Height.** Pursuant to Section 145.1 of the Planning Code, ground floor non-residential uses shall have a minimum floor-to-floor height of 14 feet, as measured from grade.

The ground floor ceiling height for a small portion (less than 25%) of the retail space on the Market Street frontage would be less than 14 feet in height. The reduced ceiling height is all located within the corner retail space which also has a double height ceiling. The Project Sponsor is seeking a variance from this Section of the Planning Code for the portion with the reduced ceiling height.

- I. **Street Frontage in Neighborhood Commercial Districts.** Section 145.1 of the Planning Code requires that within NC Districts space for active uses shall be provided within the first 25 feet of building depth on the ground floor and 15 feet on floors above from any facade facing a street at least 30 feet in width. In addition, the floors of street-fronting interior spaces housing non-residential active uses and lobbies shall be as close as possible to the level of the adjacent sidewalk at the principal entrance to these spaces. Frontages with active uses that must be fenestrated with transparent windows and doorways for no less than 60 percent of the street frontage at the ground level and allow visibility to the inside of the building. The use of dark or mirrored glass shall not count towards the required transparent area. Any decorative railings or grillwork, other than wire mesh, which is placed in front of or behind ground floor windows, shall be at least 75 percent open to perpendicular view. Rolling or sliding security gates shall consist of open grillwork rather than solid material, to provide visual interest to pedestrians when the gates are closed, and to permit light to pass through mostly unobstructed.

The project would provide active uses along both street frontages including retail space, a residential lobby, and stair access to dwellings above the sidewalk. No less than 60 percent of the street frontage at the ground level would be fenestrated with transparent windows to allow visibility to the inside of the building. The parking garage is located below grade and meets the Building Code definition of a basement.

- J. **Permitted Off-Street Parking, Residential.** Sections 151 and 733.94 of the Planning Code requires no off-street parking but principally permits up to one space for every two dwellings. Conditional use authorization is required to provide up to three spaces for every four dwellings.

The project includes 88 dwelling units and 44 off-street parking spaces for a ratio of one space for every two dwellings, which is principally permitted in the District.

- K. **Permitted Off-Street Parking, Commercial.** Sections 151 and 733.22 of the Planning Code requires no off-street parking for retail and restaurant uses that are less than 5,000 square-feet of occupied floor area.

The project includes three separate retail spaces at the ground floor totaling approximately 6,286-square-feet, which includes an approximately 2,364 square-foot restaurant use. No off-street commercial parking is required because none of the proposed retail spaces total more than 5,000 square-feet.

- L. **Car Share.** Section 166 of the Planning Code requires one car share space for 50 – 200 dwellings.

The project would provide one networked car-share space to meet the residential car share parking requirement. There is no car share requirement for the commercial uses.

- M. **Off-Street Freight Loading (Commercial).** Sections 152 and 733.23 of the Planning Code requires off-street loading be provided in the Upper Market NCT for retail uses exceeding 10,000 square feet in area.

The project contains a total of 6,286 square feet of retail space, therefore, the project is not required to provide off-street loading and provides none.

- N. **Off-Street Freight Loading (Residential).** Sections 152 of the Planning Code requires off-street loading be provided in the Upper Market NCT for residential uses exceeding 100,000 square feet in area.

The project contains a total of approximately 74,838 square feet of residential space, therefore, the project is not required to provide off-street loading and provides none.

- O. **Bicycle Parking.** Section 155.5 of the Planning Code requires 25 Class 1 bicycle parking spaces plus one Class 1 space for every four dwelling units above 50 dwelling units.

The project is required to provide 35 Class 1 bicycle parking spaces and provides 45 Class 1 bicycle parking spaces.

- P. **Residential Density.** Section 733.91 of the Planning Code places no limit on residential density within the District.

The Project Site is 18,525 square-feet in area and provides 88 dwelling units for a ratio of one dwelling unit for each 209 square feet of lot area.

- Q. **Dwelling Unit Mix.** Section 207.6 of the Planning Code requires that a minimum of 40% of the dwelling units within a Neighborhood Commercial Transit district shall contain at least two bedrooms. This requirement can be modified through the conditional use process.

Additional Conditional Use Criteria. Under Planning Code Section 207.6, in addition to the criteria of Section 303(c) of the Planning Code (discussed below), the City Planning Commission shall consider the extent to which the following criteria are met:

- (A) The project demonstrates a need or mission to serve unique populations, or
- (B) The project site or existing building(s), if any, feature physical constraints that make it unreasonable to fulfill these requirements.

The Project Sponsor is requesting a minor modification of the 40% requirement. During the fall of 2007, the Planning Department, in conjunction with then Supervisor Bevan Dufty, initiated a series of community workshops in response to development pressures and opportunities in the Upper Market corridor. The workshop identified a number of underutilized sites in the area that could be redeveloped with larger mixed-use buildings. The Project Site was one of several properties investigated during that process and was considered a good site for a more intensive mixed-use development. The desire for smaller, more affordable, 1 bedroom and studio units is one of the key design principles that resulted from the community workshops. The project seeks to meet this objective by providing 38.6% two bedroom dwellings with the remainder going to junior, one bedroom dwellings. All of the dwellings would be rentals which combined with their smaller sizes provide the more affordable and flexible housing option that the community desires.

The project site is triangular-shaped, on a grade that slopes downward from the corner of Market and 15th Streets, and is located within two different height districts. These physical and zoning constraints make it unreasonable to fulfill the 40% requirement, within the context of Section 207.6.

- R. **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 five or more units, where, as applicable here, 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 Project is meeting the Inclusionary Affordable Housing Program requirement through the On-site Affordable Housing Alternative by providing 15% of the proposed dwelling units as affordable.

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 or submit to the Department a contract demonstrating that the project's on- or off-site units are not subject to the Costa Hawkins Rental Housing Act, California Civil Code Section 1954.50 because,

under Section 1954.52(b), and entered into an agreement with a public entity in consideration for a direct financial contribution or any other form of assistance specified in California Government Code Sections 65915 et seq. and submits an Affidavit of such to the Department. All such contracts entered into with the City and County of San Francisco must be reviewed and approved by the Mayor's Office Housing and the City Attorney's Office. The Project Sponsor has indicated the intention to enter into an agreement with the City to qualify for a waiver from the Costa-Hawkins Rental Housing Act based upon the proposed density bonus and concessions provided by the City and approved herein. The Project Sponsor submitted such Affidavit on August 15, 2012 and a draft Costa Hawkins agreement on September 6, 2012. Of the 88 units provided, 13 units will be affordable rental 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. The Project must execute the Costa Hawkins agreement prior to Planning Commission approval or must revert to payment of the Affordable Housing Fee.

Project Sponsor has also indicated that, in the alternative, it may apply for California Debt Limit Allocation Committee (CDLAC) tax exempt bond financing. If the Project Sponsor receives such funding it may demonstrate that it is eligible for an exemption from the Inclusionary Affordable Housing Program requirement under Planning Code Section 415.3(c)(4) because it provides twenty percent (20%) of all of the Project's on-site residential units as affordable to be occupied only by households whose incomes do not exceed fifty percent (50%) of area median income. In that case, the requirements of the Inclusionary Housing Ordinance, Planning Code Section 415 would not apply for so long as all of the conditions set forth in Planning Code Section 415.3(c)(4) are satisfied.

- S. **Market and Octavia Community Infrastructure Impact Fee.** Per Section 421 of the Code, the project requires payment per gross new square foot of residential and commercial development for the Market and Octavia Community Improvements Fund.
- T. **Market and Octavia Plan Area Affordable Housing Fee.** Per Section 416 of the Code, the project requires payment per gross square foot of new residential development, exclusive of any square footage designated as below market rate under Section 415.1 et seq., or any other residential unit that is designated as an affordable housing unit under a Federal, State, or local restriction in a manner that maintains affordability for a term no less than 50 years pursuant to Section 416.3(c), as part of the Market and Octavia Affordable Housing Fee.
- U. **Shadow.** Section 295 of the Code prohibits any structure that exceeds 40 feet in height from casting any shade or shadow upon any property under the jurisdiction of, or designated for acquisition by, the Recreation and Parks Commission, with certain exceptions identified in the Sunlight Ordinance.

A shadow fan was developed based on the drawings submitted with the application to determine the shadow impact of the project on properties protected by the Sunlight Ordinance. The fan indicates that there is no shadow impact from the subject property on any property protected by the Ordinance.

- V. **First Source Hiring.** The Project is subject to the requirements of the First Source Hiring Program as they apply to permits for residential development (Section 83.4(m) of the Administrative Code), and the Project Sponsor shall comply with the requirements of this Program as to all construction work and on-going employment required for the Project. 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 and Employment Program approved by the First Source Hiring Administrator, and evidenced in writing. In the event that both the Director of Planning and the First Source Hiring Administrator agree, the approval of the Employment Program may be delayed as needed.

The Project Sponsor has executed a First Source Hiring Declaration of Compliance with Administrative Code Chapter 83.

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 would replace an unsightly, nonconforming gas station with a contemporary mixed-use building with 88 dwellings and ground floor retail uses, the design of which is compatible with the neighborhood character. The type and intensity of the development is necessary and desirable for a transit corridor. The project will provide a development that is desirable for and compatible with the neighborhood and community because it proposes a density and mix of uses consistent with the Market and Octavia Plan that will activate this portion of Market Street.

- 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 will demolish an underutilized, nonconforming gas station and replace it with 88 units of additional housing within an established neighborhood that is well served by public transit. A majority of the units being provided would be specifically designed to meet the unmet housing needs of the neighborhood. In addition, the project's density necessitates an inclusionary housing requirement which would be met on-site and payment to the Market and Octavia Affordable Housing Fund.

The proposed project will also provide ground floor retail space helping to fill a gap in the district's commercial frontage. These retail spaces will be accessible by walking and transit. In combination,

the proposed residential and retail uses, at the densities and scale contemplated, will enhance the existing mixed-use character of the neighborhood.

The 65 foot building height at Market Street steps down to 40 feet at the rear of the site, responding to the finer grained low-density residential uses to the south of the site. The design of the building is distinctive. While the building is relatively large, its size is appropriate for its corner location. Furthermore, the use recesses, bay windows, and rhythm of ground floor storefronts give the building articulation and verticality breaking up the horizontal massing. Also, the rear elevation will be treated architecturally like a separate building to reduce the building scale.

- 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;

With multiple lot frontages, the project site is well suited for residential mixed-use development, allowing vehicular circulation to take place on 15th Street strengthening the commercial street wall and pedestrian environment on Market Street. All the parking would be located within an underground parking garage that is accessed by a driveway on 15th Street that is within close proximity of another driveway on the adjacent property to the east. The project is well served by transit with F streetcar line operating on Market Street and the Project Site is within close proximity to the MUNI subway station at Church and Market Streets.

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

The project would consist of high quality residential units and neighborhood serving commercial space. The uses would not generate any noxious or offensive emissions, noise, glare, dust, or odors.

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

The project would include a landscaped courtyard that flows to the street and a landscaped roof deck. The project would include required street trees along the Market and 15th Street frontages. Parking would be provided in an underground parking garage. The garage entrance is located at the 15th Street frontage near another driveway on the adjacent property in order to minimize interference with pedestrian activity. Loading and service will be accessed off of 15th Street. The project will be required to meet all applicable lighting and signage restrictions.

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

With this Conditional Use Authorization and the separately requested variances, 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 below.

- D. That the use as proposed would provide development that is in conformity with the purpose of the applicable Neighborhood Commercial District.

The proposed project is consistent with the stated purposed of Upper Market Neighborhood Commercial Transit District in that the project is a mixed-use development that will contribute to the definition of Market Street's design and character, will maintain and promote the mix of commercial uses and livability of the district and its surrounding residential areas, and includes residential units on the upper floors, and space for neighborhood-serving commercial uses on the ground floor, which would provide compatible convenience service for the immediately surrounding neighborhoods.

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

NEIGHBORHOOD COMMERCE

Objectives and Policies

OBJECTIVE 1:

MANAGE ECONOMIC GROWTH AND CHANGE TO ENSURE ENHANCEMENT OF THE TOTAL CITY LIVING AND WORKING ENVIRONMENT.

Policy 1.1:

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

Policy 1.2:

Assure that all commercial and industrial uses meet minimum, reasonable performance standards.

Policy 1.3:

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

The proposed development would provide desirable goods and services to the neighborhood and would provide resident employment opportunities to those in the community. The project would replace a marginal, nonconforming, and unattractive gas station use with essential housing and neighborhood serving commercial uses. The project would not result in any undesirable consequences. Further, the Project Site is located within a neighborhood commercial district and is thus consistent with activities in the commercial land use plan.

OBJECTIVE 6:

MAINTAIN AND STRENGTHEN VIABLE NEIGHBORHOOD COMMERCIAL AREAS EASILY ACCESSIBLE TO CITY RESIDENTS.

Policy 6.1:

Ensure and encourage the retention and provision of neighborhood-serving goods and services in the city's neighborhood commercial districts, while recognizing and encouraging diversity among the districts.

The project would strengthen the neighborhood commercial district by replacing a gas station with new commercial space for neighborhood-serving commercial uses and much needed housing. The project would fill in a large gap in the commercial frontage along Upper Market Street.

HOUSING ELEMENT

Objectives and Policies

OBJECTIVE 1:

IDENTIFY AND MAKE AVAILABLE FOR DEVELOPMENT ADEQUATE SITES TO MEET THE CITY'S HOUSING NEEDS, ESPECIALLY PERMANENTLY AFFORDABLE HOUSING.

Policy 1.1

Plan for the full range of housing needs in the City and County of San Francisco, especially affordable housing.

Policy 1.4

Ensure community based planning processes are used to generate changes to land use controls.

Policy 1.10

Support new housing projects, especially affordable housing, where households can easily rely on public transportation, walking and bicycling for the majority of daily trips.

The project creates 88 new rental dwelling units, 13 of which would be affordable units on-site. The project resulted from a community planning process that began in 2007 with a series of community workshops. The Project Site was one of several properties investigated during the process and the design of the project was the result of a collaborative effort between the community, the Department and elected officials. The Project would address the community's desire for smaller, more affordable dwellings by providing 54 junior, one bedroom units. All of the dwellings would be rentals which combined with their smaller sizes provide the more affordable and flexible housing option that the community desires.

The project is well served by public transit affording occupants the ability to use alternate forms of transportation including access to 45 Class 1 bicycle parking spaces for residents.

OBJECTIVE 4:

FOSTER A HOUSING STOCK THAT MEETS THE NEEDS OF ALL RESIDENTS ACROSS LIFECYCLES.

Policy 4.1

Develop new housing, and encourage the remodeling of existing housing, for families with children.

The 34 proposed two bedroom units are sized to provide housing for families with children.

MARKET & OCTAVIA AREA PLAN

Objectives and Policies

OBJECTIVE 2.2:

ENCOURAGE CONSTRUCTION OF RESIDENTIAL INFILL THROUGHOUT THE PLAN AREA.

Policy 2.2.3:

Eliminate residential parking requirements and introduce a maximum parking cap.

Policy 2.2.4:

Encourage new housing above ground-floor commercial uses in new development and in expansion of existing commercial buildings.

The project is a mixed-use development including ground floor commercial space along Market Street with dwelling units above. The off-street residential parking does not exceed the maximum that is principally permitted

OBJECTIVE 5.3:

ELIMINATE OR REDUCE THE NEGATIVE IMPACT OF PARKING ON THE PHYSICAL CHARACTER AND QUALITY OF THE NEIGHBORHOOD.

Policy 5.3.1:

Encourage the fronts of buildings to be lined with active uses and, where parking is provided, require that it be set back and screened from the street.

The project proposes active uses along the Market Street frontage. The entrance to the underground parking garage is located on 15th Street, which is a secondary street, in order to minimize any potential negative impacts.

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 proposal would enhance the district by providing new commercial space on the ground floor of a modern mixed-use building, filling a large gap in the commercial street frontage. The new business

occupying the space would provide future opportunities for resident employment in and ownership of a new business.

- 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 Site is located within the Upper Market Neighborhood Commercial Transit District, a mixed-use area consisting of residential and commercial uses. The proposed residential units and new commercial space will complement and enhance the district by providing new housing and business opportunities in the neighborhood. Existing housing in the area would not be affected by the project.

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

No housing is removed for this project. The project will enhance the City's supply of affordable housing by providing 13 on-site affordable housing units.

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

Approximately 44 off-street parking spaces would be provided for the proposed residential use, consistent with Planning Code requirements. All the parking would be located underground and accessed from the rear of the property eliminating transit and pedestrian conflict on a major transit corridor. The project is also well served by transit. The Project Site is within close proximity to the MUNI subway station at Church and Market Streets. The project would also include 45 Class 1 bicycle parking spaces and one car share space.

- 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 would not displace any service or industrial establishment. The project would not affect industrial or service sector uses or related employment opportunities. Ownership of industrial or service sector businesses would not be affected by this project.

- 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 would 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 neighborhood was surveyed as part of the Market and Octavia rezoning effort and it was determined to be located in the eligible, but not-yet-designated, Upper Market Street Commercial

Historic District. Through environmental review, the project was determined not to cause a significant adverse impact to the potential historic district. The project site does not contain any designated landmark or historic buildings.

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

The project would have no negative impact on existing parks and open spaces. A shadow fan prepared by the Department shows that the proposed project would not cast shadow on any public spaces or parks. No vista from any park would be adversely affected.

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 **ADOPTS** the Final Mitigated Negative Declaration and the Mitigation Monitoring and Reporting Program and **APPROVES Conditional Use Application No. 2012.0110CEV** subject to the following conditions attached hereto as "EXHIBIT A" in general conformance with plans on file, dated August 20, 2012, 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.

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on September 6, 2012.

Linda D. Avery
Commission Secretary

AYES:

NAYS:

ABSENT:

ADOPTED: September 6, 2012

EXHIBIT A

AUTHORIZATION

This authorization is for a conditional use to allow the demolition of the existing automobile gasoline and service station and construction of a six-story, 65-foot-tall, 79,945-gross-square-foot (104,413 -square-foot including parking), mixed-use building containing 88 rental dwelling units, 13 of which will be affordable, and approximately 6,286-square-feet of retail space at the ground floor, a portion of which would be occupied by a yet to be determined restaurant use as defined in Section 790.91 of the Code, located at 2175 Market Street Lot 011 in Assessor's Block 3543 pursuant to Planning Code Section(s) 207.6, 733.11, 733.44, and 303 within the Upper Market Neighborhood Commercial Transit District and a 40-X/65-X Height and Bulk District; in general conformance with plans, dated August 20, 2012, and stamped "EXHIBIT B" included in the docket for Case No. 2012.0110CEV and subject to conditions of approval reviewed and approved by the Commission on September 6, 2012 under Motion No XXXXX. 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 September 6, 2012 under Motion No XXXXX.

PRINTING OF CONDITIONS OF APPROVAL ON PLANS

The conditions of approval under the 'Exhibit A' of this Planning Commission Motion No. XXXXX 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

1. **Validity and Expiration.** The authorization and right vested by virtue of this action is valid for three years from the effective date of the Motion. A building permit from the Department of Building Inspection to construct the project and/or commence the approved use must be issued as this Conditional Use authorization is only an approval of the proposed project and conveys no independent right to construct the project or to commence the approved use. The Planning Commission may, in a public hearing, consider the revocation of the approvals granted if a site or building permit has not been obtained within three (3) years of the date of the Motion approving the project. 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. The Commission may also consider revoking the approvals if a permit for the project has been issued but is allowed to expire and more than three (3) years have passed since the Motion was approved.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

2. **Extension.** This authorization may be extended at the discretion of the Zoning Administrator only where failure to issue a permit by the Department of Building Inspection to perform said tenant improvements is caused by a delay by a local, State or Federal agency or by any appeal of the issuance of such permit(s).

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

3. **Mitigation Measures.** Mitigation measures described in the MMRP attached as Exhibit C are necessary to avoid potential significant effects of the proposed project and have been agreed to by the project sponsor. Their implementation is a condition of project approval.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

DESIGN – COMPLIANCE AT PLAN STAGE

4. **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.

5. **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 architectural addenda. 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.

6. **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.

7. **Lighting Plan.** The Project Sponsor shall submit an exterior lighting plan to the Planning Department prior to Planning Department approval of the building / site permit application.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org.

8. **Streetscape Plan.** Pursuant to Planning Code Section 138.1, the Project Sponsor shall continue to work with Planning Department staff, in consultation with other City agencies, to refine the design and programming of the Streetscape Plan. The Project Sponsor shall complete final design of all street improvements, including procurement of relevant City permits, prior to issuance of first architectural addenda

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org.

9. **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:

- a. 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;
- b. On-site, in a driveway, underground;
- c. On-site, above ground, screened from view, other than a ground floor façade facing a public right-of-way;
- d. 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;
- e. Public right-of-way, underground; and based on Better Streets Plan guidelines;
- f. Public right-of-way, above ground, screened from view; and based on Better Streets Plan guidelines;
- g. On-site, in a ground floor façade (the least desirable location).

- i. 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>

PARKING AND TRAFFIC

10. **Off-Street Parking for All Units.** All off-street parking spaces shall be made available to project residents only as a separate "add-on" option for purchase or rent and shall not be bundled with any project dwelling unit for the life of the dwelling units. The required parking spaces may be made available to residents within a quarter mile of the project. All affordable dwelling units pursuant to Planning Code Section 415 shall have equal access to use of the parking as the market rate units, with parking spaces priced commensurate with the affordability of the dwelling unit. Each unit within the project shall have the first right of refusal to rent or purchase a parking space until the number of residential parking spaces are no longer available. No conditions may be placed on the purchase or rental of dwelling units, nor may homeowner's rules be established, which prevent or preclude the separation of parking spaces from dwelling units.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

PROVISIONS

11. **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

12. **Transit Impact Development Fee.** Pursuant to Planning Code Section 411 (formerly Chapter 38 of the Administrative Code), the Project Sponsor shall pay the Transit Impact Development Fee (TIDF) as required by and 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 Planning Director with certification that the fee has been paid.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

13. Affordable Units

- A. **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. The Project contains 88 units; therefore, 13 affordable units are required. The Project Sponsor will fulfill this requirement by providing the 13 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 or the Mayor's Office of Housing at 415-701-5500, www.sf-moh.org.

- B. **Unit Mix.** The Project contains 54 junior, one-bedroom units and 34 two-bedroom units; therefore, the required affordable unit mix is eight junior, one-bedroom units and five two-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 or the Mayor's Office of Housing at 415-701-5500, www.sf-moh.org.*
- C. **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 or the Mayor's Office of Housing at 415-701-5500, www.sf-moh.org.*
- D. **Phasing.** If any building permit is issued for partial phasing of the Project, the Project Sponsor shall have designated not less than fifteen percent (15%) 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 or the Mayor's Office of Housing at 415-701-5500, www.sf-moh.org.*
- E. **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 or the Mayor's Office of Housing at 415-701-5500, www.sf-moh.org.*
- F. **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 or the Mayor's Office of Housing at 415-701-5500, 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 rent, the affordable unit(s) shall be rented to qualifying households, as defined in the Procedures Manual, whose gross annual income, adjusted for household size, does not exceed an average fifty-five (55) 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 and subsequent rent level of such units shall be calculated according to the Procedures Manual. Limitations on (i) occupancy; (ii) lease changes; (iii) subleasing, 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 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 the Project 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 the intention to enter into an agreement with the City to qualify for a waiver from the Costa-Hawkins Rental Housing Act based upon the proposed incentives and concessions (as defined in California Government Code Sections 65915 et seq.) provided by the City and approved by

- this Conditional Use Authorization and the separately requested variance determination issued by the Zoning Administrator. The Project Sponsor has executed the Costa Hawkins agreement and will record a Memorandum of Agreement prior to issuance of the first construction document or must revert to payment of the Affordable Housing Fee.
- 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.
 - i. Project Sponsor has indicated that it may apply for California Debt Limit Allocation Committee (CDLAC) tax exempt bond financing. If the Project Sponsor receives such funding and has demonstrated that it is eligible for an exception from the Inclusionary Affordable Housing Program requirement under Planning Code Section 415.3(c)(4) because it provides twenty percent (20%) of all of the Project's on-site residential units as affordable to be occupied only by households whose incomes do not exceed fifty percent (50%) of area median income, then the requirements of this condition 13 (Affordable Units) shall not apply for so long as all of the conditions set forth in Planning Code Section 415.3(c)(4) are satisfied. In accordance with Planning Code Section 415.3(c)(4), if Project Sponsor establishes eligibility thereunder, Project Sponsor must record a Notice of Special Restrictions against the property that provides that, in the event of foreclosure or for any other reason, the Project no longer qualifies as a Project meeting the requirements of Planning Code Section 415.3(c)(4), the Project will either: (i) pay the Affordable Housing Fee plus interest from the date the project received its first construction document for the Project if no affordable units were ever provided or, if affordable units were provided and occupied, then the Affordable Housing Fee with no interest is due on the date the units were no longer occupied by qualifying households; or (ii) provide the required number of on-site affordable units required at time of original Project approval and that those units shall be subject to all of the requirements of the Inclusionary Affordable Housing Program. The Project Sponsor shall promptly provide a copy of the recorded Notice of Special Restriction to the Department and to MOH or its successor. In the event that there is a foreclosure or other event triggering the above requirement, the requirements of condition 13 shall re-apply, and the Project Sponsor shall record a new Notice of Special Restrictions against the property specifying the manner in which it complies with Inclusionary Affordable Housing Program, including but not limited

to any specific units restricted as affordable under Planning Code Section 415.3(c)(4)(C)(ii). The new Notice of Special Restrictions shall provide that the units must comply with all of the requirements of the Inclusionary Affordable Housing Program.

MONITORING

14. **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*
15. **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*

OPERATION

16. **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/>*
17. **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>*
18. **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*

19. **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

**EXHIBIT C:
 MITIGATION MONITORING AND REPORTING PROGRAM
 (Including the Text of the Mitigation Measures Adopted as Conditions of Approval)**

Mitigation Measures Adopted As Conditions of Approval	Responsibility for Implementation	Mitigation Schedule	Monitoring/Report Responsibility	Status/Date Completed
1. Archeological Resources				
<p>The following mitigation measure is required to avoid any potential adverse effect from the project on accidentally discovered buried or submerged historical resources as defined in CEQA Guidelines Section 15064.5(a)(c). The project sponsor shall distribute the Planning Department archeological resource "ALERT" sheet to the project prime contractor; to any project subcontractor (including demolition, excavation, grading, foundation, pile driving, etc. firms); or utilities firm involved in soils disturbing activities within the project site. Prior to any soils disturbing activities being undertaken each contractor is responsible for ensuring that the "ALERT" sheet is circulated to all field personnel including, machine operators, field crew, pile drivers, supervisory personnel, etc. The project sponsor shall provide the Environmental Review Officer (ERO) with a signed affidavit from the responsible parties (prime contractor, subcontractors), and utilities firm) to the ERO confirming that all field personnel have received copies of the Alert Sheet.</p>	Project Sponsor.	Prior to any soil-disturbing activities.	Project Sponsor to provide affidavit to the ERO confirming that all field personnel have received copies of the "ALERT" Sheet.	Considered complete upon ERO receipt of affidavit.
<p>Should any indication of an archeological resource be encountered during any soils disturbing activity of the project, the project Head Foreman and/or project sponsor shall immediately notify the ERO and shall immediately suspend any soils disturbing activities in the vicinity of the discovery until the ERO has determined what additional measures should be undertaken.</p> <p>If the ERO determines that an archeological resource may be present within the project site, the project sponsor shall retain the services of a qualified archeological consultant. The archeological consultant shall advise the ERO as to whether the discovery is an archeological resource, retains sufficient integrity, and is of potential scientific/historical/cultural significance. If an archeological resource is present, the archeological consultant shall identify and evaluate the archeological resource. The archeological consultant shall make a recommendation as to what action, if any, is warranted. Based on this information, the ERO may require, if warranted, specific additional measures to be implemented by the project sponsor.</p>	Project Sponsor, Contractor(s), and Archeologist.	During soil-disturbing activities.	Consultant to prepare memorandum to file indicating results of consultation with archeologist.	Considered complete upon later of ERO's drafting of memo or ERO's direction to implement further measures.

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Archeological Resources (cont'd.)				
Measures might include: preservation in situ of the archeological resource; an archeological monitoring program; or an archeological testing program. If an archeological monitoring program or archeological testing program is required, it shall be consistent with the Major Environmental Analysis (MEA) division guidelines for such programs. The ERO may also require that the project sponsor immediately implement a site security program if the archeological resource is at risk from vandalism, looting, or other damaging actions.	(see above)	(see above)	(see above)	(see above)
The project archeological consultant shall submit a Final Archeological Resources Report (FARR) to the ERO that evaluates the historical significance of any discovered archeological resource and describing the archeological and historical research methods employed in the archeological monitoring/data recovery program(s) undertaken. Information that may put at risk any archeological resource shall be provided in a separate removable insert within the final report.	Project sponsor and Archeological Consultant.	Following completion of any archeological field program.	ERO to review Draft FARR.	Considered complete upon ERO approval of Draft FARR.
Copies of the Draft FARR shall be sent to the ERO for review and approval. Once approved by the ERO, copies of the FARR shall be distributed as follows: California Archeological Site Survey Northwest Information Center (NWIC) shall receive one (1) copy and the ERO shall receive a copy of the transmittal of the FARR to the NWIC. The Major Environmental Analysis division of the Planning Department shall receive three copies of the FARR along with copies of any formal site recordation forms (CA DPR 523 series) and/or documentation for nomination to the National Register of Historic Places/California Register of Historical Resources. In instances of high public interest or interpretive value, the ERO may require a different final report content, format, and distribution than that presented above.	Project Sponsor.	Upon ERO approval of Draft FARR.	Project Sponsor to provide ERO with copies of transmittals of FARR distribution.	Considered complete upon receipt by ERO of evidence of distribution.

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2. Hazardous Materials				
<p><i>Step 1: Soil Testing</i></p> <p>Prior to approval of a building permit for the project, the project sponsor shall hire a consultant to collect soil samples (borings) from areas on the site in which soil would be disturbed and test the soil samples for contamination. The project sponsor shall enter the San Francisco Voluntary Remedial Action Program (VRAP) under the DPH. The project sponsor shall submit a VRAP application and a fee of \$592 in the form of a check payable to the San Francisco Department of Public Health (DPH), to the Site Assessment and Mitigation Program, Department of Public Health, 1390 Market Street, Suite 210, San Francisco, California 94102. The fee of \$592 shall cover three hours of soil testing report review and administrative handling. If additional review is necessary, DPH shall bill the project sponsor for each additional hour of review over the first three hours, at a rate of \$197 per hour. These fees shall be charged pursuant to Section 31.47(c) of the San Francisco Administrative Code. The consultant shall submit the work plan to DPH for review and concurrence prior to performing the soil sampling. The consultant shall analyze the soil borings as discrete, not composite samples. The consultant shall prepare a report on the soil testing that includes the results of the soil testing and a map that shows the locations of stockpiled soils from which the consultant collected the soil samples. The project sponsor shall submit the report on the soil testing to DPH for review and concurrence. DPH shall review the soil testing program to determine whether soils on the project site are contaminated with lead or petroleum hydrocarbons at or above potentially hazardous levels.</p>	Project Sponsor	Prior to soil-disturbing activity.	DPH to review soil testing report and advise ERO and Department of Building Inspection (DBI) if Site Mitigation Plan (SMP) is required.	<p>Prior to issuance of grading or excavation permit.</p> <p>Considered complete upon receipt by DPH, ERO, and DBI of monitoring report.</p>
<p><i>Step 2: Preparation of Site Mitigation Plan</i></p> <p>Prior to beginning demolition and construction work, the project sponsor shall prepare a Site Mitigation Plan (SMP). The SMP shall include a discussion of the level of contamination of soils on the project site and mitigation measures for managing contaminated soils on the site, including but not limited to: 1) the alternatives for managing contaminated soils on the site (e.g., encapsulation/capping, partial or complete removal, treatment, recycling for reuse, or a combination); 2) the preferred alternative for managing contaminated soils on the site and a brief justification; and 3) the specific</p>	Project Sponsor.	Upon DPH determination that SMP is required.	If SMP is required, Project Sponsor or contractor shall submit a monitoring report to DPH, with a copy to DBI and ERO, at end of construction.	<p>Prior to issuance of certificate of occupancy.</p> <p>Considered complete upon receipt of monitoring report.</p>

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<p>practices to be used to handle, haul, and dispose of contaminated soils on the site. The SMP shall be submitted to the Department of Public Health (DPH) for review and approval at least six weeks prior to beginning demolition and construction work. A copy of the SMP shall be submitted to the Planning Department to become part of the case file. Additionally, the DPH may require confirmatory samples for the project site.</p>				
<p><i>Step 3: Handling, Hauling, Treatment, and Disposal of Contaminated Soils and Groundwater</i></p> <p>(a) <u>Specific work practices</u>: If, based on the results of the soil tests conducted, DPH determines that the soils on the project site are contaminated at or above potentially hazardous levels, the construction contractor shall be alert for the presence of such soils during excavation and other construction activities on the site (detected through soil odor, color, and texture and results of on-site soil testing), and shall be prepared to handle, profile (i.e., characterize), and dispose of such soils appropriately (i.e., as dictated by local, state, and federal regulations) when such soils are encountered on the site. If excavated materials contain over one percent friable asbestos, they shall be treated as hazardous waste, and shall be transported and disposed of in accordance with applicable State and federal regulations. These procedures are intended to mitigate any potential health risks related to chrysotile asbestos, which may or may not be located on the site.</p> <p>(b) <u>Dust suppression</u>: Soils exposed during excavation for site preparation and project construction activities shall be kept moist throughout the time they are exposed, both during and after construction work hours.</p> <p>(c) <u>Surface water runoff control</u>: Where soils are stockpiled, visqueen shall be used to create an impermeable liner, both beneath and on top of the soils, with a berm to contain any potential surface water runoff from the soil stockpiles during inclement weather.</p> <p>(d) <u>Soils replacement</u>: If necessary, clean fill or other suitable material(s)</p>	<p>Project Sponsor.</p>	<p>During construction.</p>	<p>Project Sponsor to provide DPH with monitoring report following soil-disturbing construction period and final monitoring report at conclusion of building construction. Copies of reports to be provided to DBI and ERO.</p>	<p>Prior to issuance of certificate of occupancy.</p> <p>Considered complete upon receipt of monitoring report.</p>

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Mitigation Measures Adopted As Conditions of Approval	Responsibility for Implementation	Mitigation Schedule	Monitoring/Report Responsibility	Status/Date Completed
<p>shall be used to bring portions of the project site, where contaminated soils have been excavated and removed, up to construction grade.</p> <p>(e) Hauling and disposal: Contaminated soils shall be hauled off the project site by waste hauling trucks appropriately certified with the State of California and adequately covered to prevent dispersion of the soils during transit, and shall be disposed of at a permitted hazardous waste disposal facility registered with the State of California. Any contaminated groundwater shall be subject to the requirements of the City's Industrial Waste Ordinance (Ord. No. 199-77), requiring that groundwater meet specified water quality standards before it may be discharged into the system.</p>				
<p><i>Step 4: Preparation of Closure/Certification Report</i></p> <p>After construction activities are completed, the project sponsor shall prepare and submit a closure/certification report to DPH for review and approval. The closure/certification report shall include the mitigation measures in the SMP for handling and removing contaminated soils from the project site, whether the construction contractor modified any of these mitigation measures, and how and why the construction contractor modified those mitigation measures.</p>	Project Sponsor.	At completion of foundation.	Project Sponsor to provide closure/certification report to DPH, with copy to DBI and ERO.	<p>Prior to issuance of certificate of occupancy.</p> <p>Considered complete upon receipt of monitoring report.</p>

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<p>Disposal of Contaminated Soil, Site Health and Safety Plan</p> <ul style="list-style-type: none"> If, based on the results of the soil tests conducted, the DPH determines that the soils on the project site are contaminated with contaminants at or above potentially hazardous levels, any contaminated soils designated as hazardous waste and required by DPH to be excavated shall be removed by a qualified Removal Contractor and disposed of at a regulated Class I hazardous waste landfill in accordance with California and U.S. Environmental Protection Agency regulations, as stipulated in the Site Mitigation Plan. The Removal Contractor shall obtain, complete, and sign hazardous waste manifests to accompany the soils to the disposal site. Other excavated soils shall be disposed of in an appropriate landfill, as governed by applicable laws and regulations, or other appropriate actions shall be taken in coordination with the DPH. If the DPH determines that the soils on the project site are contaminated with contaminants at or above potentially hazardous levels, a Site Health and Safety (H&S) Plan shall be required by the California Division of Occupational Safety and Health (Cal-OSHA) prior to initiating any earth-moving activities at the site. The Site Health and Safety Plan shall identify protocols for managing soils during construction to minimize worker and public exposure to contaminated soils. The protocols shall include at a minimum: <ul style="list-style-type: none"> Sweeping of adjacent public streets daily (with water sweepers) if any visible soil material is carried onto the streets. Characterization of excavated native soils proposed for use on site prior to placement to confirm that the soil meets appropriate standards. The dust controls specified in the Construction Dust Control Ordinance (176-08). This includes dust control during excavation and truck loading shall include misting of the area prior to excavation, misting soils while loading onto trucks, stopping all excavation work should winds exceed 25 mph, and limiting vehicle speeds onsite to 15mph. Protocols for managing stockpiled and excavated soils. 	<p>Project sponsor and construction contractor(s).</p>	<p>During construction.</p>	<p>Project Sponsor to provide DPH with monitoring report following soil-disturbing construction period and final monitoring report at conclusion of building construction. Copies of reports to be provided to DBI and ERO.</p>	<p>Prior to issuance of certificate of occupancy. Considered complete upon receipt of monitoring report.</p>

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<ul style="list-style-type: none"> • The Site Health and Safety Plan shall identify site access controls to be implemented from the time of surface disruption through the completion of earthwork construction. The protocols shall include as a minimum: • Appropriate site security to prevent unauthorized pedestrian/vehicular entry, such as fencing or other barrier or sufficient height and structural integrity to prevent entry and based upon the degree of control required. • Posting of “no trespassing” signs. • Providing on-site meetings with construction workers to inform them about security measures and reporting/contingency procedures. • If groundwater contamination is identified, the Site Health and Safety Plan and Site Mitigation Plan shall identify protocols for managing groundwater during construction to minimize worker and public exposure to contaminated groundwater. The protocols shall include procedures to prevent unacceptable migration of contamination from defined plumes during dewatering. • The Site Health and Safety Plan shall include a requirement that construction personnel be trained to recognize potential hazards associated with underground features that could contain hazardous substances, previously unidentified contamination, or buried hazardous debris. Excavation personnel shall also be required to wash hands and face before eating, smoking, and drinking. • The Site Health and Safety Plan shall include procedures for implementing a contingency plan, including appropriate notification and control procedures, in the event unanticipated subsurface hazards are discovered during construction. Control procedures shall include, but would not be limited to, investigation and removal of underground storage tanks or other hazards. 				

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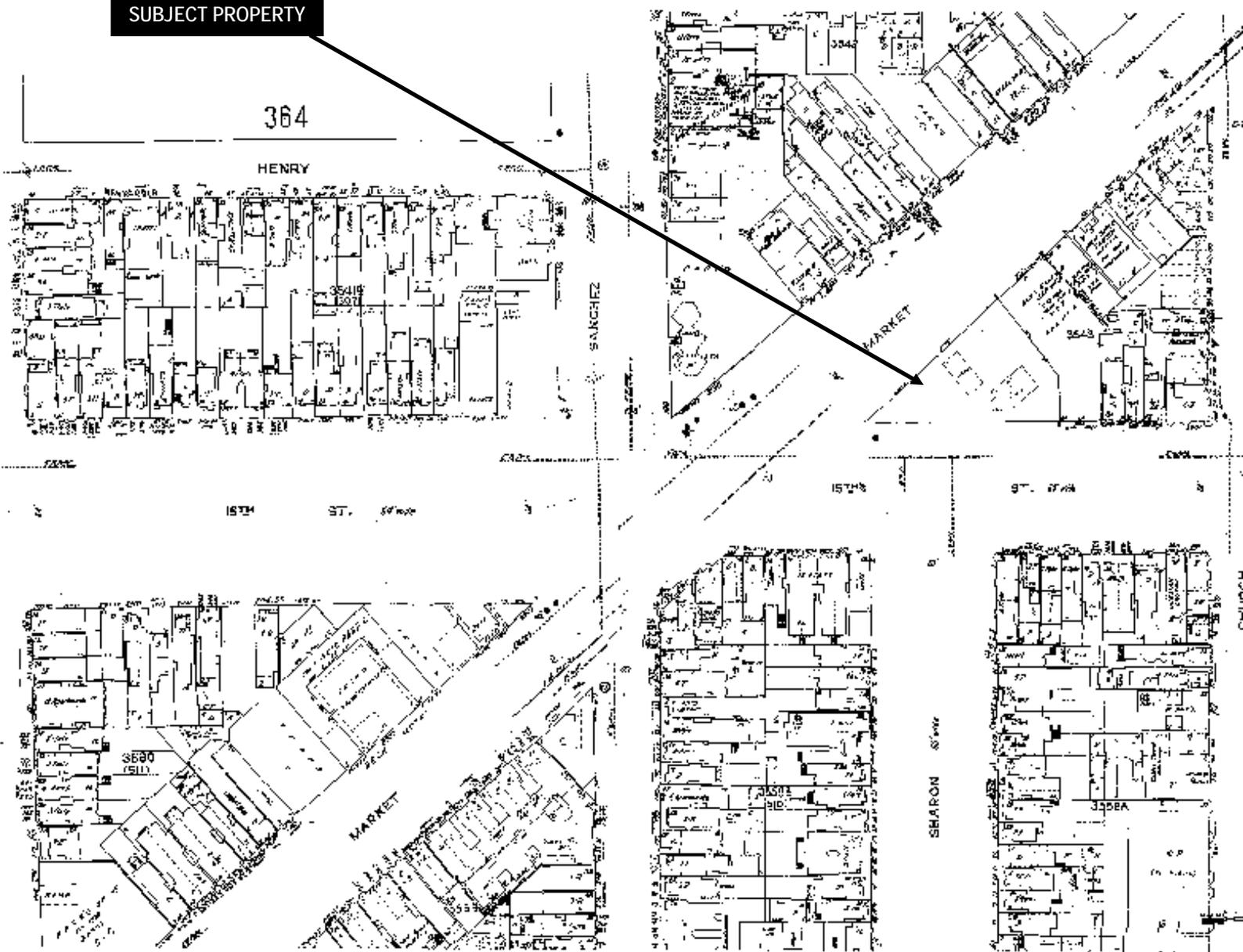
Mitigation Measures Adopted As Conditions of Approval	Responsibility for Implementation	Mitigation Schedule	Monitoring/Report Responsibility	Status/Date Completed
<p>UST Removal and/or Monitoring: In accordance with San Francisco Health Code Article 21, the project sponsor shall file an application with the San Francisco Department of Public Health (DPH) for removal and/or monitoring of any underground storage tanks (USTs) that are identified during project construction. If the proposed excavation activities encounter groundwater, the groundwater shall also be tested for contaminants. Copies of the test results shall be submitted to the DPH, Division of Environmental Health, and to the Planning Department's Environmental Review Officer, prior to the start of construction.</p> <p>If contamination or abandoned tanks are encountered, the project sponsor shall immediately notify the DPH, Division of Environmental Health, and shall take all necessary steps to ensure the safety of site workers and members of the public. USTs shall be removed by an appropriate licensed UST contractor under permit by the Hazardous Materials Unified Program Agency (HMUPA) and the San Francisco Fire Department. If petroleum hydrocarbon contamination is found in soil or if the UST has holes, it shall be referred to the Local Oversight Program (LOP) for cleanup under State regulations. This may be separate from the soil cleanup for lead if groundwater is impacted. If excavation for the project includes the UST area, the LOP will have appropriate remediation.</p> <p>Imported fill shall be characterized to be below residential ESLs. A health and safety plan shall be submitted to DPH two weeks prior to the commencement of work. DPH requires confirmatory sampling to occur following excavation of the site to confirm the removal of contaminated soils. These steps shall include implementation of a health and safety plan prepared by a qualified professional, and disposal of any contaminated soils removed from the site at an approved facility. In addition, the project shall be constructed, so that all remaining site soils are entirely capped beneath a concrete slab. If confirmation testing following site excavation indicates that contaminated soils remain on site, a deed restriction notifying subsequent property owners of the contamination and the necessity of maintaining the cap, shall be executed, prior to a certificate of occupancy.</p>	<p>Project sponsor and construction contractor(s).</p>	<p>During construction.</p>	<p>Project sponsor and construction contractor(s).</p>	<p>Considered complete on issuance of building permit.</p>

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 MITIGATION MONITORING AND REPORTING PROGRAM
 (Including the Text of the Mitigation Measures Adopted as Conditions of Approval)**

Mitigation Measures Adopted As Conditions of Approval	Responsibility for Implementation	Mitigation Schedule	Monitoring/Report Responsibility	Status/Date Completed
<p>Hazardous Materials</p> <ul style="list-style-type: none"> • Airborne particulates shall be minimized by wetting exposed soils, as appropriate, containing runoff, and tarping over-night and weekends. • Storage stockpiles shall be minimized, where practical, and properly labeled and secured. • Vehicle speeds across unpaved areas shall not exceed 15 mph to reduce dust emissions. • Activities shall be conducted so as not to track contaminants beyond the regulated area. • Misting, fogging, or periodic dampening shall be utilized to minimize fugitive dust, as appropriate. • Contaminants and regulated areas shall be properly maintained. 	Project Sponsor	During construction.	Project sponsor and construction contractor(s).	Considered complete on issuance of building permit.

Sanborn Map*

SUBJECT PROPERTY

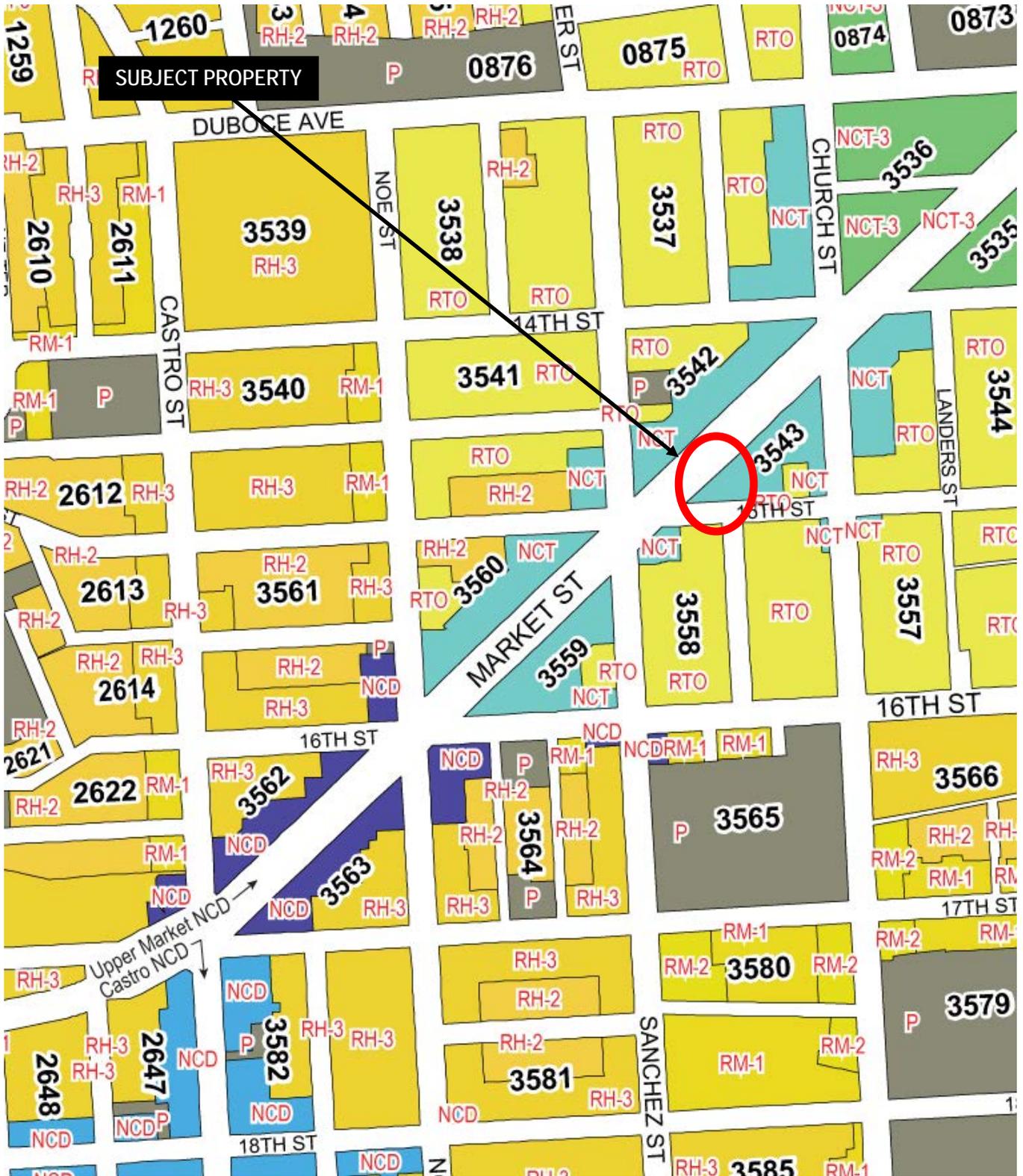


**The Sanborn Maps in San Francisco have not been updated since 1998, and this map may not accurately reflect existing conditions.*



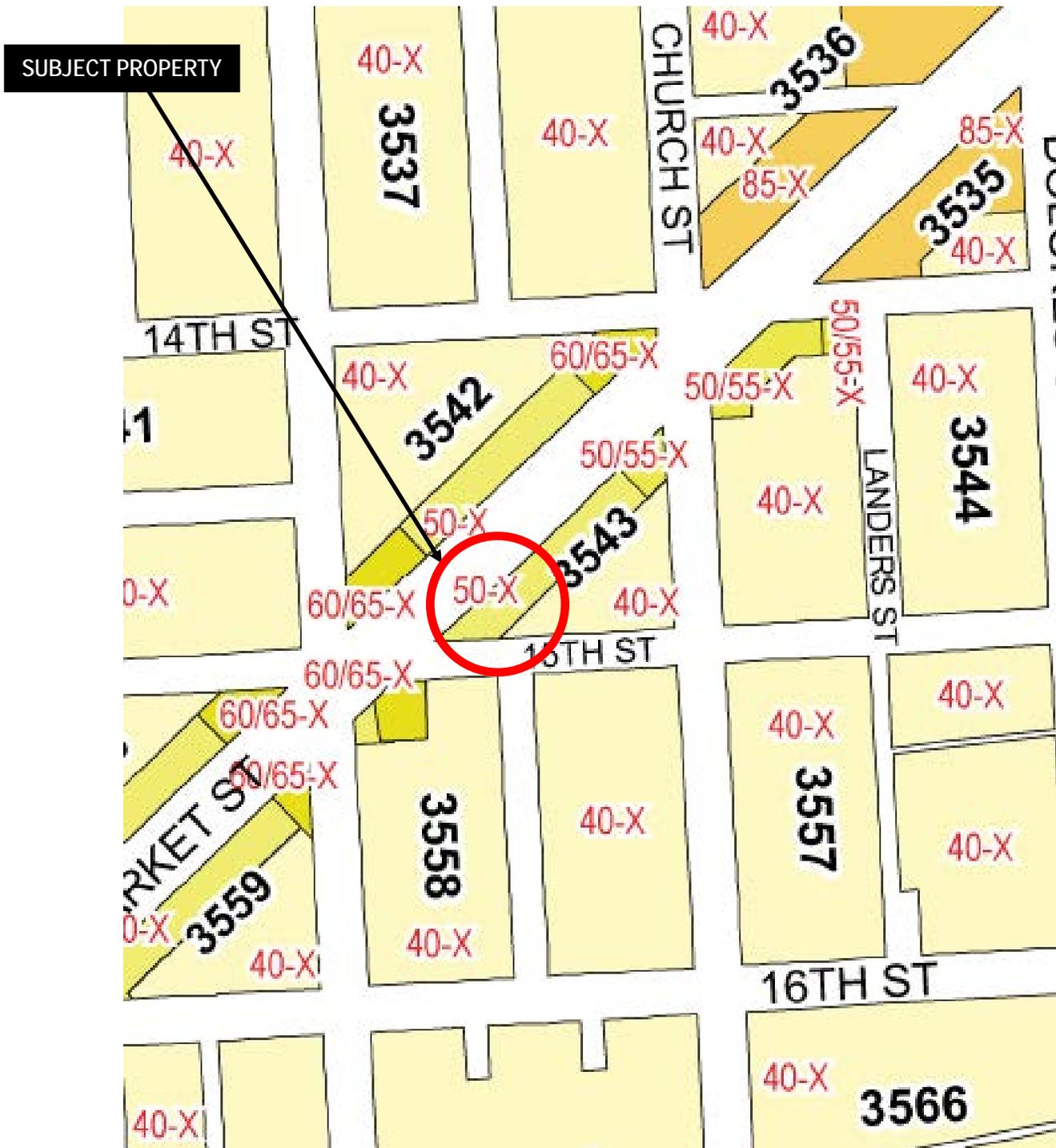
Conditional Use Hearing
Case Number 2012.0110CEV
2175 Market Street

Zoning Map



Conditional Use Hearing
Case Number 2012.0110CEV
2175 Market Street

Height and Bulk Map



**The above map does not reflect more recent changes to the height limit.*



Conditional Use Hearing
Case Number 2008.0550C
2001 Market Street

Aerial Photo



SUBJECT PROPERTY



Conditional Use Hearing
Case Number 2008.0550C
2001 Market Street

Aerial Photo



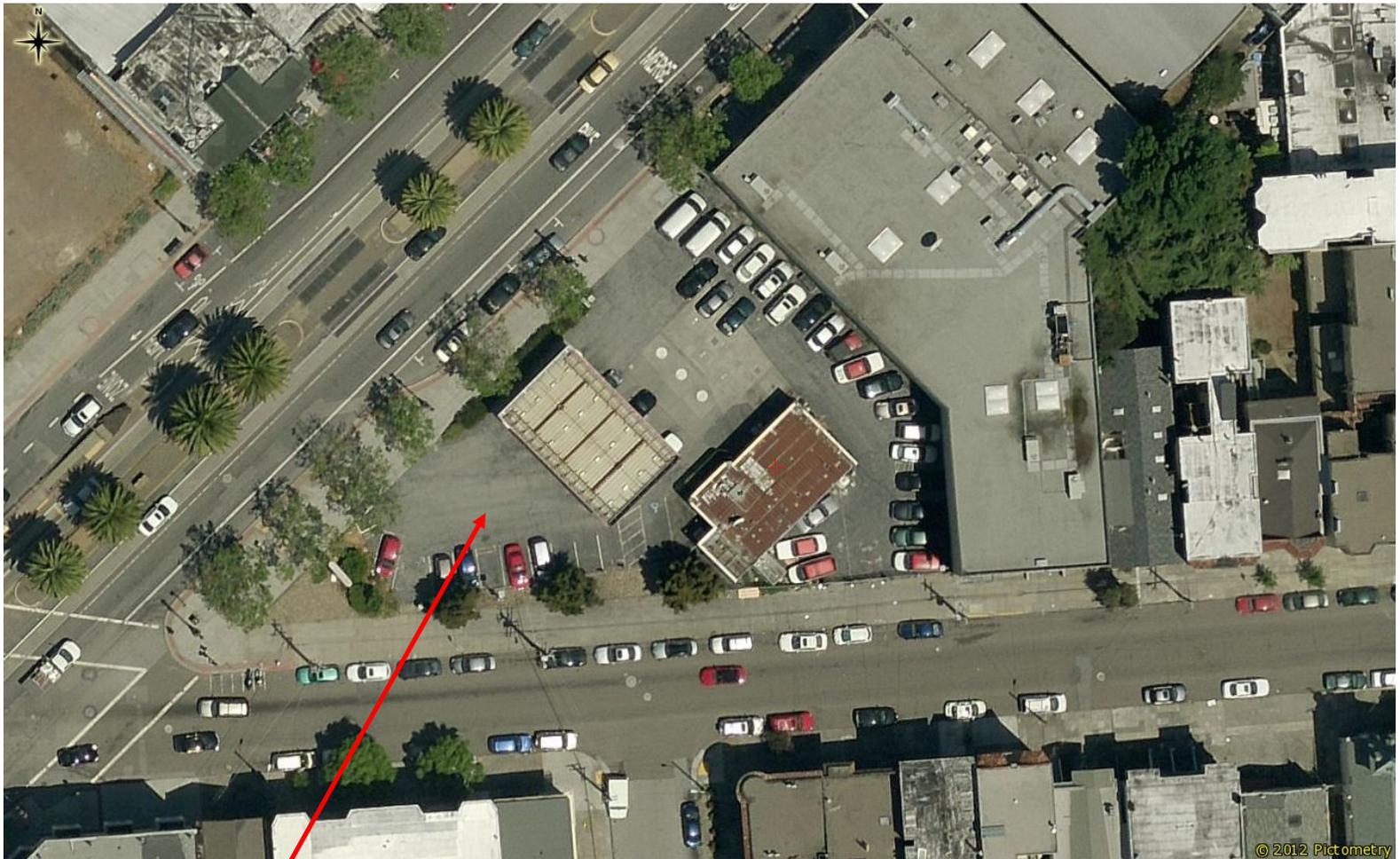
© 2012 Pictometry

SUBJECT PROPERTY



Conditional Use Hearing
Case Number 2012.0110CEV
2175 Market Street

Aerial Photo



SUBJECT PROPERTY



Conditional Use Hearing
Case Number 2012.0110CEV
2175 Market Street

Aerial Photo



SUBJECT PROPERTY



Conditional Use Hearing
Case Number 2012.0110CEV
2175 Market Street



SAN FRANCISCO PLANNING DEPARTMENT

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

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

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 2007-2014	Units Entitled To Date	Percent Entitled
Total Units Entitled¹	31,193	11,130	35.7%
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%

¹ 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).

Free Recording Requested Pursuant to
Government Code Section 27383

When recorded, mail to:
San Francisco Planning Department
1650 Mission Street
San Francisco, California 94102
Attn: Director

**MEMORANDUM OF AGREEMENT TO PROVIDE ON-SITE AFFORDABLE
HOUSING UNITS**

This Memorandum of Agreement to Provide On-Site Affordable Housing Units ("Memorandum") is entered into as of September 6, 2012, by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the "City"), acting by and through its Planning Department ("City"), and FC 2175 MARKET, L.L.C., a Delaware limited liability company ("Developer"), with respect to the project approved for 2175 Market Street (the "Project").

1. The Parties entered into that certain Agreement to Provide On-Site Affordable Housing Units ("Agreement") dated for reference purposes only as of September 6, 2012, pursuant to which Developer elected, in exchange for certain concessions from the City, to provide the Inclusionary Units in the Project in lieu of payment of all or a portion of the Affordable Housing Fee in satisfaction of its obligation under the Affordable Housing Program. The Parties further agreed that the provisions of the Costa-Hawkins Act that limit the City's ability to impose rent restrictions would not apply to the Inclusionary Units for the reasons set forth in the Agreement. The Agreement includes waivers and covenants, including but not limited to covenants not to take actions against the City that conflict with the terms of the Agreement. Initially-capitalized terms contained herein and not otherwise defined herein shall have the meanings given them in the Agreement. This Memorandum shall incorporate herein all of the terms and provisions of the Agreement as though fully set forth herein.

2. The property that is the subject of the Agreement consists of the real property located at 2175 Market Street, Lot 011 in Assessor's Block 3543, as more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Property").

3. The Agreement runs with the land and any person or entity that owns an interest in the Property and/or the Project, as defined in the Agreement, is subject to the requirements of the Agreement, including but not limited to the waivers set forth in the Agreement.

4. This Memorandum is solely for recording purposes and shall not be construed to alter, modify, amend or supplement the Agreement, of which this is a memorandum.

5. This Memorandum may be signed by the parties hereto in counterparts with the same effect as if the signatures to each counterpart were upon a single instrument. All counterparts shall be deemed an original of this Memorandum.

Executed as of September 6, 2012.

DEVELOPER:

FC 2175 Market, LLC
a Delaware limited liability company

By: _____
Name: Alexa Arena
Title: Vice President

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
John Rahaim
Director of Planning

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
Deputy City Attorney

SIGNATURES MUST BE NOTARIZED

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

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

AGREEMENT TO PROVIDE ON-SITE AFFORDABLE HOUSING UNITS
BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO AND
FC 2175 MARKET, LLC RELATIVE TO THE
DEVELOPMENT KNOWN AS 2175 MARKET STREET

THIS AGREEMENT TO PROVIDE ON-SITE AFFORDABLE HOUSING UNITS (“Agreement”) dated for reference purposes only as of this 6th day of September, 2012, 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 FC 2175 MARKET, L.L.C., a Delaware limited liability company (“Developer”) with respect to the project approved for 2175 Market Street. City and Developer 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 City's ability to restrict 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 (Civil 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 City's Inclusionary Affordable Housing Program (Planning Code Section 415 et seq., hereafter "Affordable Housing Program") 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 developer’s 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 2175 Market Street, Lot 011 in Assessor’s Block 3543 (hereinafter “Property”). The Property is more particularly described in Exhibit A attached hereto. The Property is owned in fee by Developer.

C. Development Proposal; Intent of the Parties. The Developer proposes to construct a mixed residential and commercial project on the Property, consisting of the development of approximately 88 residential dwelling units and approximately 6,300 square feet of ground floor retail space (the “Project”). City’s Planning Commission approved the Project by its Motion No. _____ (the "CU Approval") and the City’s Zoning Administrator approved the requested variances (the “Variance Decision”) on September 6, 2012. The Variance Decision and CU Approval 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 fifteen percent (15%) of the Project’s dwelling units, which, based on an 88-unit Project, would total 13 inclusionary units (the “Inclusionary Units”). The dwelling units in the Project that are not

Inclusionary Units, representing eighty-five percent (85%) of the Project's dwelling units, which, based on an 88-unit Project, would total 75 units (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. Affordable Housing Program. The Affordable Housing Program provides that developers of any housing project consisting of five 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. Developer's Election to Provide On-Site Rental Units. Developer has 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 Costa-Hawkins Act that allows City to impose rent restrictions 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 City Planning Code, and all other applicable laws and regulations.

G. Project's Compliance with CEQA. Pursuant to CEQA, the CEQA Guidelines, and Chapter 31 of the City Administrative Code, a Community Plan Exemption (the "CPE") and Mitigated Negative Declaration (the "MND") were prepared for the Project. The CPE and Final MND were reviewed and considered by the City Planning Department, which found that the CPE and Final MND and procedures through which they were prepared, publicized and reviewed, complied with CEQA, the CEQA Guidelines and Chapter 31 of the City Administrative Code. The City Planning Commission adopted CEQA findings specific to the Project on September 6, 2012 in Motion No. _____, which are incorporated by reference herein. The information in the CPE and Final MND was considered by all entities with review and approval authority over the Project prior to the approval of the Project.

H. General Plan Consistency 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, including the Market and Octavia 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 CONCESSIONS AND INCENTIVES FOR THE INCLUSIONARY UNITS.

2.1 Concessions and Incentives. The Developer has received the following concessions and incentives for the production of the Inclusionary Units on-site.

2.1.1 Project Approvals. On September 6, 2012, the City's Planning Commission and Zoning Administrator approved the Project Approvals. The Project Approvals include CU authorizations granted in the CU Approval for development on a lot greater than 9,999 square feet (pursuant to City Planning Code Section 733.11), modification of dwelling unit mix requirements (pursuant to City Planning Code Section 207.6), and to establish a restaurant use (pursuant to City Planning Code Section 733.44). The Project Approvals also include variances granted in the Variance Decision for rear yard (pursuant to City Planning Code Sections 733.12 and 134), dwelling unit exposure (pursuant to City Planning Code Section 140), residential open space exposure (pursuant to Planning Code Section 135), and ground floor non-residential ceiling height (pursuant to Planning Code Section 145.1(c)(4)(B)) requirements.

2.1.2 Waiver of Affordable Housing Fee. City hereby determines that the Developer has 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 Developer 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, Developer agrees 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, Developer hereby enters 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 City Administrative Code) apply to the Market Rate Units.

2.3 Rescission of Project Approvals. In the event the City or a court of competent jurisdiction rescinds the Project Approvals prior to commencement of construction for the Project, Developer may terminate this Agreement.

3. COVENANTS OF DEVELOPER

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 Developer obtaining its first certificate of occupancy for the Project, Developer shall provide the Inclusionary Units on-site for the life of the Project, in lieu of payment of the Affordable Housing Fee. For example, based on the contemplated total of 88 units comprising the Project, a total of 13 Inclusionary Units would be required for the Project in lieu of payment of the Affordable Housing Fee.

3.2 Developer's 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 City 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 concessions and incentives specified in Section 2.1 of this Agreement, which the Parties acknowledge will 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, Developer, on behalf of itself and all its 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 (not as to the Market Rate Units) consistent with Section 3.1 of this Agreement. Without limiting the foregoing, Developer, on behalf of itself and all successors and assigns to this Agreement, agrees not to bring any legal 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 Developer's Waiver of Right to Seek Waiver of Affordable Housing Program. Developer specifically agrees to be bound by all of the current provisions of the Affordable Housing Program applicable to on-site inclusionary units with respect to the Inclusionary Units. Developer agrees that it will not seek a waiver of the provisions of the Affordable Housing Program applicable to the Inclusionary Units.

3.4 No Obligation to Construct. By entering into this Agreement, Developer is not assuming any obligation to construct the Project, and the covenants of Developer hereunder become operative only in the event Developer proceeds with construction of the Project and obtains a first certificate of occupancy for the Project.

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, and the Affordable Housing Program 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 Developer may have to modify the Project or Project Approvals with respect to the Inclusionary Units to the extent permitted by such changes to the Affordable Housing Program.

5. DEVELOPER REPRESENTATIONS, WARRANTIES AND COVENANTS.

5.1 Interest of Developer. Developer represents that it is the legal and equitable fee owner of the Property, that it has 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. Developer is a limited liability company, duly organized and validly existing and in good standing under the laws of the State of Delaware. Developer has all requisite power and authority to own property and conduct business as presently conducted. Developer has made all filings and is in good standing in the State of California.

5.2 No Conflict With Other Agreements; No Further Approvals; No Suits. Developer warrants and represents that it is not a party to any other agreement that would conflict with the Developer's obligations under this Agreement. Neither Developer's articles of organization, bylaws, or operating agreement, as applicable, nor any other agreement or law in any way prohibits, limits or otherwise affects the right or power of Developer to enter into and perform all of the terms and covenants of 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 Developer of this Agreement or any of the terms and covenants contained in this Agreement. To Developer's knowledge, there are no pending or threatened suits or proceedings or undischarged judgments affecting Developer or any of its members before any court, governmental agency, or arbitrator which might materially adversely affect Developer's business, operations, or assets or Developer's ability to perform under this Agreement.

5.3 Priority of Agreement. Developer warrants and represents that there is no prior lien or encumbrance against the Property which, upon foreclosure, would be free and clear of the obligations set forth in this Agreement.

5.4 No Inability to Perform; Valid Execution. Developer warrants and represents that it has 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 Developer have been duly and validly authorized by all necessary action. This Agreement will be a legal, valid and binding obligation of Developer, enforceable against Developer in accordance with its terms.

5.5 Conflict of Interest. Through its execution of this Agreement, the Developer acknowledges that it is 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 it does not know of any facts which constitute a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

5.6 Notification of Limitations on Contributions. Through execution of this Agreement, the Developer acknowledges that it is 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.

5.7 Nondiscrimination. In the performance of this Agreement, Developer agrees 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 Developer, 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 Developer. A similar provision shall be included in all subcontracts (as defined in City Administrative Code Section 12B) let, awarded, negotiated or entered into by the Developer 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 or any subsequent approval for the Project (or project substantially similar to the Project) ("Subsequent Approval") 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 or Subsequent Approval). Notwithstanding the foregoing, in the event of any direct conflict between the terms of this Agreement and any amendment to the Project Approvals or any Subsequent Approval, 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. Developer may assign or transfer its duties and obligations under this Agreement to another entity, provided such entity is the 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 Developer. The provisions in this Section 7 shall not be deemed to prohibit or otherwise restrict Developer 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 Project Approvals shall be deemed waived by City by reason of the rights given to the Developer pursuant to this Section 7.2. Furthermore, although the Developer initially intends to operate the Project on a rental basis, nothing in this Agreement shall prevent Developer 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 units shall only be sold pursuant to the City procedures for sale of inclusionary units under the Affordable Housing Program.

7.3 Developer's Responsibility for Performance. If Developer transfers or assigns all or any portion of the Property to a Transferee, Developer 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 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 Developer's 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 Developer and the Transferee.

7.4 Release Upon Transfer or Assignment. Upon the Developer's transfer or assignment of all or a portion of the Property or any interest therein, including the Developer's rights and interests under this Agreement, the Developer shall be released from any obligations under this Agreement with respect to the portion of the Property so transferred; provided, however, that (i) the Developer is 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 Developer under this Agreement and shall have no effect upon the Developer's rights under this Agreement as to the remaining portions of the Property owned by the Developer. Further, a default under this Agreement by the Developer as to any portion of the Property not transferred 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, including any mortgagee 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 Developer 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 Developer 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 (or any amendment to the Project Approvals or any Subsequent Approval) and this Agreement.

7.5.3 If City receives a written notice from a Mortgagee or from Developer requesting a copy of any Notice of Default delivered to Developer and specifying the address for service thereof, then City shall deliver to such Mortgagee at such Mortgagee's cost (or Developer's cost), concurrently with service thereon to Developer, any Notice of Default delivered to Developer 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.

7.5.4 A Mortgagee shall have the right, at its option, to cure any default or breach by the Developer under this Agreement within the same time period as Developer has 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 Developer 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. 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.

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 Developer's 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 Developer. 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 receipt of a written notice of default and demand for compliance; provided, however, if a cure cannot reasonably be completed within thirty (30) calendar 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) calendar days. The Parties may mutually agree to extend the 120 day limit set forth in this Section 8.2.

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 this 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. This 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 reasonably 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 Developer. 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 the Project Approvals shall be deemed to refer to this Agreement or the Project Approvals (or any Subsequent Approval) as they 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 Project proposed to be undertaken by Developer 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 Developer shall exercise full dominion and control over the Property, subject only to the limitations and obligations of the Developer 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 Developer. Neither Party is acting as the agent of the other Party in any respect hereunder. The Developer is not a state or governmental actor with respect to any activity conducted by the Developer 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:

DRAFT

To City:

John Rahaim
Director of Planning
San Francisco Planning Department
1650 Mission Street
Suite 400
San Francisco, California 94103

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 Gross, Dep. City Attorney

To Developer:

Katie O'Brien
FC 2175 Market, LLC
875 Howard Street
Suite 330
San Francisco, CA 94103

with copies to:

Harry O'Brien
Coblentz, Patch, Duffy & Bass
One Ferry Building
Suite 200
San Francisco, CA 94111

David Noyola
Strada Investment Group
100 Spear Street
Suite 2080
San Francisco, CA 94105

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. Developer acknowledges that it has read and understands 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 Developer understands and agrees 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 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.

9.14 Memorandum of Agreement. As a condition to entering into this Agreement, Developer and City shall execute a memorandum of agreement in the form attached hereto as Exhibit B and shall record such memorandum in the official records of the City and County of San Francisco.

Exhibits

- A. Description of Property
- B. Memorandum of Agreement

9.15 Effect of Tax-Exempt Bond Financing. Notwithstanding anything to the contrary contained herein, if, in accordance with Planning Code Section 415.3(c)(4), the Project: (i) uses California Debt Limit Allocation Committee (CDLAC) tax-exempt bond financing; and (ii) provides twenty percent (20%) of all of the Project's on-site residential dwelling units as affordable units to be occupied only to households whose incomes do not exceed fifty percent (50%) of area median income, then the provisions of this Agreement shall not apply to the Project for so long as all of the conditions set forth in Planning Code Section 415.3(c)(4) are satisfied.

DRAFT

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, Approved as to form:
a municipal corporation

Dennis J. Herrera, City Attorney

By: _____
John Rahaim
Director of Planning

By: _____
Evan Gross
Deputy City Attorney

DEVELOPER

FC 2175 Market, LLC
a Delaware limited liability company

By: _____
Name: Alexa Arena
Title: Vice President



SAN FRANCISCO PLANNING DEPARTMENT

Attachment A Certificate of Determination EXEMPTION FROM ENVIRONMENTAL REVIEW

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

Case No.: 2012.0110E
Project Address: 2175 Market Street
Zoning: Upper Market Neighborhood Commercial Transit Zoning District
40-X/60/65-X Height and Bulk District
Block/Lot: 3543/011
Lot Size: 18,425 square feet
Plan Area: Market and Octavia Neighborhood Plan
Project Sponsor: Katie O'Brien, Forest City, (415) 593-4225
Staff Contact: Don Lewis, (415) 575-9095, don.lewis@sfgov.org

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

PROJECT DESCRIPTION:

The project site is located on the southeast corner of Market and 15th Streets in the Castro/Upper Market neighborhood. The project sponsor proposes the demolition of an existing gasoline station that includes a one-story, approximately 1,487-square-foot service building, canopies and gasoline pumps, and the construction of an approximately 104,413-square-foot, mixed-use development containing 88 dwelling units and approximately 6,286 square feet of ground-floor retail space. The residential use (54 one-bedroom units and 34 two-bedroom units) would be approximately 74,838 square feet in size. The proposed development would consist of two separate buildings connected by a shared podium: a 65-foot-tall, six-story building spanning the northwest side of the lot, fronting on Market Street (the "primary

(Continued on next page.)

EXEMPT STATUS:

Exempt per Section 15183 of the California Environmental Quality Act (CEQA) Guidelines and California Public Resources Code Section 21083.3

REMARKS:

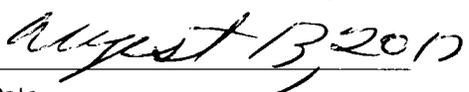
(See next page.)

DETERMINATION:

I do hereby certify that the above determination has been made pursuant to State and Local requirements.



BILL WYCKO
Environmental Review Officer



Date

cc: Katie O'Brien, Project Sponsor; Supervisor Scott Wiener, District 8; Michael Smith, Current Planning Division; Exemption/Exclusion File; Virna Byrd, M.D.F.

PROJECT DESCRIPTION (continued):

building"), and a 40-foot-tall, three-story building at the southeast corner of the lot, fronting on 15th Street (the "secondary building"). The two buildings would be separated by a narrow courtyard accessible from 15th Street. The primary building would have three or four retail spaces on the ground floor with storefronts facing Market Street with residential units located on the ground floor facing the courtyard and on the five floors above. The primary building would be topped by a roof deck and garden. The secondary building would include three floors of residential units. The proposed development would include 44 off-street parking spaces to be provided in an underground parking garage accessed from 15th Street. Both buildings and the courtyard would sit above the subterranean garage. Pedestrian access would be from Market Street and 15th Street. The project would provide 3,270 square feet of common usable open space at the podium-level courtyard and 3,830 square feet at the roof deck, for a total of approximately 7,100 square feet of common open space. The proposed project also includes the removal of four underground storage tanks. The proposed project would require conditional use authorization from the Planning Commission and variances from the Zoning Administrator. The project site is located within the Market and Octavia Area Plan.

REMARKS:

California Environmental Quality Act (CEQA) State Guidelines Section 15183 provides an exemption from environmental review for projects that are consistent with the development density established by existing zoning, community plan or general plan policies for which an Environmental Impact Report (EIR) was certified, except as might be necessary to examine whether there are project-specific effects which are peculiar to the project or its site. Section 15183 specifies that examination of environmental effects shall be limited to those effects that: a) are peculiar to the project or parcel on which the project would be located; b) were not analyzed as significant effects in a prior EIR on the zoning action, general plan or community plan with which the project is consistent; c) are potentially significant off-site and cumulative impacts which were not discussed in the underlying EIR; and d) are previously identified in the EIR, but which are determined to have a more severe adverse impact than that discussed in the underlying EIR. Section 15183(c) specifies that if an impact is not peculiar to the parcel or to the proposed project, then an EIR need not be prepared for that project solely on the basis of that impact.

This determination evaluates the potential project-specific environmental effects peculiar to the 2175 Market Street described above, and incorporates by reference information contained within the Market and Octavia Neighborhood Plan Final EIR (Case No. 2003.0347E; State Clearinghouse No. 2004012118). (FEIR). Project specific studies summarized in this determination were prepared for the proposed project at 2175 Market Street to determine if there would be any additional potentially significant impacts attributable to (i.e. "peculiar" to) the proposed project.

This determination assesses the proposed project's potential to cause environmental impacts and concludes that the proposed project, with the exception of hazards and hazardous materials, would not result in new, peculiar environmental effects, or effects of greater severity than were already analyzed

and disclosed in the FEIR.¹ With the exception of hazards and hazardous materials, this determination does not identify new or additional information that would alter the conclusions of the FEIR. This determination also identifies mitigation measures contained in the FEIR that would be applicable to the proposed project at 2175 Market Street. Relevant information pertaining to prior environmental review conducted for the FEIR is included below, as well as an evaluation of potential environmental effects. A Focused Initial Study/ Mitigated Negative Declaration was also prepared for the proposed project to cover potentially significant project-specific impacts regarding hazards and hazardous materials. Additional mitigation measures, not included in the FEIR, are described in the Initial Study/ Mitigated Negative Declaration.

Background

On April 5, 2007, the San Francisco Planning Commission certified the FEIR for the Market and Octavia Neighborhood Plan (Case No. 2003.0347E; State Clearinghouse No. 2004012118). The FEIR analyzed amendments to the Planning Code and Zoning Maps and to the Market and Octavia Neighborhood Plan, an element of the San Francisco General Plan. The FEIR analysis was based upon an assumed development and activity that were anticipated to occur under the Market and Octavia Neighborhood Plan.

Subsequent to the certification of the FEIR, in May 30, 2008, the Board of Supervisors approved, and the Mayor signed into law, revisions to the Planning Code, Zoning Maps, and General Plan that constituted the "project" analyzed in the Market and Octavia Neighborhood Plan FEIR. The legislation created several new zoning controls which allows for flexible types of new housing to meet a broad range of needs, reduces parking requirements to encourage housing and services without adding cars, balances transportation by considering people movement over auto movement, and builds walkable "whole" neighborhoods meeting everyday needs. The Plan, as evaluated in the FEIR and as approved by the Board of Supervisors, accommodates the proposed use, design, and density of the proposed 2175 Market Street project.

Individual projects that could occur in the future under the Plan would undergo project level evaluation to determine if they would result in further impacts specific to the development proposal, the site, and the time of development and additional environmental review would be required. With the exception of hazards and hazardous materials, this determination concludes that the proposed project at 2175 Market Street is consistent with and was encompassed within the analysis in the FEIR for the Market and Octavia Plan, that the FEIR adequately described the impacts of the proposed 2175 Market Street project, and identified the necessary mitigation measures in the FEIR, as adapted for project-specific conditions described in this Certificate of Determination. The proposed project is also consistent with the zoning controls for the project site. Therefore, with the exception of hazards and hazardous materials, the 2175 Market Street project is consistent with the adopted Market and Octavia Neighborhood Plan FEIR, its impacts are adequately addressed in the FEIR, and no further CEQA evaluation is necessary. In sum, the Market and Octavia Plan FEIR, this Certificate of Exemption, and Focused Initial Study/ Mitigated Negative Declaration for the proposed project comprise the full and complete CEQA evaluation necessary for the proposed project.

¹ A Focused Initial Study was conducted for the hazards and hazardous materials topic only. This document is on file and is available for review as part of Case No. 2012.0110E at the San Francisco Planning Department, 1650 Mission Street, Suite 400.

Potential Environmental Effects

The Market and Octavia Neighborhood Plan FEIR included analyses of environmental issues including: plans and policies; land use and zoning; population, housing, and employment; urban design and visual quality; shadow and wind; cultural (historical and archeological) resources; transportation; air quality; noise; hazardous materials; geology, soils and seismicity; public facilities, services, and utilities; hydrology; biology; and growth inducement. The proposed 2175 Market Street project is in conformance with the height, use, and density for the site described in the FEIR and would represent a small part of the growth that was forecast for the Market and Octavia Neighborhood in the FEIR. As a result, the proposed project, with the exception of hazards and hazardous materials, would not result in any new or substantially more severe impacts than were identified in the FEIR. With the exception of hazards and hazardous materials, the following discussion demonstrates that the project would not result in significant impacts beyond those analyzed in the FEIR, including assessment of project-specific impacts related to land use, air quality, greenhouse gases, archeological resources, transportation, wind, and shadow.

Land Use

The Market and Octavia Neighborhood Plan proposed changing the existing land use character of the project area to a transit-oriented, high-density mixed-use neighborhood. The Market and Octavia Neighborhood Plan FEIR analyzed the proposed land use changes and determined that the Market and Octavia Neighborhood Plan would not result in a significant adverse impact in land use character. The proposed project would demolish an existing gasoline service station and construct a new 65-foot-tall mixed-use development consisting of 88 dwelling units and approximately 6,286 square feet of ground-floor retail use. The proposed buildings would be consistent with the height and bulk controls for the site analyzed in the Market and Octavia Neighborhood Plan FEIR. The proposed project would intensify uses in the project vicinity, but would not result in a significant environment effect, and the new land uses would not have an impact on the character of the vicinity beyond what was identified in the FEIR. Further, the project would not result in a physical division of an established community.

With the adoption of the Market and Octavia Neighborhood Plan, the project site was re-zoned from Upper Market NCD (Neighborhood Commercial District) to Upper Market NCT (Neighborhood Commercial Transit). The Upper Market NCT district is well served by transit and is intended to be a "multi-purpose commercial district" with both neighborhood-serving and broader area commercial use. Housing is encouraged above the second story, and business and professional offices are also located along Market Street in this zone. The proposed project includes a restaurant for one of the Market Street ground-floor retail spaces. The establishment of a restaurant requires conditional use authorization. While the Upper Market NCT does not provide a residential density limit, the proposed project would require a conditional use authorization since the number of two-bedroom units is 38.6 percent, which is slightly less than required 40 percent. The discretion of the conditional use authorization process is sufficient to safeguard against cumulatively considerable land use change impacts. The proposed project is consistent with the Plan's goals of mixed-use, high-density development near transit. The project's reliance on the existing parking supply and transit facilities to support future trips is consistent with the Plan's policies. Furthermore, the proposed street-front retail and related pedestrian-scale façade treatments are consistent with the Plan's design principles. Therefore, the proposed project would have no significant impacts related to land use.

Based on all of the above, the Citywide Planning and Current Planning sections of the San Francisco Planning Department have determined that the proposed project is (i) consistent with the Market and Octavia Neighborhood Plan, (ii) satisfies the requirements of the General Plan and the Planning Code, and (iii) is eligible for a Community Plan Exemption.^{2,3}

Air Quality

Article 38 of the San Francisco Health Code requires new residential development near high-volume roadways to include upgraded ventilation systems to minimize exposure of future residents to particulate matter (DPM) and other pollutant emissions, as well as odors. Since the proposed project would include the addition of 88 residential units near a high-volume roadway, the project sponsor has agreed to install air filters⁴ in all residential units that will reduce PM_{2.5} by 80% to comply with Article 38.

The Market and Octavia FEIR identified potentially significant air quality impacts related to construction activities that may cause wind-blown dust and short-term construction exhaust emissions. Project-related demolition, excavation, grading, and other construction activities may cause wind-blown dust that could contribute particulate matter into the local atmosphere. The Market and Octavia FEIR identified a significant impact related to construction air quality and determined that *Mitigation Measure 5.8.A – Construction Mitigation Measure for Particulate Emissions* would reduce effects to a less-than-significant level. Subsequently, the San Francisco Board of Supervisors approved a series of amendments to the San Francisco Building and Health Codes generally referred to as the Construction Dust Control Ordinance (Ordinance 176-08, effective July 30, 2008), with the intent of reducing the quantity of dust generated during site preparation, demolition, and construction work, in order to protect the health of the general public and of onsite workers, minimize public nuisance complaints, and to avoid orders to stop work by the Department of Building Inspection (DBI). These regulations and procedures set forth by the San Francisco Building Code ensure that potential dust-related air quality impacts would be reduced to a less-than-significant level. Since the project would comply with the Construction Dust Control Ordinance, the project would not result in a significant impact related to construction dust. Compliance with the Construction Dust Control Ordinance, as applicable, would ensure that dust-related air quality impacts during project construction would be less than significant. Thus, Mitigation Measure 5.8A is not applicable to the proposed project.

The Market and Octavia FEIR identified a significant impact related to short-term construction exhaust emissions from construction equipment and determined that *Mitigation Measure 5.8B – Construction Mitigation Measure for Short-Term Exhaust Emissions* would reduce effects to a less-than-significant level. For determining potential health risk impacts, San Francisco has partnered with the BAAQMD to

² Adam Varat, San Francisco Planning Department, Community Plan Exemption Eligibility Determination, Citywide Planning and Policy Analysis, 2175 Market Street. This document is on file and available for review as part of Case File No. 2012.0110E at the San Francisco Planning Department, 1650 Mission Street, Suite 400.

³ Mark Luellen, San Francisco Planning Department, Community Plan Exemption Eligibility Determination, Current Planning Analysis, 2175 Market Street. This document is on file and available for review as part of Case File No. 2012.0110E at the San Francisco Planning Department, 1650 Mission Street, Suite 400.

⁴ The project sponsor will be installing MERV 13 filters upstream of each residential unit.

inventory and assess air pollution and exposures from mobile, stationary, and area sources within San Francisco and identify portions of the City that result in additional health risks for affected populations (“hot spots”). The project site is not located within an identified hot spot, therefore, the ambient health risk to sensitive receptors from air pollutants is not considered substantial. The proposed project’s construction activities would be temporary and variable in nature. Furthermore, the proposed project would be subject to California regulations limiting idling times to five minutes, which would further reduce sensitive receptors exposure to temporary and variable DPM emissions.⁵ Therefore, the construction of the proposed project would not expose sensitive receptors to substantial pollutant concentrations so the potential impact would be less-than-significant. In addition, the proposed project meets the construction screening criteria provided in the BAAQMD studies for construction-related criteria air pollutants. Therefore, based on newer information, *Mitigation Measure 5.8B – Construction Mitigation Measure for Short-Term Exhaust Emissions* is not applicable to the proposed project.

Greenhouse Gases

Gases that trap heat in the atmosphere are referred to as greenhouse gases (GHGs) because they capture heat radiated from the sun as it is reflected back into the atmosphere, much like a greenhouse does. The accumulation of GHG’s has been implicated as the driving force for global climate change. The primary GHGs are carbon dioxide, methane, nitrous oxide, ozone, and water vapor.

While the presence of the primary GHGs in the atmosphere are naturally occurring, carbon dioxide (CO₂), methane (CH₄), and nitrous oxide (N₂O) are largely emitted from human activities, accelerating the rate at which these compounds occur within earth’s atmosphere. Emissions of carbon dioxide are largely by-products of fossil fuel combustion, whereas methane results from off-gassing associated with agricultural practices and landfills. Other GHGs include hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, and are generated in certain industrial processes. Greenhouse gases are typically reported in “carbon dioxide-equivalent” measures (CO₂E).⁶

There is international scientific consensus that human-caused increases in GHGs have and will continue to contribute to global warming. Potential global warming impacts in California may include, but are not limited to, loss in snow pack, sea level rise, more extreme heat days per year, more high ozone days, more large forest fires, and more drought years. Secondary effects are likely to include a global rise in sea level, impacts to agriculture, changes in disease vectors, and changes in habitat and biodiversity.⁷

The California Air Resources Board (ARB) estimated that in 2006 California produced about 484 million gross metric tons of CO₂E (MMTCO₂E), or about 535 million U.S. tons.⁸ The ARB found that transportation is the source of 38 percent of the State’s GHG emissions, followed by electricity generation (both in-state and out-of-state) at 22 percent and industrial sources at 20 percent. Commercial and

⁵ California Code of Regulations, Title 13, Division 3, Section 2485.

⁶ Because of the differential heat absorption potential of various GHGs, GHG emissions are frequently measured in “carbon dioxide-equivalents,” which present a weighted average based on each gas’s heat absorption (or “global warming”) potential.

⁷ California Climate Change Portal. Frequently Asked Questions About Global Climate Change. Available online at: <http://www.climatechange.ca.gov/publications/faqs.html>. Accessed November 8, 2010.

⁸ California Air Resources Board (ARB), “California Greenhouse Gas Inventory for 2000-2006— by Category as Defined in the Scoping Plan.” http://www.arb.ca.gov/cc/inventory/data/tables/ghg_inventory_scopingplan_2009-03-13.pdf. Accessed March 2, 2010.

residential fuel use (primarily for heating) accounted for 9 percent of GHG emissions.⁹ In the Bay Area, fossil fuel consumption in the transportation sector (on-road motor vehicles, off-highway mobile sources, and aircraft) and the industrial and commercial sectors are the two largest sources of GHG emissions, each accounting for approximately 36% of the Bay Area's 95.8 MMTCO₂E emitted in 2007.¹⁰ Electricity generation accounts for approximately 16% of the Bay Area's GHG emissions followed by residential fuel usage at 7%, off-road equipment at 3% and agriculture at 1%.¹¹

In 2006, the California legislature passed Assembly Bill No. 32 (California Health and Safety Code Division 25.5, Sections 38500, et seq., or AB 32), also known as the Global Warming Solutions Act. AB 32 requires ARB to design and implement emission limits, regulations, and other measures, such that feasible and cost-effective statewide GHG emissions are reduced to 1990 levels by 2020 (representing a 25 percent reduction in emissions).

Pursuant to AB 32, ARB adopted a Scoping Plan in December 2008, outlining measures to meet the 2020 GHG reduction limits. In order to meet these goals, California must reduce its GHG emissions by 30 percent below projected 2020 business as usual emissions levels, or about 15 percent from today's levels.¹² The Scoping Plan estimates a reduction of 174 million metric tons of CO₂E (MMTCO₂E) (about 191 million U.S. tons) from the transportation, energy, agriculture, forestry, and high global warming potential sectors, see Table 1, below. ARB has identified an implementation timeline for the GHG reduction strategies in the Scoping Plan.¹³ Some measures may require new legislation to implement, some will require subsidies, some have already been developed, and some will require additional effort to evaluate and quantify. Additionally, some emissions reductions strategies may require their own environmental review under CEQA or the National Environmental Policy Act (NEPA).

AB 32 also anticipates that local government actions will result in reduced GHG emissions. ARB has identified a GHG reduction target of 15 percent from current levels for local governments themselves and notes that successful implementation of the plan relies on local governments' land use planning and urban growth decisions because local governments have primary authority to plan, zone, approve, and permit land development to accommodate population growth and the changing needs of their jurisdictions.

⁹ Ibid.

¹⁰ Bay Area Air Quality Management District, Source Inventory of Bay Area Greenhouse Gas Emissions: Base Year 2007, Updated: February 2010. Available online at:
http://www.baaqmd.gov/-/media/Files/Planning%20and%20Research/Emission%20Inventory/regionalinventory2007_2_10.ashx. Accessed March 2, 2010.

¹¹ Ibid.

¹² California Air Resources Board, California's Climate Plan: Fact Sheet. Available online at:
http://www.arb.ca.gov/cc/facts/scoping_plan_fs.pdf. Accessed March 4, 2010.

¹³ California Air Resources Board. AB 32 Scoping Plan. Available Online at:
http://www.arb.ca.gov/cc/scopingplan/sp_measures_implementation_timeline.pdf. Accessed March 2, 2010.

Table 1. GHG Reductions from the AB 32 Scoping Plan Sectors¹⁴

GHG Reduction Measures By Sector	GHG Reductions (MMT CO ₂ E)
Transportation Sector	62.3
Electricity and Natural Gas	49.7
Industry	1.4
Landfill Methane Control Measure (Discrete Early Action)	1
Forestry	5
High Global Warming Potential GHGs	20.2
Additional Reductions Needed to Achieve the GHG Cap	34.4
Total	174
Other Recommended Measures	
Government Operations	1-2
Agriculture- Methane Capture at Large Dairies	1
Methane Capture at Large Dairies	1
Additional GHG Reduction Measures	
Water	4.8
Green Buildings	26
High Recycling/ Zero Waste	
• Commercial Recycling	
• Composting	
• Anaerobic Digestion	9
• Extended Producer Responsibility	
• Environmentally Preferable Purchasing	
Total	42.8-43.8

The Scoping Plan relies on the requirements of Senate Bill 375 (SB 375) to implement the carbon emission reductions anticipated from land use decisions. SB 375 was enacted to align local land use and transportation planning to further achieve the State's GHG reduction goals. SB 375 requires regional transportation plans, developed by Metropolitan Planning Organizations (MPOs), to incorporate a "sustainable communities strategy" in their regional transportation plans (RTPs) that would achieve GHG emission reduction targets set by ARB. SB 375 also includes provisions for streamlined CEQA review for some infill projects such as transit-oriented development. SB 375 would be implemented over the next several years and the Metropolitan Transportation Commission's 2013 RTP would be its first plan subject to SB 375.

Senate Bill 97 (SB 97) required the Office of Planning and Research (OPR) to amend the state CEQA guidelines to address the feasible mitigation of GHG emissions or the effects of GHGs. In response, OPR amended the CEQA guidelines to provide guidance for analyzing GHG emissions. Among other changes to the CEQA Guidelines, the amendments add a new section to the CEQA Checklist (CEQA Guidelines Appendix G) to address questions regarding the project's potential to emit GHGs.

The Bay Area Air Quality Management District (BAAQMD) is the primary agency responsible for air quality regulation in the nine county San Francisco Bay Area Air Basin (SFBAAB). As part of their role in air quality regulation, BAAQMD has prepared the CEQA air quality guidelines to assist lead agencies in evaluating air quality impacts of projects and plans proposed in the SFBAAB. The guidelines provide procedures for evaluating potential air quality impacts during the environmental review process

¹⁴ Ibid.

consistent with CEQA requirements. On June 2, 2010, the BAAQMD adopted new and revised CEQA air quality thresholds of significance and issued revised guidelines that supersede the 1999 air quality guidelines. The *2010 CEQA Air Quality Guidelines* provide for the first time CEQA thresholds of significance for greenhouse gas emissions. OPR's amendments to the CEQA Guidelines as well as BAAQMD's *2010 CEQA Air Quality Guidelines* and thresholds of significance have been incorporated into this analysis accordingly.

The most common GHGs resulting from human activity are CO₂, CH₄, and N₂O.¹⁵ State law defines GHGs to also include hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride. These latter GHG compounds are usually emitted in industrial processes, and therefore not applicable to the proposed project. Individual projects contribute to the cumulative effects of climate change by directly or indirectly emitting GHGs during construction and operational phases. Direct operational emissions include GHG emissions from new vehicle trips and area sources (natural gas combustion). Indirect emissions include emissions from electricity providers, energy required to pump, treat, and convey water, and emissions associated with landfill operations.

The proposed project would increase the activity onsite by replacing the existing gasoline station with a mixed-use development containing 88 dwelling units and 6,286 square feet of retail space at the ground floor. The proposed project could result in an increase in overall energy and also water usage which generates indirect emissions from the energy required to pump, treat and convey water. The expansion could also result in an increase in discarded landfill materials. Therefore, the proposed project would contribute to annual long-term increases in GHGs as a result of increased vehicle trips (mobile sources) and operations associated with energy use, water use and wastewater treatment, and solid waste disposal.

As discussed above, the BAAQMD has adopted CEQA thresholds of significance for projects that emit GHGs, one of which is a determination of whether the proposed project is consistent with a Qualified Greenhouse Gas Reduction Strategy, as defined in the *2010 CEQA Air Quality Guidelines*. On August 12, 2010, the San Francisco Planning Department submitted a draft of the City and County of San Francisco's *Strategies to Address Greenhouse Gas Emissions* to the BAAQMD.¹⁶ This document presents a comprehensive assessment of policies, programs and ordinances that collectively represent San Francisco's Qualified Greenhouse Gas Reduction Strategy in compliance with the BAAQMD's *2010 CEQA Air Quality Guidelines* and thresholds of significance.

San Francisco's GHG reduction strategy identifies a number of mandatory requirements and incentives that have measurably reduced greenhouse gas emissions including, but not limited to, increasing the energy efficiency of new and existing buildings, installation of solar panels on building roofs, implementation of a green building strategy, adoption of a zero waste strategy, a construction and demolition debris recovery ordinance, a solar energy generation subsidy, incorporation of alternative fuel

¹⁵ Governor's Office of Planning and Research. *Technical Advisory- CEQA and Climate Change: Addressing Climate Change through California Environmental Quality Act (CEQA) Review*. June 19, 2008. Available at the Office of Planning and Research's website at: <http://www.opr.ca.gov/ceqa/pdfs/june08-ceqa.pdf>. Accessed March 3, 2010.

¹⁶ San Francisco Planning Department. *Strategies to Address Greenhouse Gas Emissions in San Francisco*. 2010. The final document is available online at: <http://www.sfplanning.org/index.aspx?page=1570>.

vehicles in the City's transportation fleet (including buses and taxis), and a mandatory composting ordinance. The strategy also identifies 42 specific regulations for new development that would reduce a project's GHG emissions.

San Francisco's climate change goals as are identified in the 2008 Greenhouse Gas Reduction Ordinance as follows:

- By 2008, determine the City's 1990 GHG emissions, the baseline level with reference to which target reductions are set;
- Reduce GHG emissions by 25 percent below 1990 levels by 2017;
- Reduce GHG emissions by 40 percent below 1990 levels by 2025; and
- Reduce GHG emissions by 80 percent below 1990 levels by 2050.

The City's 2017 and 2025 GHG reduction goals are more aggressive than the State's GHG reduction goals as outlined in AB 32, and consistent with the State's long-term (2050) GHG reduction goals. San Francisco's *Strategies to Address Greenhouse Gas Emissions* identifies the City's actions to pursue cleaner energy, energy conservation, alternative transportation and solid waste policies, and concludes that San Francisco's policies have resulted in a reduction in greenhouse gas emissions below 1990 levels, meeting statewide AB 32 GHG reduction goals. As reported, San Francisco's 1990 GHG emissions were approximately 8.26 million metric tons (MMT) CO₂E and 2005 GHG emissions are estimated at 7.82 MMTCO₂E, representing an approximately 5.3 percent reduction in GHG emissions below 1990 levels.

The BAAQMD reviewed San Francisco's *Strategies to Address Greenhouse Gas Emissions* and concluded that the strategy meets the criteria for a Qualified GHG Reduction Strategy as outlined in BAAQMD's CEQA Guidelines (2010) and stated that San Francisco's "aggressive GHG reduction targets and comprehensive strategies help the Bay Area move toward reaching the State's AB 32 goals, and also serve as a model from which other communities can learn."¹⁷

Based on the BAAQMD's 2010 *CEQA Air Quality Guidelines*, projects that are consistent with San Francisco's *Strategies to Address Greenhouse Gas Emissions* would result in a less than significant impact with respect to GHG emissions. Furthermore, because San Francisco's strategy is consistent with AB 32 goals, projects that are consistent with San Francisco's strategy would also not conflict with the State's plan for reducing GHG emissions. As discussed in San Francisco's *Strategies to Address Greenhouse Gas Emissions*, new development and renovations/alterations for private projects and municipal projects are required to comply with San Francisco's ordinances that reduce greenhouse gas emissions. Applicable requirements are shown below in Table 2.

¹⁷ Letter from Jean Roggenkamp, BAAQMD, to Bill Wycko, San Francisco Planning Department. October 28, 2010. This letter is available online at: <http://www.sfplanning.org/index.aspx?page=1570>. Accessed November 12, 2010.

Table 2. Regulations Applicable to the Proposed Project

Regulation	Requirements	Project Compliance	Discussion
Transportation Sector			
Emergency Ride Home Program	All persons employed in San Francisco are eligible for the emergency ride home program.	<input checked="" type="checkbox"/> Project Complies <input type="checkbox"/> Not Applicable <input type="checkbox"/> Project Does Not Comply	The project would be required to comply with this program.
Transportation Management Programs (Planning Code, Section 163)	Requires new buildings or additions over a specified size (buildings >25,000 sf or 100,000 sf depending on the use and zoning district) within certain zoning districts (including downtown and mixed-use districts in the City's eastern neighborhoods and south of market) to implement a Transportation Management Program and provide on-site transportation management brokerage services for the life of the building.	<input checked="" type="checkbox"/> Project Complies <input type="checkbox"/> Not Applicable <input type="checkbox"/> Project Does Not Comply	The project would be required to comply with Section 163.
Transit Impact Development Fee (Administrative Code, Chapter 38)	Establishes the following fees for all commercial developments. Fees are paid to the SFMTA to improve local transit services.	<input checked="" type="checkbox"/> Project Complies <input type="checkbox"/> Not Applicable <input type="checkbox"/> Project Does Not Comply	The proposed project would be required to pay a TIDF fee of \$10/ gross square foot of retail space.
Jobs-Housing Linkage Program (Planning Code Section 413)	The Jobs-Housing Program found that new large scale development attract new employees to the City who require housing. The program is designed to provide housing for those new uses within San Francisco, thereby allowing employees to live close to their place of employment.	<input checked="" type="checkbox"/> Project Complies <input type="checkbox"/> Not Applicable <input type="checkbox"/> Project Does Not Comply	The project would be required to comply with Planning Code Section 413.

Regulation	Requirements	Project Compliance	Discussion
	The program requires a developer to pay a fee or contribute land suitable for housing to a housing developer or pay an in-lieu fee.		
Bicycle parking in Residential Buildings (Planning Code, Section 155.5)	(A) For projects up to 50 dwelling units, one Class 1 space for every 2 dwelling units. (B) For projects over 50 dwelling units, 25 Class 1 spaces plus one Class 1 space for every 4 dwelling units over 50.	<input checked="" type="checkbox"/> Project Complies <input type="checkbox"/> Not Applicable <input type="checkbox"/> Project Does Not Comply	Planning Code Section 155.5 applies to the proposed project.
Car Sharing Requirements (Planning Code, Section 166)	New residential projects or renovation of buildings being converted to residential uses within most of the City's mixed-use and transit-oriented residential districts are required to provide car share parking spaces.	<input checked="" type="checkbox"/> Project Complies <input type="checkbox"/> Not Applicable <input type="checkbox"/> Project Does Not Comply	Planning Code Section 166 applies to the proposed project.
Energy Efficiency Sector			
San Francisco Green Building Requirements for Energy Efficiency (SF Building Code, Chapter 13C)	Commercial buildings greater than 5,000 sf will be required to be at a minimum 14% more energy efficient than Title 24 energy efficiency requirements. By 2008 large commercial buildings will be required to have their energy systems commissioned, and by 2010, these large buildings will be required to provide enhanced commissioning in compliance with LEED® Energy and Atmosphere Credit 3. Mid-sized commercial buildings will be required to have their systems commissioned by 2009, with enhanced commissioning by 2011.	<input checked="" type="checkbox"/> Project Complies <input type="checkbox"/> Not Applicable <input type="checkbox"/> Project Does Not Comply	The proposed project would be required to comply with the City's Green Building Ordinance.

Regulation	Requirements	Project Compliance	Discussion
San Francisco Green Building Requirements for Energy Efficiency (SF Building Code, Chapter 13C)	Under the Green Point Rated system and in compliance with the Green Building Ordinance, all new residential buildings will be required to be at a minimum 15% more energy efficient than Title 24 energy efficiency requirements.	<input checked="" type="checkbox"/> Project Complies <input type="checkbox"/> Not Applicable <input type="checkbox"/> Project Does Not Comply	The proposed project would be required to comply with the City's Green Building Ordinance.
San Francisco Green Building Requirements for Stormwater Management (SF Building Code, Chapter 13C) Or San Francisco Stormwater Management Ordinance (Public Works Code Article 4.2)	Requires all new development or redevelopment disturbing more than 5,000 square feet of ground surface to manage stormwater on-site using low impact design. These projects are required to comply with LEED® Sustainable Sites Credits 6.1 and 6.2, or comply with the City's Stormwater ordinance and stormwater design guidelines.	<input checked="" type="checkbox"/> Project Complies <input type="checkbox"/> Not Applicable <input type="checkbox"/> Project Does Not Comply	The proposed project will be disturbing more than 5,000 square feet and will therefore be required to comply with the City's Stormwater Management Ordinance.
San Francisco Green Building Requirements for water efficient landscaping (SF Building Code, Chapter 13C)	All new commercial buildings greater than 5,000 square feet are required to reduce the amount of potable water used for landscaping by 50%.	<input checked="" type="checkbox"/> Project Complies <input type="checkbox"/> Not Applicable <input type="checkbox"/> Project Does Not Comply	The proposed project would be required to comply with the City's Green Building Ordinance.
San Francisco Green Building Requirements for water use reduction (SF Building Code, Chapter 13C)	All new commercial buildings greater than 5,000 sf are required to reduce the amount of potable water used by 20%.	<input checked="" type="checkbox"/> Project Complies <input type="checkbox"/> Not Applicable <input type="checkbox"/> Project Does Not Comply	The proposed project would be required to comply with the City's Green Building Ordinance.
Residential Water Conservation	Requires all residential properties (existing and new), prior to sale, to	<input checked="" type="checkbox"/> Project Complies	The proposed project would be required to comply with the Residential Water

Regulation	Requirements	Project Compliance	Discussion
<p>Ordinance (SF Building Code, Housing Code, Chapter 12A)</p>	<p>upgrade to the following minimum standards:</p> <ol style="list-style-type: none"> 1. All showerheads have a maximum flow of 2.5 gallons per minute (gpm) 2. All showers have no more than one showerhead per valve 3. All faucets and faucet aerators have a maximum flow rate of 2.2 gpm 4. All Water Closets (toilets) have a maximum rated water consumption of 1.6 gallons per flush (gpf) 5. All urinals have a maximum flow rate of 1.0 gpf 6. All water leaks have been repaired. <p>Although these requirements apply to existing buildings, compliance must be completed through the Department of Building Inspection, for which a discretionary permit (subject to CEQA) would be issued.</p>	<p><input type="checkbox"/> Not Applicable</p> <p><input type="checkbox"/> Project Does Not Comply</p>	<p>Conservation Ordinance.</p>
<p>Residential Energy Conservation Ordinance (SF Building Code, Housing Code, Chapter 12)</p>	<p>Requires all residential properties to provide, prior to sale of property, certain energy and water conservation measures for their buildings: attic insulation; weather-stripping all doors leading from heated to unheated areas; insulating hot water heaters and insulating hot water pipes; installing low-flow showerheads; caulking and sealing any openings or cracks in the building's exterior; insulating accessible heating and cooling ducts; installing low-flow water-tap aerators; and installing or retrofitting toilets to make them low-flush. Apartment</p>	<p><input checked="" type="checkbox"/> Project Complies</p> <p><input type="checkbox"/> Not Applicable</p> <p><input type="checkbox"/> Project Does Not Comply</p>	<p>The proposed project would be required to comply with the Residential Energy Conservation Ordinance.</p>

Regulation	Requirements	Project Compliance	Discussion
	<p>buildings and hotels are also required to insulate steam and hot water pipes and tanks, clean and tune their boilers, repair boiler leaks, and install a time-clock on the burner.</p> <p>Although these requirements apply to existing buildings, compliance must be completed through the Department of Building Inspection, for which a discretionary permit (subject to CEQA) would be issued.</p>		
Renewable Energy Sector			
<p>San Francisco Green Building Requirements for renewable energy (SF Building Code, Chapter 13C)</p>	<p>By 2012, all new commercial buildings will be required to provide on-site renewable energy or purchase renewable energy credits pursuant to LEED® Energy and Atmosphere Credits 2 or 6.</p> <p>Credit 2 requires providing at least 2.5% of the buildings energy use from on-site renewable sources. Credit 6 requires providing at least 35% of the building’s electricity from renewable energy contracts.</p>	<p><input checked="" type="checkbox"/> Project Complies</p> <p><input type="checkbox"/> Not Applicable</p> <p><input type="checkbox"/> Project Does Not Comply</p>	<p>The proposed project would be required to comply with the Green Building Requirements for Renewable Energy.</p>
Waste Reduction Sector			
<p>San Francisco Green Building Requirements for solid waste (SF Building Code, Chapter 13C)</p>	<p>Pursuant to Section 1304C.0.4 of the Green Building Ordinance, all new construction, renovation and alterations subject to the ordinance are required to provide recycling, composting and trash storage, collection, and loading that is convenient for all users of the building.</p>	<p><input checked="" type="checkbox"/> Project Complies</p> <p><input type="checkbox"/> Not Applicable</p> <p><input type="checkbox"/> Project Does Not Comply</p>	<p>The proposed project is the construction of a mixed-use development which would be required to comply with the San Francisco Green Building Code requirements for solid waste.</p>

Regulation	Requirements	Project Compliance	Discussion
Mandatory Recycling and Composting Ordinance (Environment Code, Chapter 19)	The mandatory recycling and composting ordinance requires all persons in San Francisco to separate their refuse into recyclables, compostables and trash, and place each type of refuse in a separate container designated for disposal of that type of refuse.	<input checked="" type="checkbox"/> Project Complies <input type="checkbox"/> Not Applicable <input type="checkbox"/> Project Does Not Comply	The proposed project would be required to comply with the Mandatory Recycling and Composting Ordinance.
San Francisco Green Building Requirements for construction and demolition debris recycling (SF Building Code, Chapter 13C)	These projects proposing demolition are required to divert at least 75% of the project's construction and demolition debris to recycling.	<input checked="" type="checkbox"/> Project Complies <input type="checkbox"/> Not Applicable <input type="checkbox"/> Project Does Not Comply	The proposed project involves demolition and therefore would be required to comply with the Green Building Requirements for construction and demolition debris recycling.
San Francisco Construction and Demolition Debris Recovery Ordinance (SF Environment Code, Chapter 14)	Requires that a person conducting full demolition of an existing structure to submit a waste diversion plan to the Director of the Environment which provides for a minimum of 65% diversion from landfill of construction and demolition debris, including materials source separated for reuse or recycling.	<input checked="" type="checkbox"/> Project Complies <input type="checkbox"/> Not Applicable <input type="checkbox"/> Project Does Not Comply	The proposed project involves demolition and therefore would be required to comply with the Construction and Demolition Debris Recovery Ordinance.
Environment/Conservation Sector			
Street Tree Planting Requirements for New Construction (Planning Code Section 428)	Planning Code Section 428 requires new construction, significant alterations or relocation of buildings within many of San Francisco's zoning districts to plant on 24-inch box tree for every 20 feet along the property street frontage.	<input checked="" type="checkbox"/> Project Complies <input type="checkbox"/> Not Applicable <input type="checkbox"/> Project Does Not Comply	The project would be required to comply with Section 428.
Wood Burning Fireplace Ordinance	Bans the installation of wood burning fire places except for the following:	<input checked="" type="checkbox"/> Project Complies	The proposed project would not include a wood burning fireplace.

Regulation	Requirements	Project Compliance	Discussion
(San Francisco Building Code, Chapter 31, Section 3102.8)	<ul style="list-style-type: none"> • Pellet-fueled wood heater • EPA approved wood heater • Wood heater approved by the Northern Sonoma Air Pollution Control District 	<input type="checkbox"/> Not Applicable <input type="checkbox"/> Project Does Not Comply	
Regulation of Diesel Backup Generators (San Francisco Health Code, Article 30)	Requires (among other things): <ul style="list-style-type: none"> • All diesel generators to be registered with the Department of Public Health • All new diesel generators must be equipped with the best available air emissions control technology. 	<input checked="" type="checkbox"/> Project Complies <input type="checkbox"/> Not Applicable <input type="checkbox"/> Project Does Not Comply	The proposed project would be required to comply with Article 30 of the San Francisco Health Code.

Depending on a proposed project’s size, use, and location, a variety of controls are in place to ensure that a proposed project would not impair the State’s ability to meet statewide GHG reduction targets outlined in AB 32, nor impact the City’s ability to meet San Francisco’s local GHG reduction targets. Given that: (1) San Francisco has implemented regulations to reduce greenhouse gas emissions specific to new construction and renovations of private developments and municipal projects; (2) San Francisco’s sustainable policies have resulted in the measured success of reduced greenhouse gas emissions levels; (3) San Francisco has met and exceeded AB 32 greenhouse gas reduction goals for the year 2020; (4) current and probable future state and local greenhouse gas reduction measures will continue to reduce a project’s contribution to climate change; and (5) San Francisco’s *Strategies to Address Greenhouse Gas Emissions* meet BAAQMD’s requirements for a Qualified GHG Reduction Strategy, projects that are consistent with San Francisco’s regulations would not contribute significantly to global climate change. The proposed project would be required to comply with these requirements, and was determined to be consistent with San Francisco’s *Strategies to Address Greenhouse Gas Emissions*.¹⁸ As such, the proposed project would result in a less than significant impact with respect to GHG emissions.

Archeological Resources

Potential archeological impacts were identified in the Market and Octavia Neighborhood Plan FEIR. *Mitigation Measure 5.6.A2: Archaeological Mitigation Measure – General Soil Disturbing Activities* applies to any project involving any soils-disturbing activities beyond a depth of four feet and located within those properties within the Plan Area for which no archeological assessment report has been prepared. This mitigation measure, as outlined in the FEIR, states that a Preliminary Archeological Sensitivity Study (PASS) should be prepared to determine whether an Archaeological Research Design/Treatment Plan (ARD/TP) is required.

¹⁸ Greenhouse Gas Analysis: Compliance Checklist. July 3, 2012. This document is on file in Case File No. 2012.0110E and available for public review at the Planning Department, 1650 Mission Street, Suite 400.

Pursuant to *Mitigation Measure 5.6.A2*, a PASS memorandum was prepared for the proposed project and is summarized here.¹⁹ In the absence of previous archeological investigations within the project site, it is not known if the project site was occupied or used by prehistoric populations. The project site is within Archeological Sensitivity Zone 3 of the EP Hispanic Period Archeo GIS layer because of its proximity to the Mission acequia which was fed by a spring to the northwest of the Project Site. There is some variation in the historical cartographic representations of the alignment of certain sections of the Mission acequia. The original acequia was constructed in the late 1770s but it is not known how early it was extended to the spring northwest of Church and Market Streets. Its form of construction varied from a ditch (*zanja*) to being lined in Serpentine rock. The 1857 USCS topographic sheet shows the project site as part of a large area under cultivation. The project site was still unimproved by the end of the 19th century. The 1914 Sanborn Map indicates that the site is mostly vacant with an upholstery shop and some single-story dwellings along Market Street and a wood shed and storage sheds along 15th Street.

The project site is located on the slope of an ancient alluvial fan that dips down toward the east. One of several tributaries to upper Mission Creek flowed through or along the northern edge of the project site. Soils sampling within the project has not provided any clear confirmation of the presence of a former watercourse or marsh deposits. The dense alluvial deposits underlying the project site may be part of the Colma Formation which formed during the Pleistocene era and provided a stable land surface through the Early and Middle and perhaps, Late Holocene Periods. At some point in the early 1900s the project site was filled in to provide a more level building pad.

The proposed project site is less than a half of a block from the Mission Dolores Archeological District in the Market and Octavia Neighborhood Plan FEIR and is within Archeological Zone No. 3 of the EP Hispanic Period Archeo GIS layer. Within the latter Hispanic Period archeological sensitivity zone, the project site is sensitive for archeological deposits or features associated with the Mission acequia (water conveyance system) and to remains of any agricultural operations or improvements related to the acequia.

There are several Spanish/Mexican period and prehistoric potential/excavated archeological sites east and southeast of the project site. These represent a wide range of archeological unit types ranging from the Mission acequia, adobe building foundations, trash pits, shell midden sites, sheet scatter, etc.

As applied to the proposed project, *Mitigation Measure 5.6.A2* indicates that the project would not result in significant impacts with implementation of the Department's measures for accidental discovery. In the event such resources are encountered during ground-disturbing activities, implementation of Archeological *Mitigation Measure 5.6.A2* reduces potential effects to a less-than-significant level. Therefore, *Mitigation Measure 5.6.A2* (see Project Mitigation Measure 2 on page 24 of this Certificate of Determination) shall be undertaken to reduce the potential significant impact from soils-disturbing activities on buried archeological resources to a less-than-significant level.

¹⁹ Randall Dean, EP archeologist, memorandum to Don Lewis, EP planner, July 10, 2012. This memorandum is available for review at the Planning Department, 1650 Mission Street, Suite 400, in File No. 2012.0110E.

Transportation

The Market and Octavia Neighborhood Plan FEIR anticipated that growth resulting from the zoning changes would result in significant transportation impacts.²⁰ Accordingly, the FEIR identified eight transportation mitigation measures, including implementation of traffic management strategies and transit improvements. Even with mitigation, however, the FEIR found that the significant adverse effects at certain local intersections and the cumulative impacts on certain transit lines could not be fully mitigated. Thus these impacts were found to be significant and unavoidable, and a Statement of Overriding Considerations with findings was adopted as part of the Market and Octavia Neighborhood Plan approval on May 30, 2008.

Trip Generation

Trip generation of the proposed project was calculated using information in the 2002 Transportation Impacts Analysis Guidelines for Environmental Review (SF Guidelines) developed by the San Francisco Planning Department.²¹ The proposed project would generate about 1,688 person trips (inbound and outbound) on a weekday daily basis, consisting of about 867 person trips by auto, 453 transit trips, 293 walk trips and 75 trips by other modes. During the p.m. peak hour, the proposed project would generate an estimated 75 vehicle trips (accounting for vehicle occupancy data for this Census Tract), 69 transit trips, 34 walk trips and 11 trips by other modes.

Traffic

Intersection operating conditions are characterized by the concept of Level of Service (LOS), which ranges from A to F and provides a description of an intersection's performance based on traffic volumes, intersection capacity, and vehicle delays. LOS A represents free flow conditions, with little or no delay, while LOS F represents congested conditions, with extremely long delays; LOS D (moderately high delays) is considered the lowest acceptable level in San Francisco.

The nearest intersections for which the Market and Octavia FEIR identified a significant impact under 2025 weekday p.m. peak hour were at Market/Sanchez/Fifteenth Streets (immediately adjacent to the project site), and at Market/Church/Fourteenth Streets (one block away to the northeast). The FEIR found these intersections operating at LOS D under existing (baseline) conditions, and that they would deteriorate to LOS E under 2025 conditions without Plan implementation. Under the 2025 with Plan Conditions, the EIR found that both of these intersections would remain at LOS E but would experience additional peak PM hour delays as implementation of the Market and Octavia Plan would add substantial numbers of vehicles to these intersections. The FEIR found that Plan-added vehicles to these intersections represented a considerable contribution to the cumulative conditions, and thus would result in a significant impact.

The Market and Octavia FEIR proposed a specific mitigation measure (5.7D) for the Market/Sanchez/Fifteenth Streets intersection that included minor changes to signal timing in conjunction

²⁰ *Market and Octavia Neighborhood Plan Final Environmental Impact Report*, Planning Department Case No. 2003.0347E, 2007. The FEIR is on file for public review at the Planning Department, 1650 Mission Street Suite 400 as part of Case No. 2003.0347E,

²¹ These calculations are available for review as part of Case File No. 2012.0110E at the San Francisco Planning Department, 1650 Mission Street, Suite 400.

with the addition of a right-turn pocket on the westbound approach on Fifteenth Street. However, the FEIR concluded that the feasibility of implementing this measure could not be fully assessed at that time, because implementation of the signal timing changes would be dependent on later assessments by the Metropolitan Transportation Agency (MTA) of transit and traffic coordination along Market Street, to ensure that the changes would not substantially affect Muni bus operations, signal progressions, pedestrian minimum green time requirements, and programming limitations of signals. Because the FEIR could not determine whether this mitigation measure was feasible, it could not determine that the measure would reduce the traffic impact at this intersection to a less-than-significant level. Consequently, in certifying the completion of the FEIR, the Planning Commission found that the impact to the Market/Sanchez/Fifteenth Streets intersection was significant and unavoidable.

Consistent with the assumptions in the Market and Octavia FEIR, it is anticipated that the proposed project would add vehicle trips to the Market/Sanchez/Fifteenth Streets intersection that could potentially contribute to worsening the LOS. This impact was disclosed in the FEIR as significant and unavoidable due to future growth in the project area and the infeasibility of the proposed mitigation measure.

Since the adoption of the Market and Octavia Neighborhood Plan, the City has adopted policies, such as the Better Streets Plan of the General Plan²² and related Planning Code provisions, and the Upper Market Community Design Plan, that support installation of a corner bulb-out at the southeast corner of 15th and Market Streets and that conflict with installation of a right-turn pocket on Fifteenth Street. The Better Streets Plan classifies Market Street as a Ceremonial (Civic) street and states that the treatment for Ceremonial streets should include corner curb extensions (e.g., bulb-outs). *Planning Code* Section 138.1 states that the Better Streets Plan shall govern the design, location, and dimensions of all pedestrian and streetscape items in the public right-of-way, including curb extensions/bulb-outs. Therefore, a right-turn pocket at the 15th/Sanchez/Market Streets intersection is infeasible because it would violate the Better Streets Plan of the General Plan.

The project site is located within a special design area, the Upper Market Community Design Plan (UMCDP) area. The UMCDP was created through the Upper Market Workshop, a community visioning process, to guide the future of the Upper Market corridor, which is generally defined as Market Street between Castro and Octavia Streets. The workshop was held in the fall of 2007, and included the design review of nine properties, including the proposed project. The UMCDP encourages a vibrant pedestrian realm, and Figure 4.9B of this Plan shows a corner bulb-out at the Market/Sanchez/Fifteenth Streets intersection. Additionally, the corner bulb-out would also comply with the City's Transit First Policy which essentially promotes other modes of travel above vehicular modes. The proposed project includes the installation of a corner bulb-out at the southeast corner of 15th and Market Streets.

Transit

The Market and Octavia Neighborhood Plan FEIR found that under 2025 with Plan conditions, capacity utilization for all screenlines would remain similar to those under 2025 without Plan conditions, and all

²² The Better Streets Plan, which was adopted by the Mayor and Board of Supervisors in December 2010, describes design guidelines for pedestrian and streetscape features in the public right-of-way in San Francisco, and also describes streetscape requirements for new development.

screenlines and sub-corridors would continue to operate below the Muni capacity utilization standard. The FEIR found that the peak hour capacity utilization would not be substantially increased by the Plan and the impact on Muni screenlines would be less than significant.

The proposed project is estimated to add about 453 daily transit person trips, of which 69 are estimated to occur in the p.m. peak hour. The project site is well-served by several local and regional transit lines, including two Muni bus lines (22 and 37) and six Muni Metro lines (J, K, L, M, T, and F). Transit trips to and from the proposed project would utilize the nearby Muni lines, and would transfer to and from other Muni lines. The addition of 69 p.m. peak hour transit trips would increase Muni ridership; however, this net increase would not be substantial as existing transit lines have the capacity to accommodate these new trips. Additionally, the proposed project would not substantially interfere with any nearby transit routes. Therefore, the project would have a less-than-significant impact on transit.

The Market and Octavia Neighborhood Plan FEIR identified significant and unavoidable cumulative impacts relating to the degradation of transit service as a result of increases in delays at the following intersections in the p.m. peak hour: Hayes Street/Van Ness Avenue, Hayes Street/Franklin Streets, and Hayes Street/Gough Street. Mitigation measures were proposed to address these impacts related to changes to street configurations and traffic patterns. Even with mitigation, however, cumulative impacts were found to be significant and unavoidable, and a Statement of Overriding Considerations with findings was adopted as part of the Market and Octavia Neighborhood Plan FEIR approval. The proposed project would not conflict with the implementation of these mitigation measures.

Loading

Based on the SF Guidelines, the proposed project would generate an average truck loading demand of 0.15 truck-trips per hour. Planning Code Section 152.1 does not require off-street loading for residential development less than 100,000 square feet and for retail use less than 10,000 square feet. Therefore, off-street loading spaces are not required for the proposed project. However, the project sponsor proposes a new passenger loading zone at the building's northeast frontage along Market Street and a new commercial loading zone at the building's mid-point Market Street frontage. Accordingly, it is anticipated that the truck loading demand would be met on-street. In addition, the sponsor is proposing a residential "white zone" on the building's southeast frontage along 15th Street for move in/move out activities. Therefore, the project would have a less-than-significant impact on loading.

Pedestrian and Bicycle Conditions

The FEIR notes that the Market and Octavia Neighborhood Plan area contains several key bicycle corridors, and that the generally flat terrain combined with major thoroughfares that traverse the project area and the density and mix of uses in the project area provide for bicycle travel. The FEIR notes also that the Neighborhood Plan area contains several key pedestrian corridors, and the Plan includes new pedestrian facilities and amenities. The FEIR did not identify significant impacts related to bicycle and pedestrian conditions as a result of Plan implementation.

The proposed project would not cause a substantial amount of pedestrian and vehicle conflicts, as there are adequate sidewalk and crosswalk widths, and the proposed project includes improving the exterior lighting and sidewalks along the project's perimeter. Additionally, instead of the westbound right-turn

pocket that was originally identified as part of the traffic mitigation measure, the project proposes a corner bulb-out at the southeast corner of 15th and Market Streets, consistent with the Better Streets Plan and the UMCDP. The corner bulb-out would improve the pedestrian environment as it would decrease the crossing distance across 15th and Market Streets, decrease the time pedestrians are exposed to traffic, and increase their overall visibility so the impact would be less-than-significant.

Parking

While the proposed project would not be required to provide off-street parking spaces pursuant to *Planning Code* Section 733.94, the project includes 44 parking spaces in an underground garage, consistent with the allowable .5 to 1 ratio under the Planning Code. Based on the methodology presented in the SF Guidelines, on an average weekday, the demand for parking would be 149 spaces. Thus, the project would have an unmet parking demand of 105 spaces. Additionally, the project site is located on a major transit corridor and in a relatively dense area well-served by a mix of uses. As such, it is expected that many of the residents would be encouraged not to make their trips by car.

San Francisco does not consider parking supply as part of the permanent physical environment. Parking conditions are not static, as parking supply and demand varies from day to day, day to night, month to month, etc. Hence, the availability of parking spaces (or lack thereof) is not a permanent physical condition, but changes over time as people change their modes and patterns of travel.

Parking deficits are considered to be social effects, rather than impacts on the physical environment as defined by CEQA. Under CEQA, a project's social impacts need not be treated as significant impacts on the environment. Environmental documents, should however, address the secondary physical impacts that could be triggered by a social impact (CEQA Guidelines §15131a). The social inconvenience of parking deficits, such as having to hunt for scarce parking spaces, is not an environmental impact, but there may be secondary physical environmental impacts, such as increased traffic congestion at intersections, air quality impacts, safety impacts, or noise impacts caused by congestion. In the experience of San Francisco transportation planners, however, the absence of a ready supply of parking spaces, combined with available alternatives to auto travel (e.g., transit service, taxis, bicycles, or travel by foot) and a relatively dense pattern of urban development, induces many drivers to seek and find alternative parking facilities, shift to other modes of travel, or change their overall travel habits. Any such resulting shifts to transit service in particular would be in keeping with the City's "Transit First" policy. The City's Transit First Policy, established in the City's Charter Section 16.102, provides that "parking policies for areas well served by public transit shall be designed to encourage travel by public transportation and alternative transportation." The project area is well-served by public transit, which provides alternatives to auto travel. Therefore, the creation of, or increase in parking demand resulting from a proposed project that cannot be met by existing or proposed parking facilities would not be considered a significant effect.

Wind

Wind impacts are directly related to building design and surrounding site conditions. Based on consideration of the height and location of the proposed 65-foot-tall building, Planning Department staff determined that the proposed project does not have the potential to cause significant changes to the wind environment in pedestrian areas adjacent or near the project site. As a result, the proposed project would

not have any significant wind impacts. The mitigation measures in the Market and Octavia Plan FEIR addressing potential wind impacts are not applicable to the proposed project because the project would not exceed 85 feet in height (FEIR Mitigation Measure 5.5B1) and would not result in significant pedestrian level wind impacts (FEIR Mitigation Measure 5.5B2).

Shadow

Section 295 of the Planning Code was adopted in response to Proposition K (passed November 1984) in order to protect certain public open spaces from shadowing by new structures during the period between one hour after sunrise and one hour before sunset, year round. Planning Code Section 295 restricts net new shadow on public open spaces under the jurisdiction of, or to be acquired by, the Recreation and Park Commission by any structure exceeding 40 feet unless the Planning Commission, in consultation with the Recreation and Park Commission, finds the impact to be less than significant.

The Market and Octavia Plan FEIR identified no significant shadow impact on Section 295 open space at the program or project level. For non-Section 295 parks and open space, the FEIR identified potential significant impacts related to new construction buildings over 50 feet tall, and determined that Mitigation Measure 5.5A2 would reduce potential impacts to a less-than-significant level. Mitigation Measure 5.5A2 would require shaping buildings to reduce shadow impacts on public plazas, parks, and open spaces not protected by Planning Code Section 295. The shadow fan for the proposed project indicated that no plaza, public open space, or parks and open space not subject to Section 295 would be affected by the proposed project. Thus, FEIR Mitigation Measure 5.5A2 would not be applicable to the proposed project.

The proposed development would be 65 feet in height. To determine whether this proposed project would conform to Section 295, a shadow fan analysis was prepared by Planning Department staff.²³ The shadow fan indicated that project shadows could not reach any site under Recreation and Park Commission jurisdiction.

The proposed buildings would add new shade to portions of adjacent properties, sidewalks and streets. However, because the height of the proposed buildings would not be substantially taller than surrounding buildings, and because of the existing configuration of surrounding buildings, the net new shadow would not be considered substantial and would not increase the total amount of shading in the neighborhood above levels that are common and generally accepted in urban areas. Due to the dense urban fabric of the city, the loss of sunlight on private residences or property is rarely considered to be a significant environmental impact and the limited increase in shading as a result of the proposed project would not be considered a significant impact under CEQA.

²³ Adrian Putra, San Francisco Planning Department, to Katie O'Brien, letter dated December 21, 2011. This document is available for public review at the Planning Department, 1650 Mission Street, San Francisco, as part of Case No. 2012.0110E.

Hazardous Materials

A Phase I Environmental Site Assessment (ESA) prepared for the project²⁴ revealed evidence of one historic recognized adverse environmental condition in connection to a documented release from a former underground storage tank (UST) located at the project site. Low levels of petroleum hydrocarbon contamination are present in the soil and groundwater at the Site. The site has been granted Case Closure and a Remedial Action Completion Certificate from the San Francisco Department of Public Health (SFDPH) with concurrence from the Regional Water Quality Control Board (RWQCB) dated November 23, 2010.²⁵ However, workers and members of the public in the area during project construction could be exposed to contaminated soils (low-level petroleum hydrocarbons), and this potential exposure to hazardous materials is a potentially significant impact. In addition, the four existing underground fuel storage tanks would require excavation, removal, and closure in accordance with the SFDPH.

The Market and Octavia Neighborhood Plan FEIR identified a significant impact related to Hazardous Materials and determined that *Mitigation Measure 5.10.A: Hazardous Materials* would reduce effects to a less-than-significant level. Therefore, implementation of *Mitigation Measure 5.10.A* (see Project Mitigation Measure 2 on page 26 of this Certificate of Determination) is required.

Although the Market and Octavia Neighborhood Plan FEIR identified a significant effect related to hazardous materials, it has been determined that *Mitigation Measure 5.10.A* is not adequate to mitigate project-specific impacts regarding either the potential risk of release and exposure to petroleum hydrocarbons in site soils, or the potential risk associated with the removal of the existing USTs. Since implementation of *Mitigation Measure 5.10.A* would not fully reduce this potential risk to a less-than-significant level, a Focused Initial Study and Mitigated Negative Declaration was prepared for the proposed project to address and mitigate this potential project-specific impact to a less-than-significant level.²⁶

Mitigation Measures

In accordance with the Market and Octavia Neighborhood Plan Final FEIR requirements, the project sponsor has agreed to implement the following mitigation measures.

Project Mitigation Measure 1 – Archeological Resources (Mitigation Measure 5.6.A2 – General Soil Disturbing Activities in the Market and Octavia Neighborhood Plan Final EIR)

The following mitigation measure is required to avoid any potential adverse effect from the project on accidentally discovered buried historical resources as defined in CEQA Guidelines Sections 15064.5(a) and (c). The project sponsor shall distribute the Planning Department archeological resource "ALERT" sheet to the project prime contractor; to any project subcontractor (including demolition, excavation, grading, foundation, pile driving, etc. firms); or utilities firm involved in soils disturbing activities within

²⁴ Treadwell & Rollo, Updated Phase I Environmental Site Assessment, 2175 Market Street, San Francisco, California, April 11, 2011. A copy of this document is available for review at the Planning Department, 1650 Mission Street, Suite 400, in File No. 2012.0110E.

²⁵ A copy of the SFDPH letter can be reviewed at 1650 Mission Street, Suite 400 in Case File No. 2012.00110E.

²⁶ This document is on file and is available for review as part of Case No. 2012.0110E at the San Francisco Planning Department, 1650 Mission Street, Suite 400.

the project site. Prior to any soils disturbing activities being undertaken each contractor is responsible for ensuring that the "ALERT" sheet is circulated to all field personnel including, machine operators, field crew, pile drivers, supervisory personnel, etc. The project sponsor shall provide the Environmental Review Officer (ERO) with a signed affidavit from the responsible parties (prime contractor, subcontractors), and utilities firm) to the ERO confirming that all field personnel have received copies of the Alert Sheet.

Should any indication of an archeological resource be encountered during any soils disturbing activity of the project, the project Head Foreman and/or project sponsor shall immediately notify the ERO and shall immediately suspend any soils disturbing activities in the vicinity of the discovery until the ERO has determined what additional measures should be undertaken.

If the ERO determines that an archeological resource may be present within the project site, the project sponsor shall retain the services of a qualified archeological consultant. The archeological consultant shall advise the ERO as to whether the discovery is an archeological resource, retains sufficient integrity, and is of potential scientific/historical/cultural significance. If an archeological resource is present, the archeological consultant shall identify and evaluate the archeological resource. The archeological consultant shall make a recommendation as to what action, if any, is warranted. Based on this information, the ERO may require, if warranted, specific additional measures to be implemented by the project sponsor.

Measures might include: preservation in situ of the archeological resource; an archaeological monitoring program; or an archeological testing program. If an archeological monitoring program or archeological testing program is required, it shall be consistent with the Major Environmental Analysis (MEA) division guidelines for such programs. The ERO may also require that the project sponsor immediately implement a site security program if the archeological resource is at risk from vandalism, looting, or other damaging actions.

The project archeological consultant shall submit a Final Archeological Resources Report (FARR) to the ERO that evaluates the historical significance of any discovered archeological resource and describing the archeological and historical research methods employed in the archeological monitoring/data recovery program(s) undertaken. Information that may put at risk any archeological resource shall be provided in a separate removable insert within the final report.

Copies of the Draft FARR shall be sent to the ERO for review and approval. Once approved by the ERO, copies of the FARR shall be distributed as follows: California Archaeological Site Survey Northwest Information Center (NWIC) shall receive one (1) copy and the ERO shall receive a copy of the transmittal of the FARR to the NWIC. The Major Environmental Analysis division of the Planning Department shall receive three copies of the FARR along with copies of any formal site recordation forms (CA DPR 523 series) and/or documentation for nomination to the National Register of Historic Places/California Register of Historical Resources. In instances of high public interest or interpretive value, the ERO may require a different final report content, format, and distribution than that presented above.

Project Mitigation Measure 2 – Hazardous Materials (Mitigation Measure 5.10.A: Hazardous Materials in the Market and Octavia Neighborhood Plan Final EIR)

Program or project level mitigation measures would vary depending upon the type and extent of contamination associated with each individual project. Mitigation measures to protect the community generally shall include:

- Airborne particulates shall be minimized by wetting exposed soils, as appropriate, containing runoff, and tarping over-night and weekends.
- Storage stockpiles shall be minimized, where practical, and properly labeled and secured.
- Vehicle speeds across unpaved areas shall not exceed 15 mph to reduce dust emissions.
- Activities shall be conducted so as not to track contaminants beyond the regulated area.
- Misting, fogging, or periodic dampening shall be utilized to minimize fugitive dust, as appropriate.
- Contaminants and regulated areas shall be properly maintained.

This mitigation measure will be required in addition to the hazardous materials mitigation measures identified in the Initial Study / Mitigated Negative Declaration for the proposed project.

Public Notice and Comment

A “Notification of Project Receiving Environmental Review” was mailed on April 18, 2012 to adjacent occupants and owners of properties within 300 feet of the project site, and ten members of the public expressed their concerns and issues. Overall, concerns and issues raised by the public in response to the notice were taken into consideration and incorporated in the environmental review as appropriate for CEQA analysis. Members of the public expressed concerns regarding increased potential emissions and traffic, pedestrian safety, litter, potential increased shade and shadow, potential reduction of outdoor vegetation, potential noise pollution, potential intrusive nighttime lighting, parking, potential increased traffic on 15th Street, size and height of development, location of the 15th Street driveway, and potential transit impacts. All issues appropriate for CEQA analysis have been adequately addressed in the Market and Octavia Plan FEIR and this Certificate of Exemption. The proposed project would not result in significant adverse environmental impacts associated with those issues identified by the public, and there is no substantial evidence that any of these topics could have a significant effect on the environment.

Other comments by members of the public in response to the public notice expressed either support for or opposition to the proposed project. Comments regarding the merits of the project are not relevant to CEQA analysis but may be taken into account by decision-makers as part of the project approval process.

Conclusion

With the exception of hazards and hazardous materials, the Market and Octavia Neighborhood Plan FEIR incorporated and adequately addressed all potential impacts of the proposed 2175 Market Street project. As described above, and except for hazards and hazardous materials, the 2175 Market Street project would not have any additional or peculiar significant adverse effects not examined in the Market and Octavia Neighborhood Plan FEIR, nor has any new or additional information come to light that would alter the conclusions of the FEIR. Thus, with the exception of hazards and hazardous materials, the proposed project would not have any new significant or peculiar effects on the environment not

previously identified in the FEIR for the Market and Octavia Neighborhood Plan, nor would any environmental impacts be substantially greater than described in the FEIR. No mitigation measures previously found infeasible have been determined to be feasible, nor have any new mitigation measures or alternatives been identified but rejected by the project sponsor. Therefore, in addition to being exempt from environmental review under Section 15183 of the CEQA Guidelines, the proposed project is also exempt under Section 21083.3 of the California Public Resources Code.



SAN FRANCISCO PLANNING DEPARTMENT

Preliminary Mitigated Negative Declaration

Date: August 15, 2012
Case No.: **2012.0110E**
Project Address: **2175 Market Street**
Zoning: Upper Market Neighborhood Commercial Transit Zoning District
40-X/60/65-X Height and Bulk District
Block/Lot: 3543/011
Lot Size: 18,425 square feet
Plan Area: Market and Octavia Neighborhood Plan
Project Sponsor: Katie O'Brien, Forest City, (415) 593-4225
Staff Contact: Don Lewis, (415) 575-9095
don.lewis@sfgov.org

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

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

PROJECT DESCRIPTION:

The project site is located on the southeast corner of Market and 15th Streets in the Castro/Upper Market neighborhood. The project sponsor proposes the demolition of an existing gasoline station that includes a one-story, approximately 1,487-square-foot service building, canopies and gasoline pumps, and the construction of an approximately 104,413-square-foot, mixed-use development containing 88 dwelling units and approximately 6,286 square feet of ground-floor retail space. The residential use (54 one-bedroom units and 34 two-bedroom units) would be approximately 74,838 square feet in size. The proposed development would consist of two separate buildings connected by a shared podium: a 65-foot-tall, six-story building spanning the northwest side of the lot, fronting on Market Street (the "primary building"), and a 40-foot-tall, three-story building at the southeast corner of the lot, fronting on 15th Street (the "secondary building"). The two buildings would be separated by a narrow courtyard accessible from 15th Street. The primary building would have three or four retail spaces on the ground floor with storefronts facing Market Street with residential units located on the ground floor facing the courtyard and on the five floors above. The primary building would be topped by a roof deck and garden. The secondary building would include three floors of residential units. The proposed development would include 44 off-street parking spaces to be provided in an underground parking garage accessed from 15th Street. Both buildings and the courtyard would sit above the subterranean garage. Pedestrian access would be from Market Street and 15th Street. The project would provide 3,270 square feet of common usable open space at the podium-level courtyard and 3,830 square feet at the roof deck, for a total of approximately 7,100 square feet of common open space. The proposed project also includes the removal of four underground storage tanks. The proposed project would require conditional use authorization from the Planning Commission and variances from the Zoning Administrator. The project site is located within the Market and Octavia Area Plan.

FINDING:

This project could not have a significant effect on the environment. This finding is based upon the criteria of the Guidelines of the State Secretary for Resources, Sections 15064 (Determining Significant Effect), 15065 (Mandatory Findings of Significance), and 15070 (Decision to prepare a Negative Declaration), and

Preliminary Mitigated Negative Declaration
August 15, 2012

CASE NO. 2012.01110E
2175 Market Street

the following reasons as documented in the Initial Evaluation (Initial Study) for the project, which is attached.

Mitigation measures are included in this project to avoid potentially significant effects. See pages 34-37.

cc: Katie O'Brien, Project Sponsor; Supervisor Scott Wiener, District 8; Michael Smith, Current Planning Division; Exemption/Exclusion File; Virna Byrd, M.D.F.

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2175 Market Street

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**INITIAL STUDY
2175 MARKET STREET
PLANNING DEPARTMENT CASE NO. 2012.0110E**

A. PROJECT DESCRIPTION

Project Location and Site Characteristics

The triangular project site (Assessor's Block 3543, Lot 11) totals 18,425 square feet and is located on a sloping parcel at 2175 Market Street on the southeast corner of Market and 15th Streets (the "project site") in the Castro/Upper Market neighborhood where the topography is otherwise primarily flat (see Figure 1, Site Location). The project site is currently occupied by a gasoline and service station, which includes a small garage/store building and a detached canopy covering the gasoline pump islands. The site is within the Upper Market Neighborhood Commercial Transit Zoning District (Upper Market NCT), the Upper Market Special Sign District, and a 40-X, 60-X, and 65-X Height and Bulk District. The project site is located within the Market and Octavia Area Plan, and the identified potential Upper Market Street Commercial Historic District.

Proposed Project

The project sponsor proposes the demolition of an existing gasoline station that includes a one-story, approximately 1,487-square-foot service building, canopies and gasoline pumps, and the construction of a new approximately 104,413-square-foot, mixed-use development containing approximately 88 dwelling units and approximately 6,286 square feet of ground-floor retail space. The residential use (54 one-bedroom units and 34 two-bedroom units) would be approximately 74,838 square feet in size. The proposed development would consist of two buildings connected by a shared podium: a 65-foot-tall, six-story building spanning the northwest side of the lot, fronting on Market Street (the "primary building"), and a 40-foot-tall, three-story building at the southeast corner of the lot, fronting on 15th Street (the "secondary building") (see Figures 2 – 11: Site Plan, Floor Plans, and Sections). The two buildings would be separated by a narrow courtyard accessible from 15th Street. The primary building would have three or four retail spaces on the ground floor with storefronts facing Market Street and residential units located on the ground floor facing the courtyard and facing both the courtyard and Market Street on the five floors above. The primary building would be topped by a roof deck

and garden. The secondary building would include three floors of residential units. The proposed development would include 44 off-street parking spaces to be provided in an underground parking garage accessed from 15th Street. Both buildings and the courtyard would sit above the subterranean garage. Pedestrian access would be from Market Street and 15th Street. The project would provide 3,270 square feet of common usable open space at the podium-level courtyard and 3,830 square feet at the roof deck, for a total of approximately 7,100 square feet of common open space. The proposed project also includes the removal of four underground storage tanks.

Proposed Building Form

The proposed development would have a contemporary aesthetic, with an articulated façade intended to break up the volume of the building, including a combination of boxy and angular forms and flat wall surfaces, and would feature flat roofs with some angled parapet profiles. The primary building would be clad with stucco, metal panels, and horizontal wood siding with an unpainted natural finish. These materials would each cover large sections of the exterior walls, creating contrasting panels with articulation of the wall plane between. The building would feature large expanses of glazing. Horizontally slatted screens would be employed as window detailing and wedge-plan windows would be staggered along the facades at the third through sixth story levels. The secondary building would be clad with more conventional horizontal drop wood siding. It would have shallow square oriel windows that project regularly from the second and third stories and are topped by angled parapet profiles. The building would feature regular fenestration patterns, but the windows would feature asymmetrical muntin patterns similar to those on the primary building. The site would be landscaped with trees and vegetation along the street, within the courtyard, and on top of the primary building.

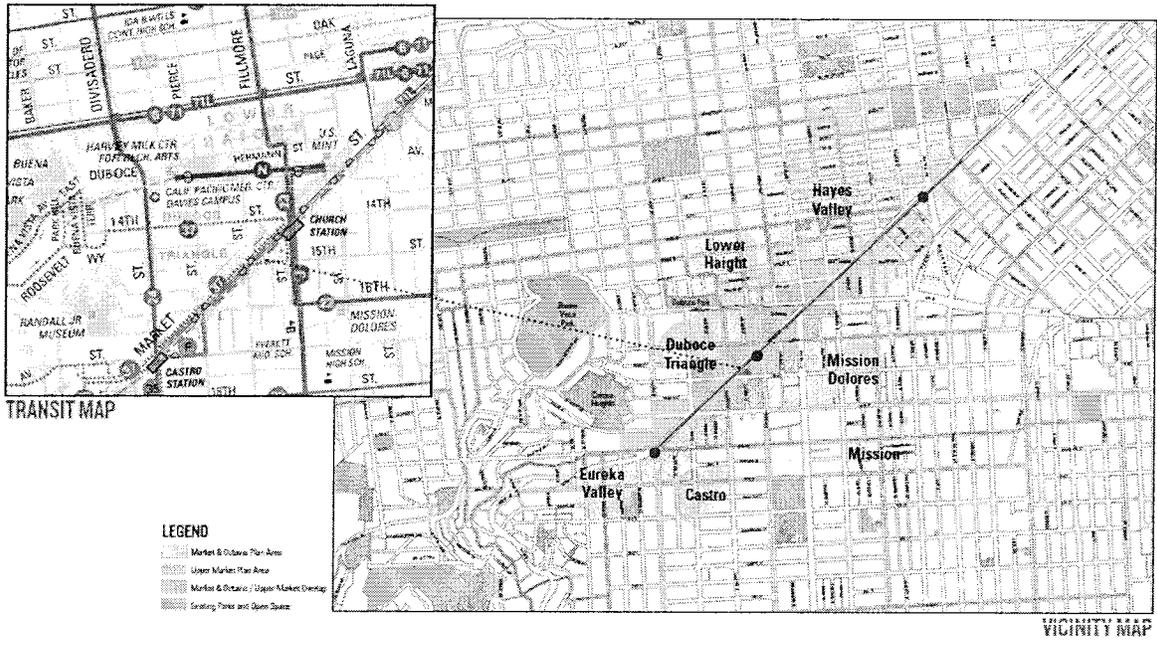
Project Construction

The project would involve up to 18 feet of excavation and the removal of approximately 6,188 cubic yards of soil for the proposed underground parking garage. Project construction, including demolition, would take approximately 14 months, and the project's estimated cost is \$16,000,000. The project sponsor is FC2175 Market, LLC and the project architect is Van Meter, Williams, and Pollack.

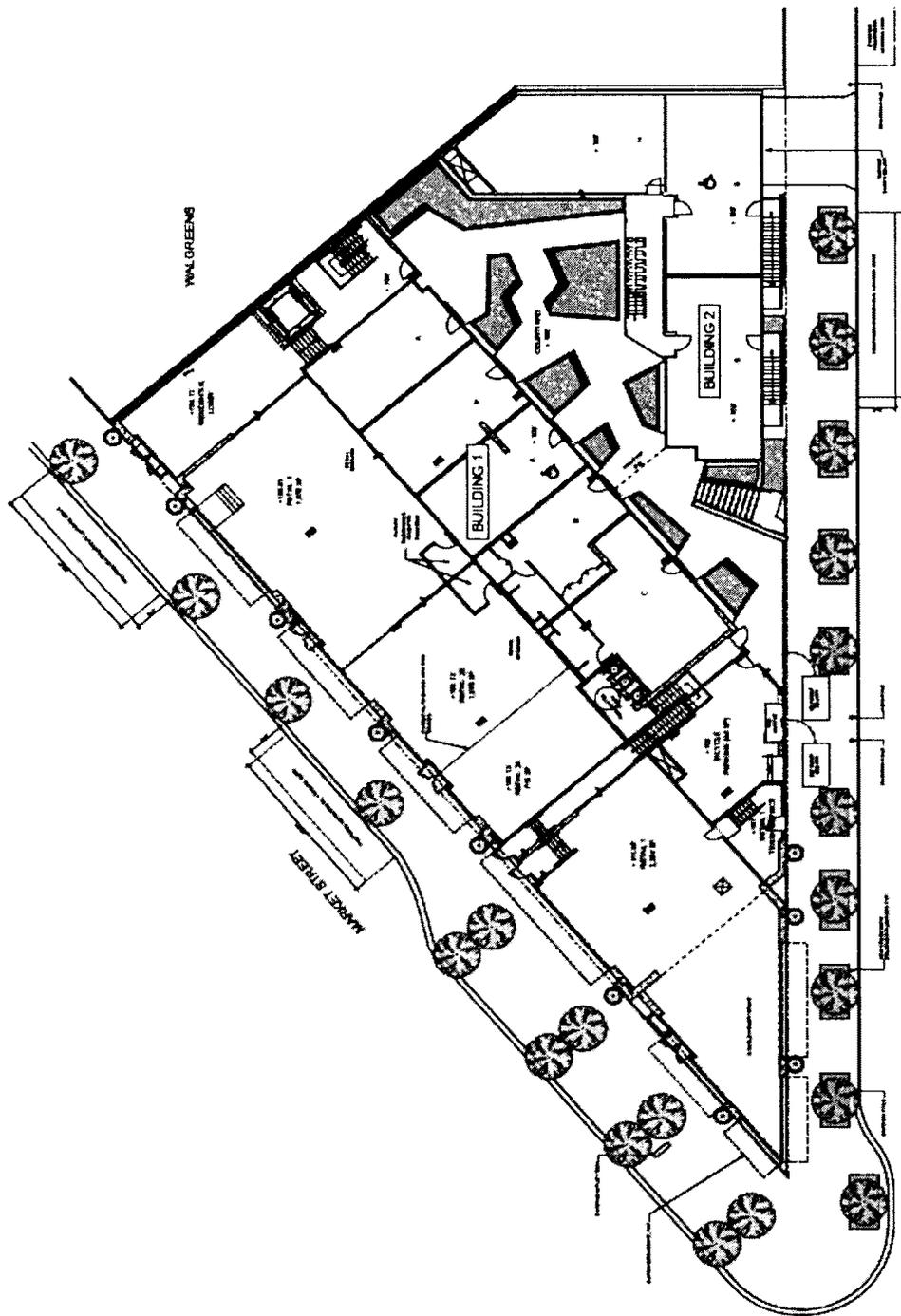
Project Approvals

The proposed project would require conditional use authorization from the Planning Commission for development of a lot larger than 10,000 square feet (pursuant to Planning Code Section 733.11), a restaurant (pursuant to Planning Code Section 733.44), and modification of dwelling unit mix requirements (pursuant to Planning Code Section 207.6).

The project site is on an irregularly shaped triangular lot and a sloping site. Due to those physical constraints and the project program, the proposed project would also require variances for rear yard (pursuant to Planning Code Section 733.12), dwelling unit exposure (pursuant to Planning Code Section 140), residential open space (pursuant to Planning Code Section 135), above-grade parking setback (pursuant to Planning Code Section 145.1(c)(1)), and ground floor ceiling height (pursuant to Planning Code Section 145.1(c)(4)(B)) requirements.

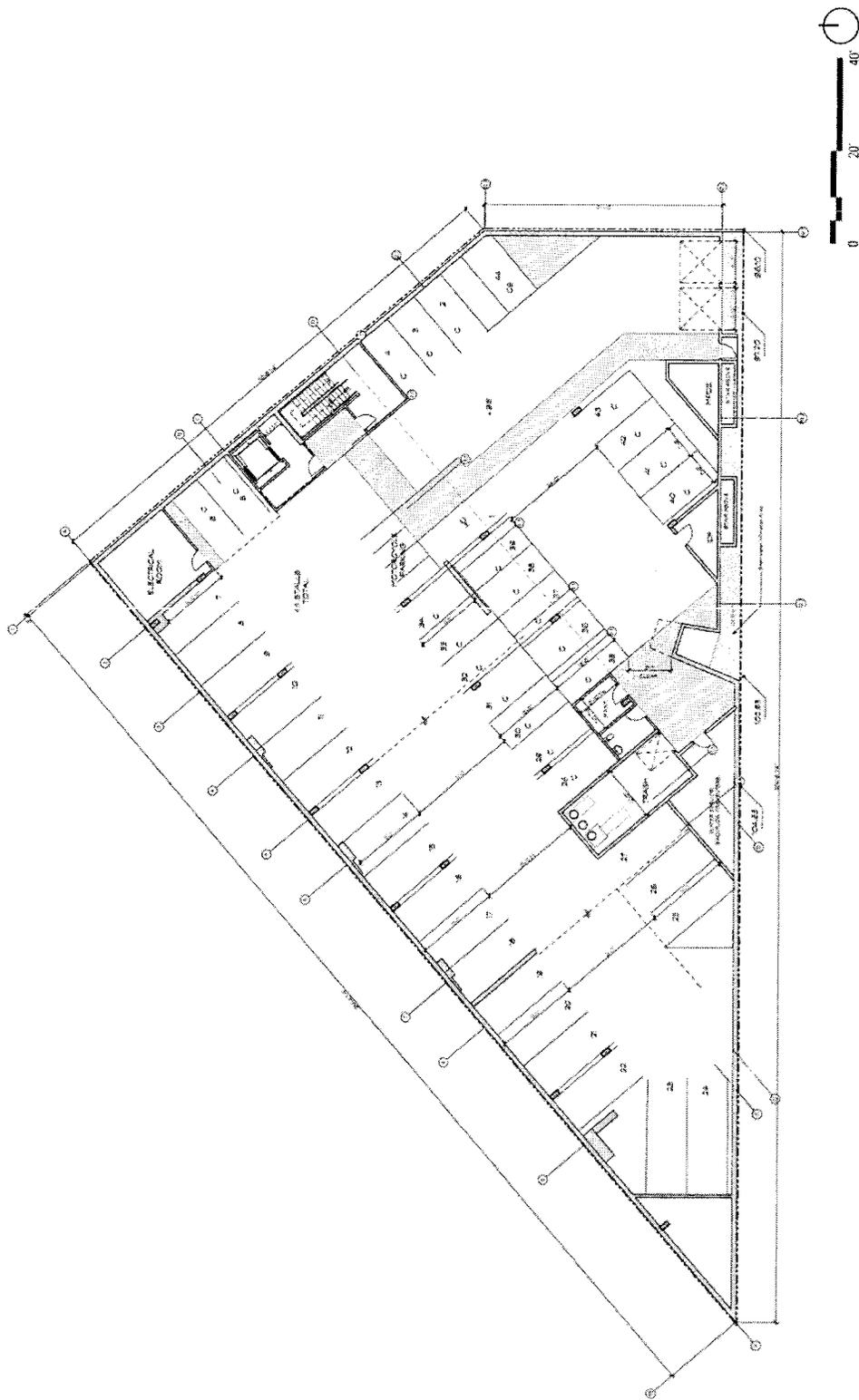


**Figure 1 – Project Location Map
2175 Market Street**
Source: Planning Department, July 2012



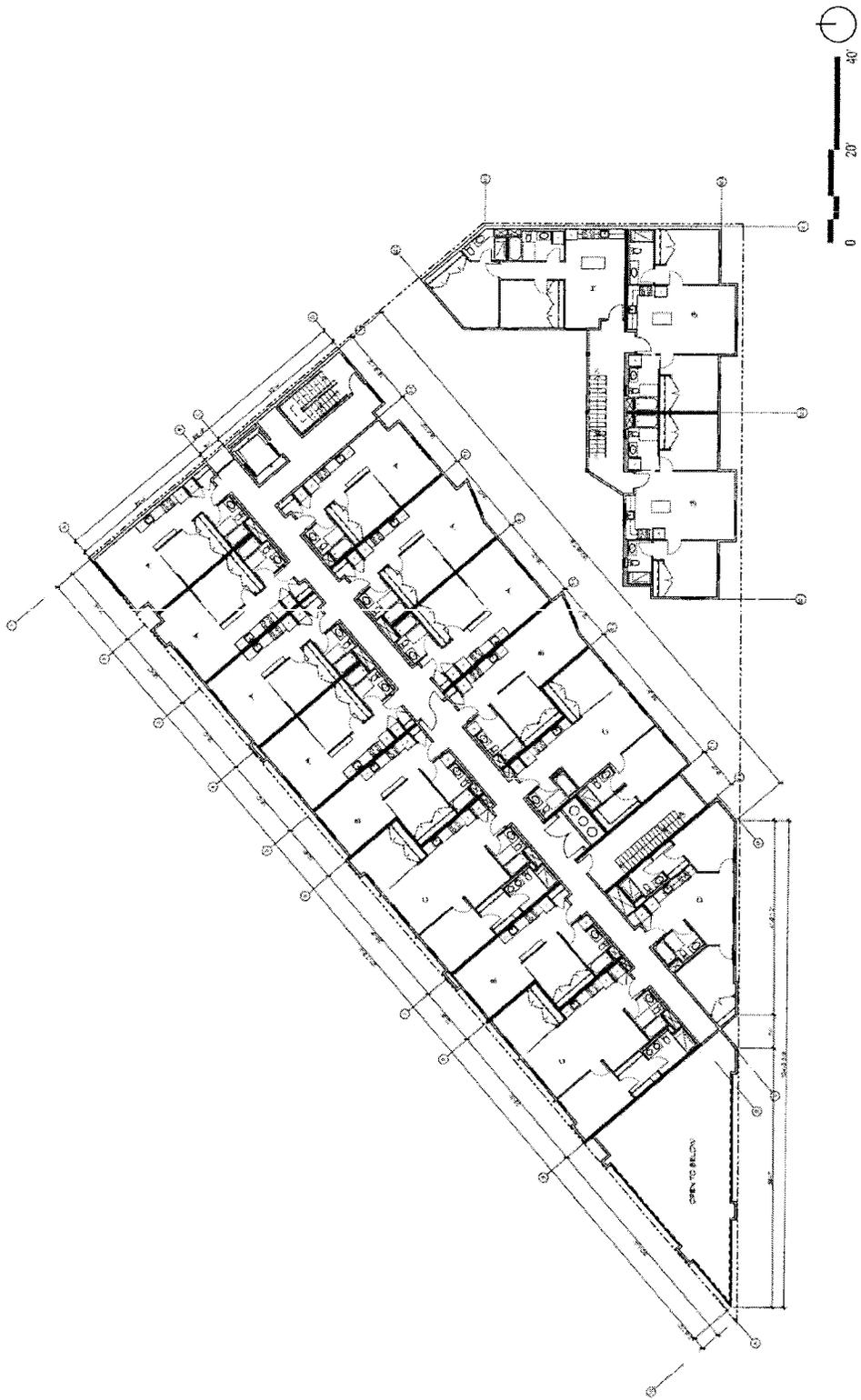
**Figure 2 – Project Site Plan
2175 Market Street**

Source: Van Meter, Williams, Pollack, April 2012



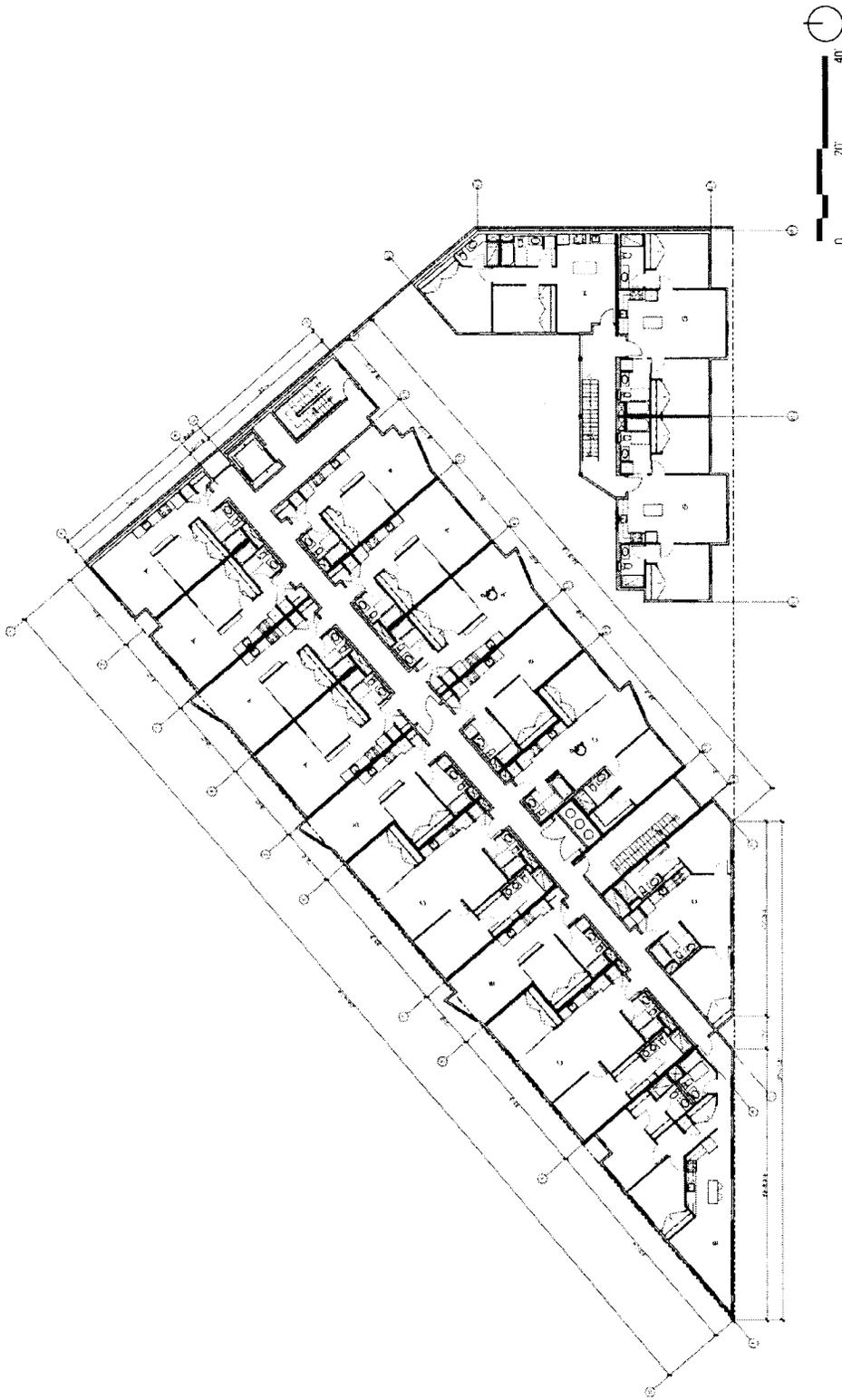
**Figure 3 – Garage Plan
2175 Market Street**

Source: Van Meter, Williams, Pollack, April 2012



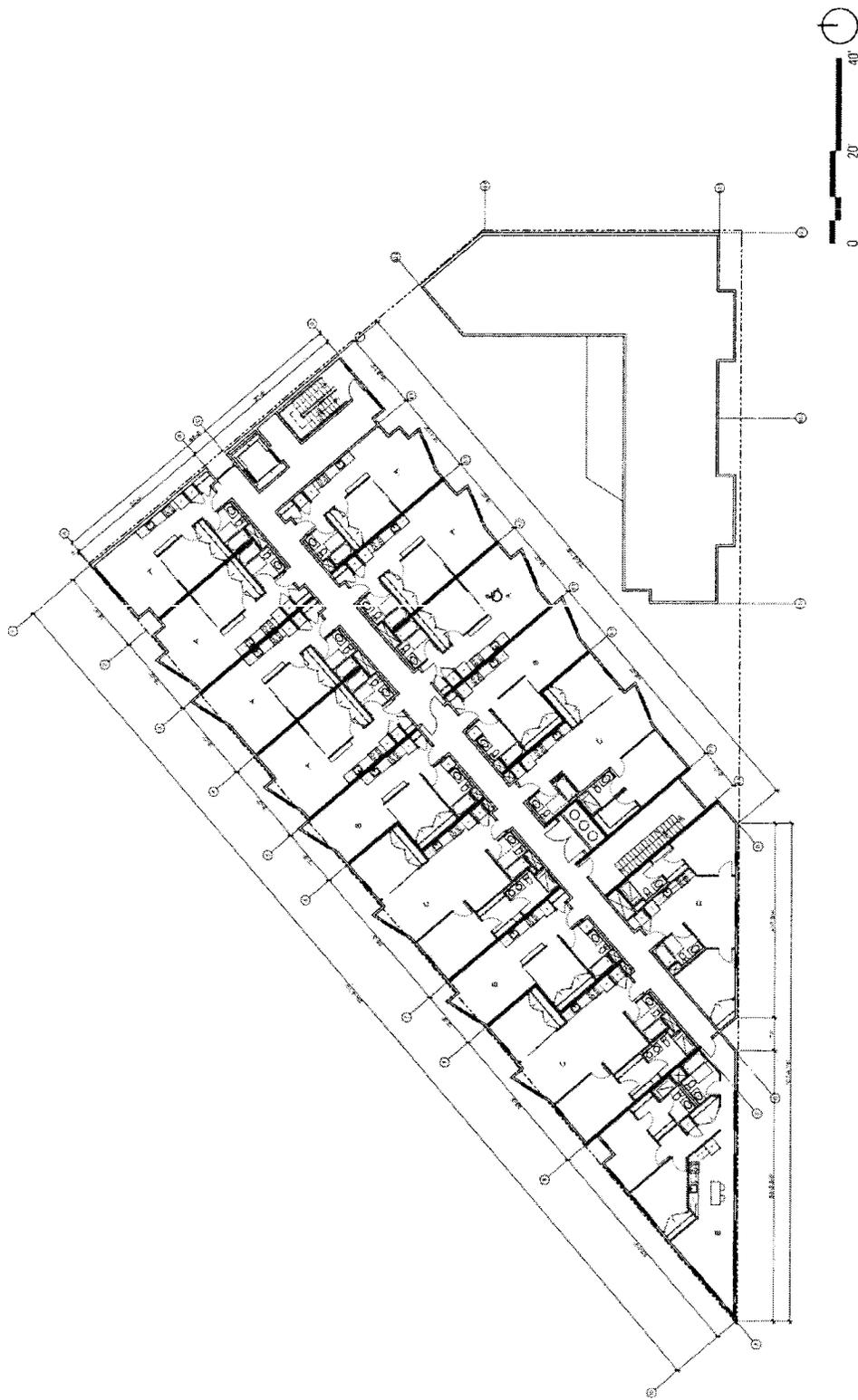
**Figure 5 – Second Floor Plan
2175 Market Street**

Source: Van Meter, Williams, Pollack, April 2012



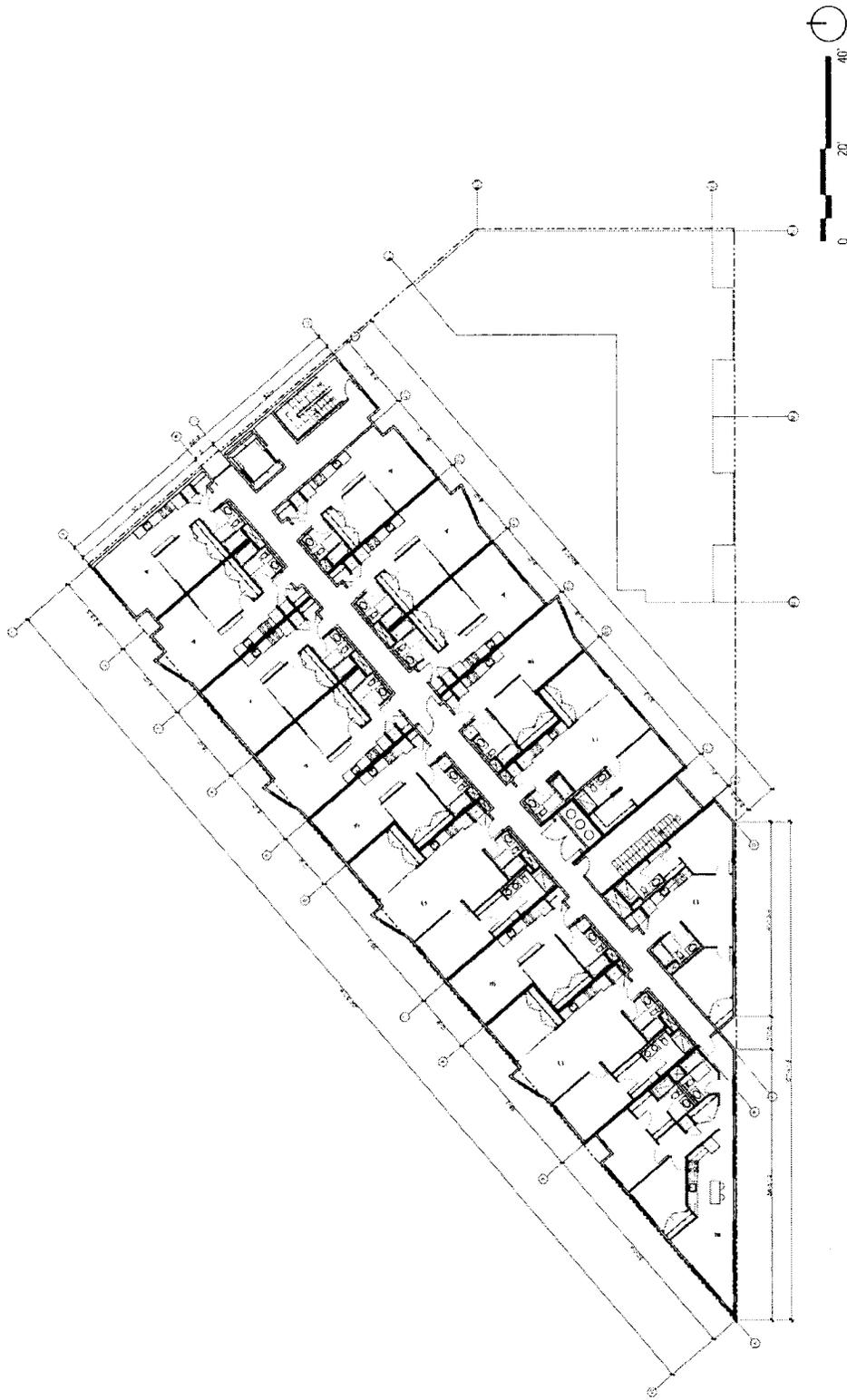
**Figure 6 – Third Floor Plan
2175 Market Street**

Source: Van Meter, Williams, Pollack, April 2012



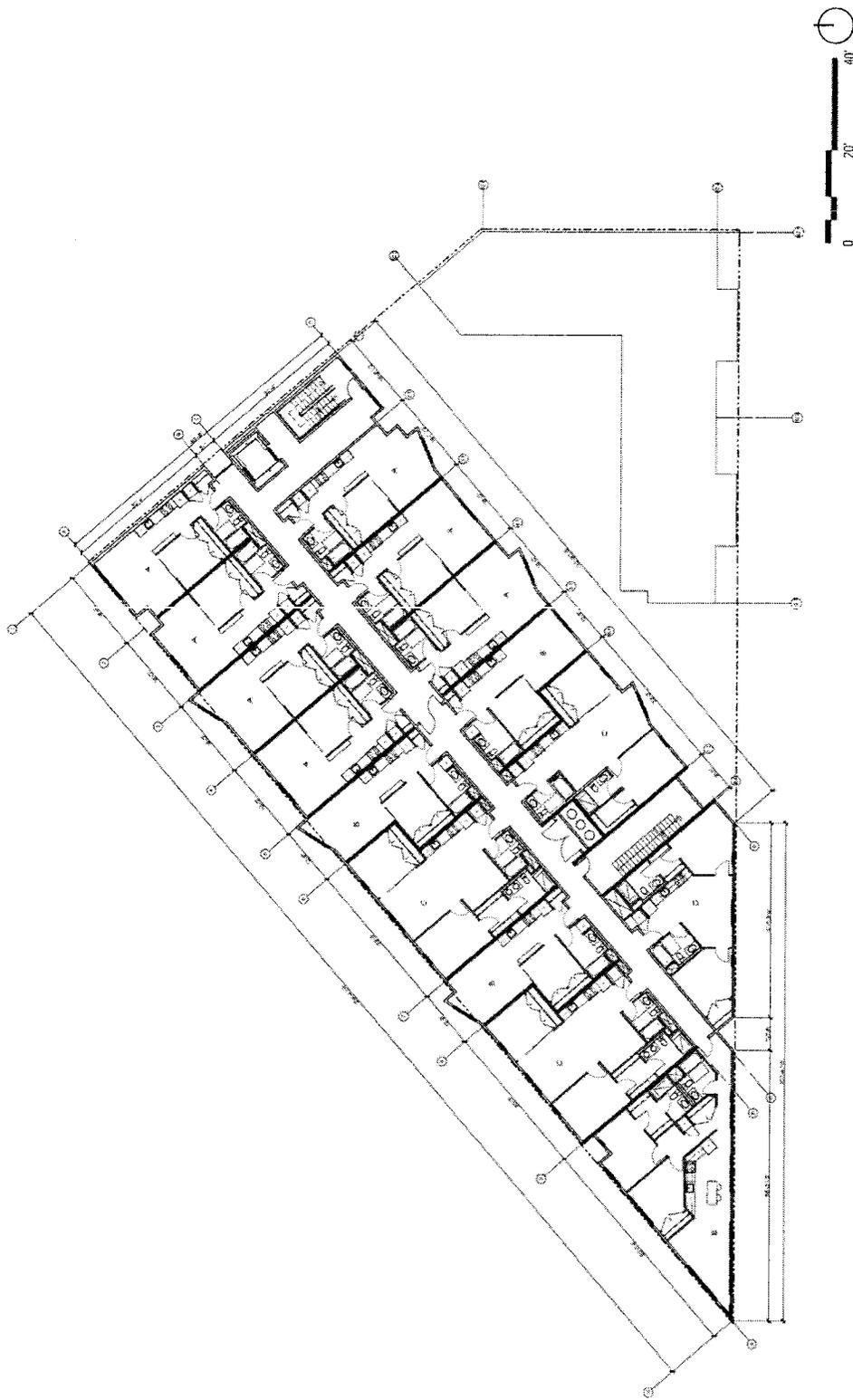
**Figure 7 – Fourth Floor Plan
2175 Market Street**

Source: Van Meter, Williams, Pollack, April 2012



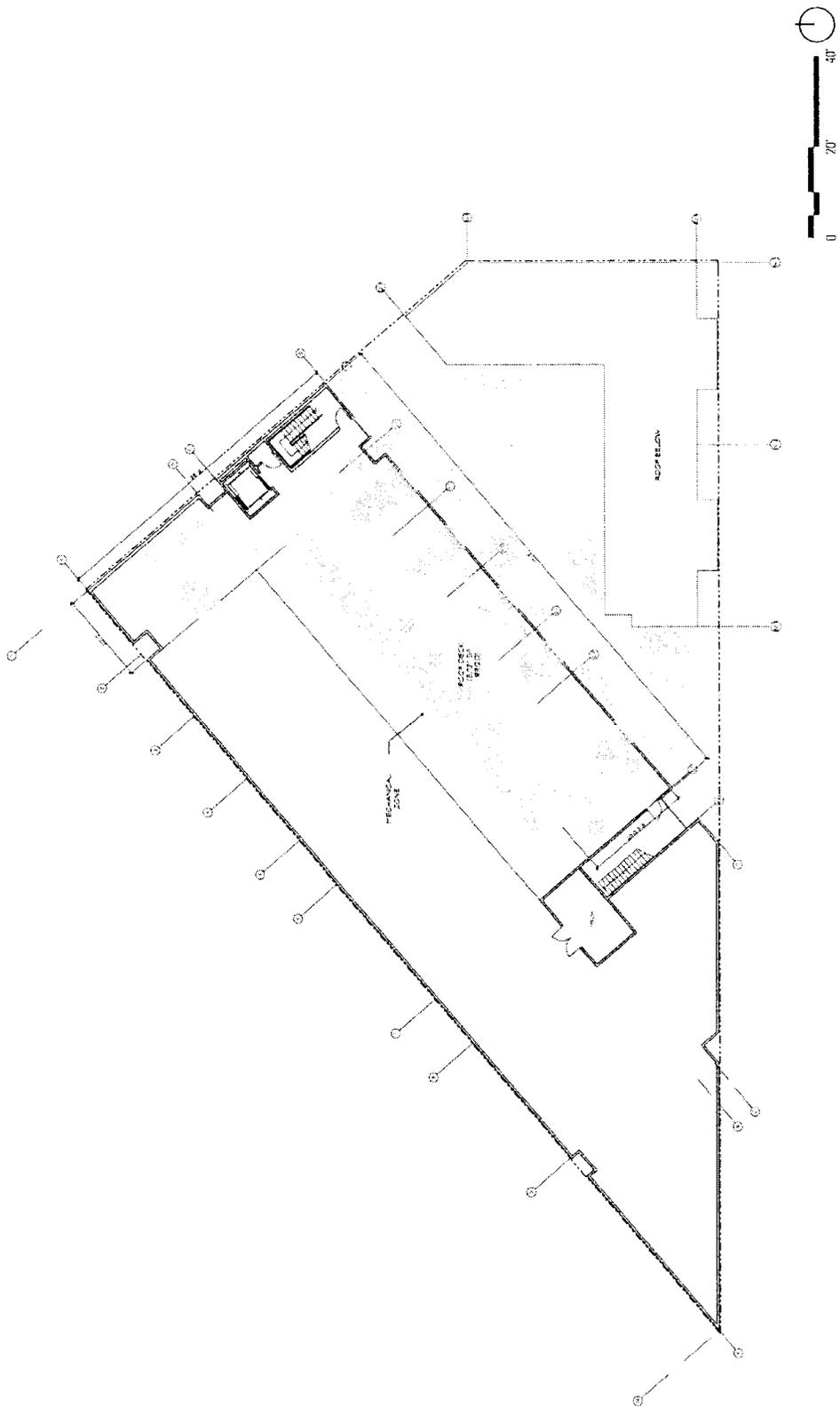
**Figure 8 – Fifth Floor Plan
2175 Market Street**

Source: Van Meter, Williams, Pollack, April 2012



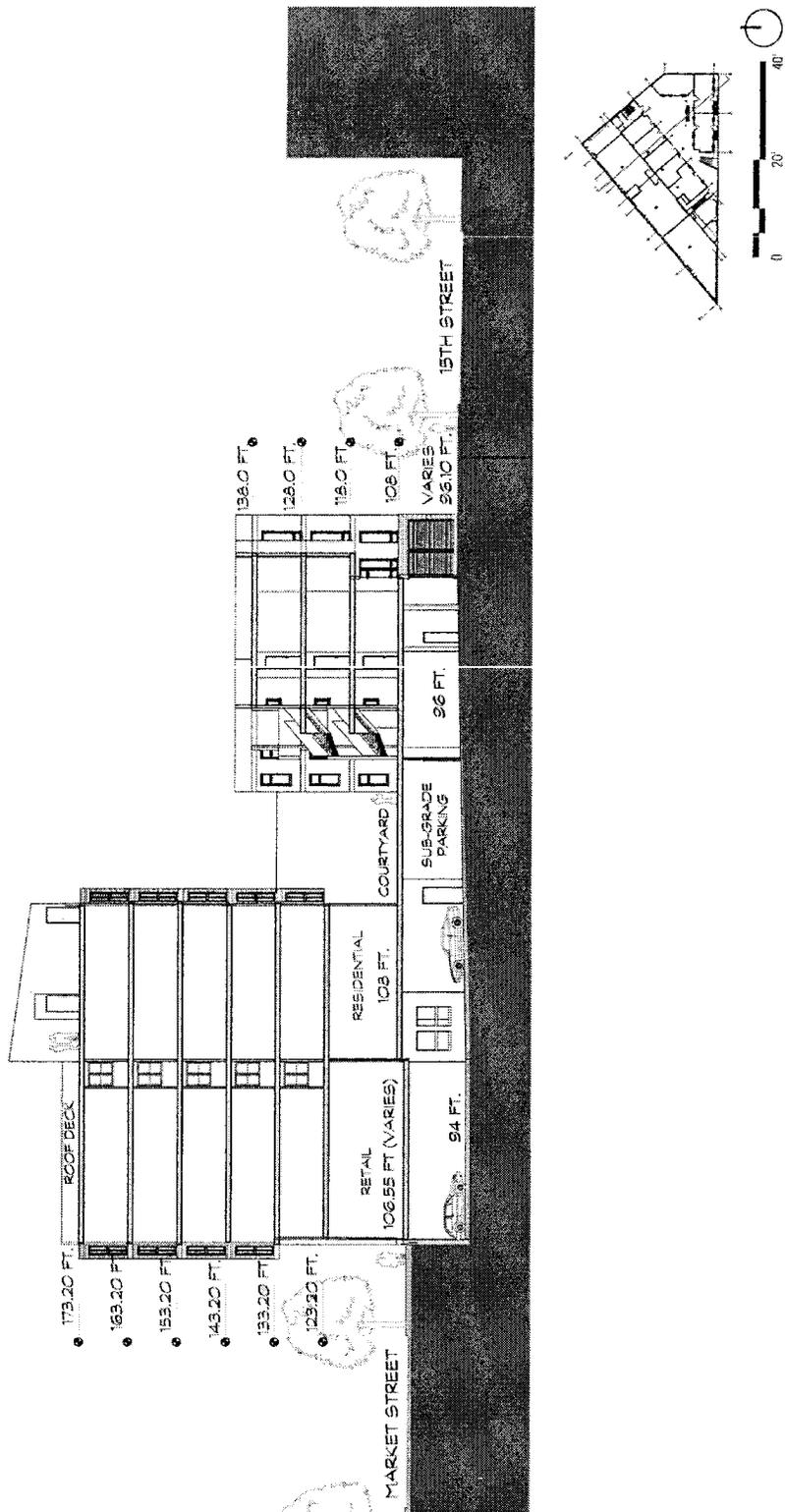
**Figure 9 – Sixth Floor Plan
2175 Market Street**

Source: Van Meter, Williams, Pollack, April 2012



**Figure 10 – Roof Plan
2175 Market Street**

Source: Van Meter, Williams, Pollack, April 2012



**Figure 11 – Building Section
2175 Market Street**

Source: Van Meter, Williams, Pollack, April 2012

B. PROJECT SETTING

The sloping triangular project site is located at 2175 Market Street, on the southeast corner of Market and 15th Streets, in San Francisco's Castro/Upper Market neighborhood. Land uses in the surrounding neighborhood are mixed, and include residential, commercial (primarily retail), small office and some automotive service facilities.

Adjacent to the project site along the south side of Market Street from 15th Street to Church Street is a two-story commercial building (Walgreen's and 24 Hour Fitness) that also fronts on 15th Street; a two-story, vacant, commercial building; a two-story, commercial building (Crossroads Trading Company and Academy of Ballet); and a three-story, mixed-use building with six residential units above ground-floor retail use that also fronts on Church Street.

Along the west side of Church Street from Market Street to 15th Street is a one-story, three-unit, commercial building; a three-story, mixed-use building with residential units above ground-floor retail use; a three-story, mixed-use building with residential units above ground-floor retail use; and a three-story, mixed-use building with residential units above ground-floor retail use that also fronts on 15th Street.

Along the north side of 15th Street from Church Street to Market Street is a two-story, two-unit residential building; a four-story, nine-unit, residential building; a three-story, two-unit residential building; and a three-story, two-unit residential building. Across the project site along the south side of 15th Street from Market Street to Church Street is a four-story, mixed-use building with nine residential units above ground-floor retail use; a two-story, two-unit residential building; a three-story, six-unit residential building; a two-story, three-unit residential building that primarily fronts on Sharon Street; a two-story, two-unit residential building; a three-story, two-unit residential building; a four-story, six-unit residential building; a two-story, single-family residential building; a two-story, four-unit residential building; a two-story, single-family residential building; a Russian Orthodox church (St. Nicholas Cathedral); and a three-story, mixed-use building with two residential units above ground-floor retail use that also fronts on Church Street.

Across the project site along the north side of Market Street from Sanchez Street to Church Street is a vacant lot; a three-story, commercial building (Swedish American Hall and Café du Nord); a four-story hotel (Perramont Hotel); a four-story hotel (Twin Peaks Hotel); a three-story, three-unit residential building; a three-story, three-unit residential building; a 16-space surface parking lot; a one-story commercial building; a three-story, three-unit residential building; a four-story, mixed-use building with twelve residential units above ground-floor retail use; a three-story, mixed-use building with five residential units above ground-floor retail use; a three-story, office building with ground-floor retail use; an approximately ten-space surface parking lot; and a one-story, vacant commercial building that also fronts on Church Street and 14th Street. There is an underground MUNI elevator at the Market and Church Streets intersection.

The project site, similar to other parcels along Market Street, is zoned Upper Market Neighborhood Commercial Transit (Upper Market NCT). The Upper Market NCT is a multi-purpose commercial district that provides limited convenience goods to adjacent neighborhoods, but also serves as a shopping street for a broader trade area. This district is well served by transit and is anchored by the Market Street subway and the F-Market historic streetcar line. Beyond this neighborhood commercial transit zone is a multi-family, moderate-density area primarily zoned RTO (Residential, Transit-Oriented District). In relation to height regulations, surrounding parcels range from 65-X, 60-X, and 40-X height and bulk districts, with areas transitioning to 40-X districts in residential areas.

C. COMPATIBILITY WITH EXISTING ZONING AND PLANS

	<i>Applicable</i>	<i>Not Applicable</i>
Discuss any variances, special authorizations, or changes proposed to the Planning Code or Zoning Map, if applicable.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Discuss any conflicts with any adopted plans and goals of the City or Region, if applicable.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Discuss any approvals and/or permits from City departments other than the Planning Department or the Department of Building Inspection, or from Regional, State, or Federal Agencies.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

SAN FRANCISCO PLANNING CODE

The *San Francisco Planning Code (Planning Code)*, which incorporates by reference the City's Zoning Maps, governs permitted uses, densities, and configuration of buildings within San Francisco. Permits to construct new buildings (or to alter or demolish existing ones) may not be issued unless the proposed project conforms to the *Planning Code*, an exception is granted pursuant to provisions of the *Planning Code*, or a reclassification of the site occurs.

The proposed project includes a mixed-use residential and commercial development which is a permitted use in the Upper Market NCT zoning district. The Upper Market NCT district does not provide a residential density limit. However, pursuant to *Planning Code* Section 207.6, no less than 40 percent of the total number of dwelling units on site shall contain at least two bedrooms, unless conditional authorization is obtained to modify that requirement. This requirement applies to projects in the RTO, Hayes-Gough NCT, Upper Market Street NCT, and NCT-3 districts. The proposed project would provide 34 two-bedroom units or 38.6% of the 88 total units. Thus, conditional use authorization is required pursuant to Section 207.6.

The Upper Market NCT district is intended as a “multi-purpose commercial district” with both neighborhood-serving and broader area commercial use. Housing is encouraged above the second story, and business and professional offices are also located along Market Street in this zone. The proposed project includes a space for a full-service restaurant for one of the Market Street ground-floor retail spaces. The establishment of a full-service restaurant requires conditional use authorization pursuant to *Planning Code* Section 733.42. The other future tenants of the proposed ground-floor commercial spaces are not known at this time.

The project site is located within a 60/65-X and 40-X height and bulk districts. The proposed building would be 65-feet in height measured at the Market Street frontage. *Planning Code* Section 102.12(d) allows the owner to choose the street or streets from which the measurement of height is to be taken where the lot has frontage on two or more streets, if the scope of the rules stated in subsections (a) – (c) are followed. The project sponsor has chosen to take the height measurement at the Market Street frontage. The additional five-foot height exception for ground floor uses, permitted by Section 263.20 of the Code, would be applied to the portion of the site within the 40-X height and bulk district.

Planning Code Section 733.94 would permit up to 0.5 off-street parking space for each dwelling unit in the Upper Market NCT, would allow by conditional use authorization up to 0.75 parking spaces per dwelling units, and would generally permit up to 1 commercial parking space per 1,500 square feet of occupied floor area. As principally permitted, the project, with 88 dwelling units and approximately 6,286 square feet of retail space, proposes 43 residential parking spaces and 1 car share parking space, for a total of 44 off-street parking spaces. Because the project site is sloping, a small portion of the podium is above grade at the lowest point of the property and will be used for accessory off-street parking. Thus, a variance is required pursuant to Section 145(c)(1) for the above-grade parking.

Section 155.5 of the *Planning Code* requires that residential projects of 50 dwelling units or more provide 25 bicycle parking spaces plus 1 for every 4 dwellings over 50 dwelling units. The project proposes 88 dwelling units and thus would be required to provide 34 bicycle parking spaces. Forty-five bicycle parking spaces would be provided in the parking garage.

Pursuant to Section 135 of the *Planning Code*, approximately 60 square feet of private open space or 80 square feet of common open space per dwelling unit, or some equivalent combination of private and common open space is required. The proposed project would be required to provide 7,040 square feet of common open space, and the project would provide 7,100 square feet of common open space at the courtyard and roof deck. The project would provide more open space than the required amount. Even so, because the courtyard open space would not technically meet exposure requirements, a variance is required pursuant to Section 135.

Under Section 733.12 of the *Planning Code*, the project requires a 25 percent rear yard at grade level and above opposite and parallel to the Market Street frontage. The required rear yard is approximately 20 feet using this method of measurement. The proposed project would require a variance from this section as the proposed development is within the required rear yard at the property's 15th Street frontage, in part because of the triangular shape of the project site.

The proposed project would require conditional use authorization by the Planning Commission for the development of a lot larger than 10,000 square feet (Section 733.11), for a modification of the dwelling unit mix requirements (Section 207.6), and for a restaurant (Section 733.44). The proposed project would require variances for dwelling unit exposure (Section 140),

residential open space (Section 135) (as discussed above), rear yard (Section 733.12), above-grade parking setback (Section 145.1(c)(1)) (as discussed above), and ground floor ceiling height (Section 145.1(c)(4)(B)).

Projects proposing five or more dwelling units are subject to the Inclusionary Affordable Housing Program outlined in Section 415 of the Code. The project sponsor would fulfill their requirement of complying with Section 415 by providing 13 on-site affordable units.

The proposed project would require building permit(s) from the Department of Building Inspection (DBI). Any curb or street modifications would require approval by the Department of Parking and Traffic within the Municipal Transportation Agency and from the Department of Public Works. Protection and addition of street trees would require approval from the Department of Public Works (DPW). Prior to disturbing soils on the project site, the San Francisco Department of Public Health shall approve a Site Mitigation Plan (SMP) for the removal and closure of the existing underground storage tanks.

PLANS AND POLICIES

San Francisco General Plan Priority Planning Policies

The San Francisco *General Plan*, which provides general policies and objectives to guide land use decisions, contains some policies that relate to physical environmental issues. The compatibility of the project with *General Plan* policies that do not relate to physical environmental issues will be considered by decision-makers as part of their decision whether to approve or disapprove the proposed project and any potential conflicts identified as part of that process would not alter the physical environmental effects of the proposed project.

In November 1986, the voters of San Francisco approved Proposition M, the Accountable Planning Initiative, which added Section 101.1 to the City's *Planning Code* to establish eight Priority Policies. These policies, and the sections of this Environmental Evaluation addressing the environmental issues associated with the policies, are: (1) preservation and enhancement of neighborhood-serving retail uses; (2) protection of neighborhood character (Question 1c, Land Use); (3) preservation and enhancement of affordable housing (Question 3b, Population and Housing, with regard to housing supply and displacement issues); (4) discouragement of commuter automobiles (Questions 5a, b, f, and g, Transportation and Circulation); (5) protection

of industrial and service land uses from commercial office development and enhancement of resident employment and business ownership (Question 1c, Land Use); (6) maximization of earthquake preparedness (Questions 13 a-d, Geology, Soils, and Seismicity); (7) landmark and historic building preservation (Question 4a, Cultural Resources); and (8) protection of open space (Questions 8 a and b, Wind and Shadow, and Questions 9a and c, Recreation and Public Space). Prior to issuing a permit for any project which requires an Initial Study under the California Environmental Quality Act (CEQA), and prior to issuing a permit for any demolition, conversion, or change of use, and prior to taking any action which requires a finding of consistency with the *General Plan*, the City is required to find that the proposed project or legislation is consistent with the Priority Policies. As noted above, the consistency of the proposed project with the environmental topics associated with the Priority Policies is discussed in the Evaluation of Environmental Effects.

Other Plans

Environmental plans and policies are those, like the Bay Area Air Quality Plan, that directly address environmental issues and/or contain targets or standards, which must be met in order to preserve or improve characteristics of the City's physical environment. The proposed project would not obviously or substantially conflict with any such adopted environmental plan or policy.

Market and Octavia Area Plan

The proposed project is within the Market and Octavia Area Plan. The Plan promotes a mixed-use, urban neighborhood in which new and current residents enjoy a vibrant pedestrian realm and rich transit connections. On April 5, 2007, the Planning Commission certified the final EIR for the Market and Octavia Plan (Case No. 2003.0347E; State Clearinghouse No. 2004012118). The Program EIR analyzed amendments to the Planning Code and Zoning Maps and the then-proposed Market and Octavia Area Plan. The EIR analysis was based on assumed land use development and activities that were anticipated to occur under the Market and Octavia Area Plan. The proposed project was designed in consideration of the Market and Octavia Area Plan and the Upper Market NCT zoning. The proposed project at 2175 Market Street is consistent with the development density established by the Market and Octavia Neighborhood Plan EIR, a

comprehensive programmatic document that presents an analysis of the environmental effects of implementation of the Market and Octavia Area Plan.

As such, Planning Department Citywide Planning, Environmental Planning, and Current Planning staff have determined that the proposed project is consistent with density established with the Market and Octavia Area Plan, satisfies the requirements of the General Plan and the Planning Code, and is eligible for a Community Plan Exemption.^{1,2} The sufficiency of the Market and Octavia Area Plan Program EIR for environmental review of the proposed project was considered in the Community Plan Exemption Checklist, discussed below.

As part of the Market and Octavia Area Plan, design guidelines for development in the Upper Market Streets neighborhood were created as a result of the Upper Market Workshop, which was a community visioning process that created the Upper Market Community Design Plan (UMCDP) to guide the future of the Upper Market corridor, which is generally defined as Market Street between Castro and Octavia Streets. The workshop was held in the fall of 2007, and included the review of design of nine properties, including the proposed project site. The plan encourages attractive public spaces and new development that integrates with and contributes to the area's charm and diversity. The overarching community design principles derived from the workshop are the following: vibrant pedestrian realm; active, street-engaging buildings; well-designed, affordable, and flexible buildings; strong local character and identity; network of open spaces; series of community servicing uses; and sustainable environments. The UMCDP guidelines outline the community's vision, with individual elements to be included and determined by developers based on specific program, site constraints, design approach, and other considerations. Planning Department staff reviews proposals for overall consistency with the intent of the guidelines. Planning Department staff reviewed the proposed project and concluded that the proposed project is generally consistent with and meets the intent of the UMCDP guidelines for land use, building height, massing, ground floor and upper story design, and architectural context.

¹ Jose Campos, San Francisco Planning Department, Community Plan Exemption Eligibility Determination, Citywide Planning and Policy Analysis, 2175 Market Street. This document is on file and available for review as part of Case File No. 2012.0110E at the San Francisco Planning Department, 1650 Mission Street, Suite 400.

² Mark Luellen, San Francisco Planning Department, Community Plan Exemption Eligibility Determination, Current Planning Analysis, 2175 Market Street. This document is on file and available for review as part of Case File No. 2012.0110E at the San Francisco Planning Department, 1650 Mission Street, Suite 400.

D. SUMMARY OF ENVIRONMENTAL EFFECTS

The proposed project could potentially affect the environmental factor(s) checked below. The following pages present a more detailed checklist and discussion of each environmental factor checked below.

- | | | |
|---|--|---|
| <input type="checkbox"/> Land Use | <input type="checkbox"/> Air Quality | <input type="checkbox"/> Biological Resources |
| <input type="checkbox"/> Aesthetics | <input type="checkbox"/> Greenhouse Gas Emissions | <input type="checkbox"/> Geology and Soils |
| <input type="checkbox"/> Population and Housing | <input type="checkbox"/> Wind and Shadow | <input type="checkbox"/> Hydrology and Water Quality |
| <input type="checkbox"/> Cultural and Paleo. Resources | <input type="checkbox"/> Recreation | <input checked="" type="checkbox"/> Hazards/Hazardous Materials |
| <input type="checkbox"/> Transportation and Circulation | <input type="checkbox"/> Utilities and Service Systems | <input type="checkbox"/> Mineral/Energy Resources |
| <input type="checkbox"/> Noise | <input type="checkbox"/> Public Services | <input type="checkbox"/> Agricultural and Forest Resources |
| | <input checked="" type="checkbox"/> Mandatory Findings of Significance | |

E. EVALUATION OF ENVIRONMENTAL EFFECTS

California Environmental Quality Act (CEQA) State Guidelines Section 15183 provides an exemption from environmental review for projects that are consistent with the development density established by existing zoning, community plan or general plan policies for which an Environmental Impact Report (EIR) was certified, except as might be necessary to examine whether there are project-specific effects which are peculiar to the project or its site. Section 15183 specifies that examination of environmental effects for projects eligible for a Community Plan Exemption shall be limited to those effects that: a) are peculiar to the project or parcel on which the project would be located; b) were not analyzed as significant effects in a prior EIR on the zoning action, general plan or community plan with which the project is consistent; c) are potentially significant off-site and cumulative impacts which were not discussed in the underlying EIR; and d) are previously identified in the EIR, but which are determined to have a more severe adverse impact than that discussed in the underlying EIR. Section 15183(c) specifies

that if an impact is not peculiar to the parcel or to the proposed project, then an EIR need not be prepared for that project solely on the basis of that impact.

An initial analysis, in the form of a Community Plan Exemption Checklist and Determination, was conducted by the Planning Department to evaluate potential project-specific environmental effects peculiar to the 2175 Market Street project, and it incorporated by reference information contained within the Market and Octavia Neighborhood Plan Final EIR (Case No. 2003.0347E; State Clearinghouse No. 2004012118). This initial analysis assessed the proposed project's potential to cause environmental impacts and concluded that, with the exception of hazardous materials, the proposed project would not result in new, potentially significant peculiar environmental effects, or effects of greater severity than were already analyzed and disclosed in the Market and Octavia Neighborhood Plan Final EIR.³ Due to the potentially significant peculiar impact concerning hazardous materials, this Focused Initial Study was prepared for that topic area only.

<i>Topics:</i>	<i>Potentially Significant Impact</i>	<i>Less Than Significant with Mitigation Incorporated</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>	<i>Not Applicable</i>
1. HAZARDS AND HAZARDOUS MATERIALS					
Would the project:					
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

³ Community Plan Exemption Checklist, 2175 Market Street, August 15, 2012. This document is on file and available for review as part of Case File No. 2012.0110E at the San Francisco Planning Department, 1650 Mission Street, Suite 400.

<i>Topics:</i>	<i>Potentially Significant Impact</i>	<i>Less Than Significant with Mitigation Incorporated</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>	<i>Not Applicable</i>
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
h) Expose people or structures to a significant risk of loss, injury or death involving fires?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

The project site is not included on the Department of Toxic Substances Control (DTSC) list compiled pursuant to Government Code Section 65962.5 of hazardous materials sites in San Francisco, and therefore, Topics 1d is not applicable to the proposed project. The project site is not located within an airport land use plan area, nor is it in the vicinity of a private airstrip, and therefore, Topics 1e and 1f are not applicable to the proposed project.

The Maher Ordinance (Ordinance 253-86) is a San Francisco ordinance that requires certain hazardous materials reporting and handling for parcels primarily located “Bayward of the high-tide-line.” The project site is not within the limits of the Maher Zone.

Impact HZ-1: The proposed project would not create a significant hazard through routine transport, use, disposal, handling or emission of hazardous materials. (Less than Significant)

The project would involve the demolition of an existing gasoline and service station and the construction of a mixed-use building with 88 dwelling units and approximately 6,286 square feet of commercial use. As with other residential and commercial developments, the development would likely handle common types of hazardous materials, such as cleaners and disinfectants. These products are labeled to inform users of potential risks and to instruct them in appropriate handling procedures. Most of these materials are consumed through use, resulting in relatively little waste. Businesses are required by law to ensure employee safety by identifying hazardous materials in the workplace, providing safety information to workers who handle hazardous materials, and adequately training workers. For these reasons, hazardous materials used during

project operation would not pose any substantial public health or safety hazards related to hazardous materials. Thus, there would be less-than-significant impacts related to hazardous materials use, with development of the proposed project.

Impact HZ-2: Demolition and excavation of the project site would result in handling and accidental release of contaminated soils and hazardous building materials associated with historic uses. (Less than Significant with Mitigation Incorporated)

The project site is currently developed with an automobile gasoline and service station. Potential subsurface contamination that could be encountered related to a gasoline and service station land use includes potential soil and groundwater contamination with petroleum hydrocarbons (gasoline, diesel, and oil), volatile organic compounds (VOCs) such as benzene and MTBE, metals, and PCBs. A Phase I Environmental Site Assessment (ESA) was prepared for the project site addressing the potential for hazardous material exposure that could result from the demolition of the existing automobile gasoline and service station, closure of the three existing underground fuel storage tanks and project construction.⁴ An ESA describes current and prior uses of the property, reviews environmental agency databases and records, reports site reconnaissance observations, and summarizes potential soil and groundwater contamination issues. The following is a summary from the Phase I ESA for the proposed project.

According to the ESA, the project site has been a service station from 1930 to the present. In the 1893 and 1899 Sanborn Maps, the site is vacant with some single- and two-story dwellings to the north of Market Street and south across 15th Street. The 1914 Sanborn Map indicates that the site is mostly vacant with an upholstery shop and some single-story dwellings along Market Street and a wood shed and storage sheds along 15th Street. In 1914, the center of the site contains two tanks that are labeled "asphalt kettles." The surrounding areas to the east and south contain mostly one- and two-story dwelling and commercial businesses. In the 1946 aerial photograph and the 1950 Sanborn Map, the site is occupied by a used car sales and service station with a small office building near the western side of the property. The adjoining property to the east is a two-story auto sales and service building. Across Market Street to the north is a service station located at 2198 Market Street and various one- and two-story businesses and residential

⁴ Treadwell & Rollo. Updated Phase I Environmental Site Assessment, 2175 Market Street, San Francisco, April 11, 2011. A copy of this document is available for review at the Planning Department, 1650 Mission Street, Suite 400, in File No. 2012.0110E.

buildings. The surrounding area to the east and south appears occupied by one- and two-story business and residential buildings.

There are several facilities within the study area that appear on the regulatory agency lists. The potential for the documented nearby off-site sources of chemical constituents affecting the environmental conditions of the site is judged in the ESA to be minimal. The chief transport mechanism for the migration of the off-site chemical impacts to the on-site environment, if any, would likely be via groundwater flow.

Based on a review of regulatory files, the site history, and site reconnaissance, the ESA concluded that detectible levels of petroleum hydrocarbon contamination are present in the soil and groundwater at the site. The source of its contamination is from a documented release from a former underground storage tank located at the site and also potentially from an off-site halogenated volatile organic compounds (HVOCs) source migrating on-site, possibly through the groundwater flow. Groundwater monitoring revealed that these low levels of petroleum hydrocarbons and HVOCs in the groundwater have reduced over the last four quarters of monitoring in 2009 to 2010.

The site has been granted Case Closure and a Remedial Action Completion Certificate from the San Francisco Department of Public Health (SFDPH) with concurrence from the Regional Water Quality Control Board (RWQCB) dated November 23, 2010 and no additional environmental investigation or groundwater monitoring is required.⁵ Therefore, potential hazardous materials impacts related to groundwater would be less-than-significant. As such, the mitigation measures discussed below pertain to potential soil contamination.

The proposed project would involve the construction of a six-story mixed-use building over an underground parking garage that would require excavation of up to approximately 18 feet below grade. The risk of direct contact with the underlying soil and groundwater by future site users is minimal, given that the maximum site concentrations of constituents in soil are below residential screening levels, including vapor intrusion. Moreover, given the depth to groundwater (i.e., 40

⁵ A copy of the SFDPH letter can be reviewed at 1650 Mission Street, Suite 400 in Case File No. 2012.00110E.

feet to 50 feet below ground surface) dermal contact is not a complete pathway. Finally, groundwater concentrations are below vapor intrusion screening levels.

Any potential significant risk would be fully mitigated by encapsulating the soil and groundwater with a concrete foundation system, as the concrete foundation system would effectively cap the site. The encapsulation would further reduce any health risk through dermal contact, inhalation, and ingestion by providing a physical barrier between any contaminations and site users.

The three existing underground fuel storage tanks would require closure, i.e., in-place closure, or excavation and removal in accordance with the SFDPH. There are currently three groundwater monitoring wells located on-site, which would need to be removed as part of the proposed project and are subject to approval by the SFDPH and San Francisco RWQCB. After excavation and foundation construction activities are completed, the project sponsor shall prepare and submit a closure and certification report to DPH for review and approval.

Workers and members of the public in the area during project construction could be exposed to contaminated soils (low-level petroleum hydrocarbons), and this potential exposure to hazardous materials is a potentially significant impact. Implementation of **Mitigation Measures M-HZ-2A to M-HZ-2C**, which would include the preparation of a soil management plan and a health and safety plan prior to construction and were developed in consultation with the SFDPH's Environmental Health Section, would reduce this impact to a less-than-significant level. The following mitigation measures would mitigate any long-term environmental or health and safety risks caused by the presence of the low-level petroleum hydrocarbons in the soil and groundwater.

Mitigation Measure M-HZ-2A: UST Removal and/or Monitoring

In accordance with San Francisco Health Code Article 21, the project sponsor shall file an application with the San Francisco Department of Public Health (DPH) for removal and/or monitoring of any underground storage tanks (USTs) that are identified during project construction. If the proposed excavation activities encounter groundwater, the groundwater shall also be tested for contaminants. Copies of the test results shall be submitted to the DPH, Division of Environmental Health, and to the Planning Department's Environmental Review Officer, prior to the start of construction.

If contamination or abandoned tanks are encountered, the project sponsor shall immediately notify the DPH, Division of Environmental Health, and shall take all necessary steps to ensure

the safety of site workers and members of the public. USTs shall be removed by an appropriate licensed UST contractor under permit by the Hazardous Materials Unified Program Agency (HMUPA) and the San Francisco Fire Department. If petroleum hydrocarbon contamination is found in soil or if the UST has holes, it shall be referred to the Local Oversight Program (LOP) for cleanup under State regulations. This may be separate from the soil cleanup for lead if groundwater is impacted. If excavation for the project includes the UST area, the LOP will have appropriate remediation.

Imported fill shall be characterized to be below residential ESLs. A health and safety plan shall be submitted to DPH SAM two weeks prior to the commencement of work. DPH requires confirmatory sampling to occur following excavation of the site to confirm the removal of contaminated soils. These steps shall include implementation of a health and safety plan prepared by a qualified professional, and disposal of any contaminated soils removed from the site at an approved facility. In addition, the project shall be constructed, so that all remaining site soils are entirely capped beneath a concrete slab. If confirmation testing following site excavation indicates that contaminated soils remain on site, a deed restriction notifying subsequent property owners of the contamination and the necessity of maintaining the cap, shall be executed, prior to a certificate of occupancy.

Mitigation Measure M-HZ-2B: Testing for and Handling, Hauling, and Disposal of Contaminated Soils

Step 1: Soil Testing. Prior to approval of a building permit for the project, the project sponsor shall hire a consultant to collect soil samples (borings) from areas on the site in which soil would be disturbed and test the soil samples for contamination. The project sponsor shall enter the San Francisco Voluntary Remedial Action Program (VRAP) under the DPH SAM. The project sponsor shall submit a VRAP application and a fee of \$592 in the form of a check payable to the San Francisco Department of Public Health (DPH), to the Site Assessment and Mitigation Program, Department of Public Health, 1390 Market Street, Suite 210, San Francisco, California 94102. The fee of \$592 shall cover three hours of soil testing report review and administrative handling. If additional review is necessary, DPH shall bill the project sponsor for each additional hour of review over the first three hours, at a rate of \$197 per hour. These fees shall be charged pursuant to Section 31.47(c) of the San Francisco Administrative Code. The consultant shall submit the work plan to DPH SAM for review and concurrence prior to performing the soil sampling. The consultant shall analyze the soil borings as discrete, not composite samples. The consultant shall prepare a report on the soil testing that includes the results of the soil testing and a map that shows the locations of stockpiled soils from which the consultant collected the soil samples. The project sponsor shall submit the report on the soil testing to DPH SAM for review and concurrence. DPH shall review the soil testing program to determine whether soils on the project site are contaminated with lead or petroleum hydrocarbons at or above potentially hazardous levels.

Step 2: Preparation of Site Mitigation Plan. Prior to beginning demolition and construction work, the project sponsor shall prepare a Site Mitigation Plan (SMP). The SMP shall include a discussion of the level of contamination of soils on the project site and mitigation measures for managing contaminated soils on the site, including but not limited to: 1) the alternatives for managing contaminated soils on the site (e.g., encapsulation/capping, partial or complete removal, treatment, recycling for reuse, or a combination); 2) the preferred alternative for managing contaminated soils on the site and a brief justification; and 3) the specific practices to

be used to handle, haul, and dispose of contaminated soils on the site. The SMP shall be submitted to the Department of Public Health (DPH) for review and approval at least six weeks prior to beginning demolition and construction work. A copy of the SMP shall be submitted to the Planning Department to become part of the case file. Additionally, the DPH may require confirmatory samples for the project site.

Step 3: Handling, Hauling, and Disposal of Contaminated Soils

(a) Specific work practices: If, based on the results of the soil tests conducted, DPH determines that the soils on the project site are contaminated at or above potentially hazardous levels, the construction contractor shall be alert for the presence of such soils during excavation and other construction activities on the site (detected through soil odor, color, and texture and results of on-site soil testing), and shall be prepared to handle, profile (i.e., characterize), and dispose of such soils appropriately (i.e., as dictated by local, state, and federal regulations) when such soils are encountered on the site. If excavated materials contain over one percent friable asbestos, they shall be treated as hazardous waste, and shall be transported and disposed of in accordance with applicable State and federal regulations. These procedures are intended to mitigate any potential health risks related to chrysotile asbestos, which may or may not be located on the site.

(b) Dust suppression: Soils exposed during excavation for site preparation and project construction activities shall be kept moist throughout the time they are exposed, both during and after construction work hours.

(c) Surface water runoff control: Where soils are stockpiled, visqueen shall be used to create an impermeable liner, both beneath and on top of the soils, with a berm to contain any potential surface water runoff from the soil stockpiles during inclement weather.

(d) Soils replacement: If necessary, clean fill or other suitable material(s) shall be used to bring portions of the project site, where contaminated soils have been excavated and removed, up to construction grade.

(e) Hauling and disposal: Contaminated soils shall be hauled off the project site by waste hauling trucks appropriately certified with the State of California and adequately covered to prevent dispersion of the soils during transit, and shall be disposed of at a permitted hazardous waste disposal facility registered with the State of California. Any contaminated groundwater shall be subject to the requirements of the City's Industrial Waste Ordinance (Ord. No. 199-77), requiring that groundwater meet specified water quality standards before it may be discharged into the system.

Step 4: Preparation of Closure/Certification Report. After construction activities are completed, the project sponsor shall prepare and submit a closure/certification report to DPH for review and approval. The closure/certification report shall include the mitigation measures in the SMP for handling and removing contaminated soils from the project site, whether the construction contractor modified any of these mitigation measures, and how and why the construction contractor modified those mitigation measures.

Mitigation Measure M-HZ-2C: Disposal of Contaminated Soil, Site Health and Safety Plan

If, based on the results of the soil tests conducted, the DPH determines that the soils on the project site are contaminated with contaminants at or above potentially hazardous levels, any contaminated soils designated as hazardous waste and required by DPH to be excavated shall be removed by a qualified Removal Contractor and disposed of at a regulated Class I hazardous waste landfill in accordance with California and U.S. Environmental Protection Agency regulations, as stipulated in the Site Mitigation Plan. The Removal Contractor shall obtain, complete, and sign hazardous waste manifests to accompany the soils to the disposal site. Other excavated soils shall be disposed of in an appropriate landfill, as governed by applicable laws and regulations, or other appropriate actions shall be taken in coordination with the DPH.

If the DPH determines that the soils on the project site are contaminated with contaminants at or above potentially hazardous levels, a Site Health and Safety (H&S) Plan shall be required by the California Division of Occupational Safety and Health (Cal-OSHA) prior to initiating any earth-moving activities at the site. The Site Health and Safety Plan shall identify protocols for managing soils during construction to minimize worker and public exposure to contaminated soils. The protocols shall include at a minimum:

- Sweeping of adjacent public streets daily (with water sweepers) if any visible soil material is carried onto the streets.
- Characterization of excavated native soils proposed for use on site prior to placement to confirm that the soil meets appropriate standards.
- The dust controls specified in the Construction Dust Control Ordinance (176-08). This includes dust control during excavation and truck loading shall include misting of the area prior to excavation, misting soils while loading onto trucks, stopping all excavation work should winds exceed 25 mph, and limiting vehicle speeds onsite to 15mph.
- Protocols for managing stockpiled and excavated soils.
- The Site Health and Safety Plan shall identify site access controls to be implemented from the time of surface disruption through the completion of earthwork construction. The protocols shall include as a minimum:
 - Appropriate site security to prevent unauthorized pedestrian/vehicular entry, such as fencing or other barrier of sufficient height and structural integrity to prevent entry and based upon the degree of control required.
 - Posting of “no trespassing” signs.
 - Providing on-site meetings with construction workers to inform them about security measures and reporting/contingency procedures.

If groundwater contamination is identified, the Site Health and Safety Plan and Site Mitigation Plan shall identify protocols for managing groundwater during construction to minimize worker and public exposure to contaminated groundwater. The protocols shall include procedures to prevent unacceptable migration of contamination from defined plumes during dewatering.

The Site Health and Safety Plan shall include a requirement that construction personnel be trained to recognize potential hazards associated with underground features that could contain hazardous substances, previously unidentified contamination, or buried hazardous debris. Excavation personnel shall also be required to wash hands and face before eating, smoking, and drinking.

The Site Health and Safety Plan shall include procedures for implementing a contingency plan, including appropriate notification and control procedures, in the event unanticipated subsurface hazards are discovered during construction. Control procedures shall include, but would not be limited to, investigation and removal of underground storage tanks or other hazards.

Impact HZ-3: The proposed project would emit hazardous emissions or handle hazardous materials within the vicinity of a school. (Less than Significant)

There are five schools located within a quarter mile of the project site: Sanchez Elementary School, Everett Middle School, McKinley Elementary School, Mission High School, and Children's Day School. Construction and operation of the proposed building would require the limited use of hazardous materials, such as fuels, lubricants, and cleaning solvents. Storage and use of hazardous materials during construction at the site could result in the accidental release of small quantities of hazardous materials which could degrade soil and groundwater quality, and/or surface water quality in downstream water bodies. The most likely incidents involving these hazardous materials are associated with minor spills or drips.

As discussed in Impact HZ-1 above, hazardous materials would be stored, handled and used in accordance with applicable regulations. All equipment and materials storage would need to be routinely inspected for leaks, and records maintained for documenting compliance with the storage and handling of hazardous materials.

As described above, project operation would not require the storage, handling, or disposal of significant quantities of hazardous materials at the project site and would not otherwise include any uses that would include emissions of hazardous substances. Therefore, the proposed project would have a less than significant impact related to hazardous emissions or materials within a quarter of a mile of a school.

Impact HZ-4: The proposed project would not impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan. (Less than Significant)

The implementation of the proposed project could add to congested traffic conditions in the immediate area in the event of an emergency evacuation. However, the proposed project would be relatively insignificant within the dense urban setting of the project site and it is expected that traffic would be dispersed within the existing street grid such that there would be no significant adverse effects on nearby traffic conditions. Therefore, the proposed project would not impair implementation of, or physically interfere with, an adopted emergency response plan or emergency evacuation plan and this impact would be less than significant.

Impact HZ-5: The proposed project would not expose people or structures to a significant risk of loss, injury or death involving fires. (Less than Significant)

San Francisco ensures fire safety and emergency accessibility within new and existing developments through provisions of its Building and Fire Codes. The project would conform to these standards, which may include development of an emergency procedure manual and an exit drill plan for the proposed development. Potential fire hazards (including those associated with hydrant water pressure and blocking of emergency access points) would be addressed during the permit review process. Conformance with these standards would ensure appropriate life safety protections. Consequently, the project would not have a significant impact on fire hazards nor interfere with emergency access plans.

Impact C-HZ: The proposed project, in combination with past, present, and reasonably foreseeable future projects in the site vicinity, would not have a substantial cumulative impact with hazards and hazardous materials. (Less than Significant)

Impacts from hazards are generally site-specific, and typically do not result in cumulative impacts. Any hazards present at surrounding sites would be subject to the same safety requirements discussed for the proposed project above, which would reduce any cumulative hazard effects to levels considered less than significant. Overall, with implementation of Mitigation Measures M-HZ-2A to M-HZ-2C described above, the proposed project would not contribute to any cumulatively considerable significant effects related to hazards and hazardous materials.

<i>Topics:</i>	<i>Potentially Significant Impact</i>	<i>Less Than Significant with Mitigation Incorporated</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>	<i>Not Applicable</i>
2. MANDATORY FINDINGS OF SIGNIFICANCE—					
Would the project:					
a) Have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal, or eliminate important examples of the major periods of California history or prehistory?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Have impacts that would be individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Have environmental effects that would cause substantial adverse effects on human beings, either directly or indirectly?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The proposed project would involve demolition of the existing gasoline service station and the construction of a new six-story, mixed-use building with 88 dwelling units and approximately 6,286 square feet of commercial space. As previously discussed, an initial analysis was conducted and found that, with the exception of hazardous materials, the proposed project would not result in any new, peculiar potentially significant environmental effects, or effects of greater severity than were already analyzed and disclosed in the Market and Octavia FEIR. Due to the peculiar impact found concerning hazardous materials, this Focused Initial Study was prepared for this topic area only.

The foregoing analysis identifies potentially significant impacts regarding hazardous materials, which would be mitigated to a less-than-significant level through implementation of Mitigation Measures M-HZ-2A to M-HZ-2C, as set forth above, would reduce the potential impacts of the proposed project to less-than-significant levels. Therefore, the proposed project would not result in any new significant environmental impacts not already described in the Market Octavia Plan Program EIR.

F. MITIGATION MEASURES

Mitigation Measure M-HZ-2A: UST Removal and/or Monitoring

In accordance with San Francisco Health Code Article 21, the project sponsor shall file an application with the San Francisco Department of Public Health (DPH) for removal and/or monitoring of any underground storage tanks (USTs) that are identified during project construction. If the proposed excavation activities encounter groundwater, the groundwater shall also be tested for contaminants. Copies of the test results shall be submitted to the DPH, Division of Environmental Health, and to the Planning Department's Environmental Review Officer, prior to the start of construction.

If contamination or abandoned tanks are encountered, the project sponsor shall immediately notify the DPH, Division of Environmental Health, and shall take all necessary steps to ensure the safety of site workers and members of the public. USTs shall be removed by an appropriate licensed UST contractor under permit by the Hazardous Materials Unified Program Agency (HMUPA) and the San Francisco Fire Department. If petroleum hydrocarbon contamination is found in soil or if the UST has holes, it shall be referred to the Local Oversight Program (LOP) for cleanup under State regulations. This may be separate from the soil cleanup for lead if groundwater is impacted. If excavation for the project includes the UST area, the LOP will have appropriate remediation.

Imported fill shall be characterized to be below residential ESLs. A health and safety plan shall be submitted to DPH SAM two weeks prior to the commencement of work. DPH SAM requires confirmatory sampling to occur following excavation of the site to confirm the removal of contaminated soils. These steps shall include implementation of a health and safety plan prepared by a qualified professional, and disposal of any contaminated soils removed from the site at an approved facility. In addition, the project shall be constructed, so that all remaining site soils are entirely capped beneath a concrete slab. If confirmation testing following site excavation indicates that contaminated soils remain on site, a deed restriction notifying subsequent property owners of the contamination and the necessity of maintaining the cap, shall be executed, prior to a certificate of occupancy.

Mitigation Measure M-HZ-2B: Testing for and Handling, Hauling, and Disposal of Contaminated Soils

Step 1: Soil Testing. Prior to approval of a building permit for the project, the project sponsor shall hire a consultant to collect soil samples (borings) from areas on the site in which soil would be disturbed and test the soil samples for contamination. The project sponsor shall enter the San Francisco Voluntary Remedial Action Program (VRAP) under the DPH SAM. The project sponsor shall submit a VRAP application and a fee of \$592 in the form of a check payable to the San Francisco Department of Public Health (DPH), to the Site Assessment and Mitigation Program, Department of Public Health, 1390 Market Street, Suite 210, San Francisco, California 94102. The fee of \$592 shall cover three hours of soil testing report review and administrative handling. If additional review is necessary, DPH shall bill the project sponsor for each additional hour of review over the first three hours, at a rate of \$197 per hour. These fees shall be charged pursuant to Section 31.47(c) of the San Francisco Administrative Code. The consultant shall submit the work plan to DPH SAM for review and concurrence prior to performing the soil sampling. The consultant shall analyze the soil borings as discrete, not composite samples. The consultant shall

prepare a report on the soil testing that includes the results of the soil testing and a map that shows the locations of stockpiled soils from which the consultant collected the soil samples. The project sponsor shall submit the report on the soil testing to DPH SAM for review and concurrence. DHP shall review the soil testing program to determine whether soils on the project site are contaminated with lead or petroleum hydrocarbons at or above potentially hazardous levels.

Step 2: Preparation of Site Mitigation Plan. Prior to beginning demolition and construction work, the project sponsor shall prepare a Site Mitigation Plan (SMP). The SMP shall include a discussion of the level of contamination of soils on the project site and mitigation measures for managing contaminated soils on the site, including but not limited to: 1) the alternatives for managing contaminated soils on the site (e.g., encapsulation/capping, partial or complete removal, treatment, recycling for reuse, or a combination); 2) the preferred alternative for managing contaminated soils on the site and a brief justification; and 3) the specific practices to be used to handle, haul, and dispose of contaminated soils on the site. The SMP shall be submitted to the Department of Public Health (DPH) for review and approval at least six weeks prior to beginning demolition and construction work. A copy of the SMP shall be submitted to the Planning Department to become part of the case file. Additionally, the DPH may require confirmatory samples for the project site.

Step 3: Handling, Hauling, and Disposal of Contaminated Soils

(a) Specific work practices: If, based on the results of the soil tests conducted, DPH determines that the soils on the project site are contaminated at or above potentially hazardous levels, the construction contractor shall be alert for the presence of such soils during excavation and other construction activities on the site (detected through soil odor, color, and texture and results of on-site soil testing), and shall be prepared to handle, profile (i.e., characterize), and dispose of such soils appropriately (i.e., as dictated by local, state, and federal regulations) when such soils are encountered on the site. If excavated materials contain over one percent friable asbestos, they shall be treated as hazardous waste, and shall be transported and disposed of in accordance with applicable State and federal regulations. These procedures are intended to mitigate any potential health risks related to chrysotile asbestos, which may or may not be located on the site.

(b) Dust suppression: Soils exposed during excavation for site preparation and project construction activities shall be kept moist throughout the time they are exposed, both during and after construction work hours.

(c) Surface water runoff control: Where soils are stockpiled, visqueen shall be used to create an impermeable liner, both beneath and on top of the soils, with a berm to contain any potential surface water runoff from the soil stockpiles during inclement weather.

(d) Soils replacement: If necessary, clean fill or other suitable material(s) shall be used to bring portions of the project site, where contaminated soils have been excavated and removed, up to construction grade.

(e) Hauling and disposal: Contaminated soils shall be hauled off the project site by waste hauling trucks appropriately certified with the State of California and adequately covered to prevent dispersion of the soils during transit, and shall be disposed of at a permitted hazardous waste

disposal facility registered with the State of California. Any contaminated groundwater shall be subject to the requirements of the City's Industrial Waste Ordinance (Ord. No. 199-77), requiring that groundwater meet specified water quality standards before it may be discharged into the system.

Step 4: Preparation of Closure/Certification Report. After construction activities are completed, the project sponsor shall prepare and submit a closure/certification report to DPH for review and approval. The closure/certification report shall include the mitigation measures in the SMP for handling and removing contaminated soils from the project site, whether the construction contractor modified any of these mitigation measures, and how and why the construction contractor modified those mitigation measures.

Mitigation Measure M-HZ-2C: Disposal of Contaminated Soil, Site Health and Safety Plan

If, based on the results of the soil tests conducted, the DPH determines that the soils on the project site are contaminated with contaminants at or above potentially hazardous levels, any contaminated soils designated as hazardous waste and required by DPH to be excavated shall be removed by a qualified Removal Contractor and disposed of at a regulated Class I hazardous waste landfill in accordance with California and U.S. Environmental Protection Agency regulations, as stipulated in the Site Mitigation Plan. The Removal Contractor shall obtain, complete, and sign hazardous waste manifests to accompany the soils to the disposal site. Other excavated soils shall be disposed of in an appropriate landfill, as governed by applicable laws and regulations, or other appropriate actions shall be taken in coordination with the DPH.

If the DPH determines that the soils on the project site are contaminated with contaminants at or above potentially hazardous levels, a Site Health and Safety (H&S) Plan shall be required by the California Division of Occupational Safety and Health (Cal-OSHA) prior to initiating any earth-moving activities at the site. The Site Health and Safety Plan shall identify protocols for managing soils during construction to minimize worker and public exposure to contaminated soils. The protocols shall include at a minimum:

- Sweeping of adjacent public streets daily (with water sweepers) if any visible soil material is carried onto the streets.
- Characterization of excavated native soils proposed for use on site prior to placement to confirm that the soil meets appropriate standards.
- The dust controls specified in the Construction Dust Control Ordinance (176-08). This includes dust control during excavation and truck loading shall include misting of the area prior to excavation, misting soils while loading onto trucks, stopping all excavation work should winds exceed 25 mph, and limiting vehicle speeds onsite to 15mph.
- Protocols for managing stockpiled and excavated soils.
- The Site Health and Safety Plan shall identify site access controls to be implemented from the time of surface disruption through the completion of earthwork construction. The protocols shall include as a minimum:

- Appropriate site security to prevent unauthorized pedestrian/vehicular entry, such as fencing or other barrier or sufficient height and structural integrity to prevent entry and based upon the degree of control required.
- Posting of “no trespassing” signs.
- Providing on-site meetings with construction workers to inform them about security measures and reporting/contingency procedures.

If groundwater contamination is identified, the Site Health and Safety Plan and Site Mitigation Plan shall identify protocols for managing groundwater during construction to minimize worker and public exposure to contaminated groundwater. The protocols shall include procedures to prevent unacceptable migration of contamination from defined plumes during dewatering.

The Site Health and Safety Plan shall include a requirement that construction personnel be trained to recognize potential hazards associated with underground features that could contain hazardous substances, previously unidentified contamination, or buried hazardous debris. Excavation personnel shall also be required to wash hands and face before eating, smoking, and drinking.

The Site Health and Safety Plan shall include procedures for implementing a contingency plan, including appropriate notification and control procedures, in the event unanticipated subsurface hazards are discovered during construction. Control procedures shall include, but would not be limited to, investigation and removal of underground storage tanks or other hazards.

G. PUBLIC NOTICE AND COMMENT

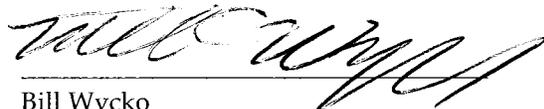
A “Notification of Project Receiving Environmental Review” was mailed on April 18, 2012 to owners of properties within 300 feet of the project site and adjacent occupants. Ten members of the public expressed concerns related to the proposed project but none of the comments were related to hazardous materials. All concerns raised by the public were addressed in the Community Plan Exemption Certificate.⁶

⁶ Community Plan Exemption Certificate, 2175 Market Street. This document is on file and available for review as part of Case No. 2012.0110E at the San Francisco Planning Department, 1650 Mission Street, Suite 400.

H. DETERMINATION

On the basis of this Initial Study:

- I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.
- I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.
- I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.
- I find that the proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.
- I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, no further environmental documentation is required.



Bill Wycko
Environmental Review Officer

for

John Rahaim
Director of Planning

DATE

August 13, 2017

MEMORANDUM

TO: Members, San Francisco Planning Commission
FROM:
DATE: August 20, 2012
RE: 2175 Market Street Project -- Community Outreach

Background

Beginning in October of 2011 the 2175 Market Street team, including Project Sponsor, development partner and community liaison Strada Investment Group, and architect Van Meter Williams Pollack have held more than 15 meetings in with area community organizations and informal groups of neighbors adjacent to the project. Meetings were held in private homes and community facilities, including workshops and presentations with:

- Sharon Street Neighbors
- Duboce Triangle Neighborhood Association
- Eureka Valley Neighborhood Association
- Mission Dolores Neighborhood Association
- Upper Market Alliance
- Merchants of Upper Market and Castro
- Castro Community Benefit District Land Use Committee
- Market & Octavia Community Advisory Committee

Community input and project changes

The project team has made significant changes to the development program and design of the project in response to extensive conversations with neighbors and community stakeholders.

- **Retail space size:** Neighbors encouraged the project to consider reducing both the overall size of the ground floor retail component as well as the sizes of the individual retail spaces. The final proposal reflects a reduction of more than 1,000 sf from the original proposal, and features leasable spaces as small as 750sf.
- **Vertical articulation:** In response to comments encouraging the design of the residential façade to reflect the vertical articulation patterns of surrounding housing stock, the architect has added more bays and continued them through to the top of the building in a regular vertical pattern.
- **15th Street building – neighborhood context:** Neighbors asked the design team to consider the visual relationship between the lower building on 15th Street and the surrounding structures. While the 15th Street building originally perched atop an exposed, board-formed concrete podium, the design now brings the siding treatment down to grade, and provides more landscaping at the stoop entrances, helping the building relate to the adjacent alley.
- **Base-middle-top articulation:** To increase the visual distinction between the middle and top elements of the 65' building, the architect has added a strong sunshade at the top of upper floor

window line. In addition, the architect has increased the size of parapet cap of both buildings in order to have a more defined and accentuated top.

- **Simplified flatiron corner:** The flatiron corner of the building has been simplified in this design iteration by doing away with the notched element of early iterations of the design in favor of a straight angle that ascends towards the 15th and Market corner, in response to specific requests about having a prominent corner element.
- **Blank wall design:** The wall at the northeast end of the building facing the property line with the Walgreens now features a geometric vertical scoring pattern to avoid a monolithic appearance. In addition, the recessed wall featuring windows into the residential corridors of that 65' building will now feature an accent color to further break down the mass above the Walgreens building.

The project team appreciates the time and input on the project offered by neighbors and representatives of the many community groups we have met with during the design process.



2175 MARKET STREET | PLANNING COMMISSION INFORMATION PACKAGE

SAN FRANCISCO, CA | AUGUST 20, 2012

FORESTCITY
**VAN METER
WILLIAMS
POLLACK^{LLP}**

PLANNING DATA

Zoning District:	NCT	Upper Market Neighborhood Commercial Market Octavia Neighborhood Plan
Height and Bulk Districts:	65 40-x	
Special Sign District:	Upper Market	608.1
	Restriction:	prohibits all GA signs & visible 200 feet
Allowable Density:	Restricted by Height and Bulk	
Parking:	Allowed	Provided
	.5 space per unit	
	44 spaces	43 Residential Spaces. 1 Car Share Spaces
Bicycle Parking:	Required	Provided
	25 spaces plus 1 for every 4 dwellings over 50	
	34 spaces req'd	45 spaces provided
Setbacks:	None	
Open Space:	Required	Provided
	Per Table 135 A	
	60 sf per unit req'd if all private. X 1.33 if Common (80 sf)	All Common
	88 x 80 = 7040 sq ft req'd	3,270 at Courtyard, 3,830 at Roof Deck = 7,100 sf total
Building Height	65 at Market Street for 70 feet	
	40 feet at 15th Street (+ 5' Special Exception Sec. 263.20)	
Conditional Use Required Due to:	Large Site (Over 10,000 sf)	
	Full Service Restaurant	
	Dwelling Unit Mix	
Variance Requests:	Open Space Exposure	
	Unit Exposure at Courtyard	
	Rear Yard	
	Ground Floor Ceiling Height	

PLANNING DATA

Address:	2175 Market Street San Francisco, CA 94114
Parcels:	3543/011
Neighborhood:	Castro/Upper Market
Lot Area:	18,525 sf

PROJECT DATA

UNIT COUNT

54	1-bedroom units
34	2-bedroom units (38.64%)
88	units total

GROSS BUILDING AREA STATISTICS

Floor	Residential	Circulation/Util	Retail	TOTAL GROSS
MARKET STREET BUILDING				
1 (Courtyard)	3,038	2,286	6,276	11,600 sf
2	9,383	1,510		10,893 sf
3	10,594	1,560		12,154 sf
4	10,637	1,560		12,197 sf
5	10,524	1,560		12,084 sf
6	10,595	1,560		12,155 sf
Roof (Enclosed Area)				753 sf
			(bldg total)	71,837 sf
15TH STREET BUILDING				
1 (Courtyard)	2,443	292		2,735 sf
2	2,558	292		2,851 sf
3	2,558	292		2,851 sf
			(bldg total)	8,437 sf
TOTAL B1 AND B2	62,332	10,912	6,276	80,274
GARAGE FLOOR				17,783 sf
TOTAL BUILDING GROSS SF				98,057 SF

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17	Roof Plan



2175 MARKET STREET | SITE PHOTO KEY PLAN

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1. MARKET STREET SIDEWALK



2. SITE VIEW FROM MARKET STREET TOWARD 15TH STREET



3. SITE VIEW FROM MARKET AND 15TH STREET INTERSECTION



4. ADJACENT BUILDING - MARKET STREET LOOKING SOUTH (FRONT OF WALGREENS)

2175 MARKET STREET | EXISTING SITE PHOTOS

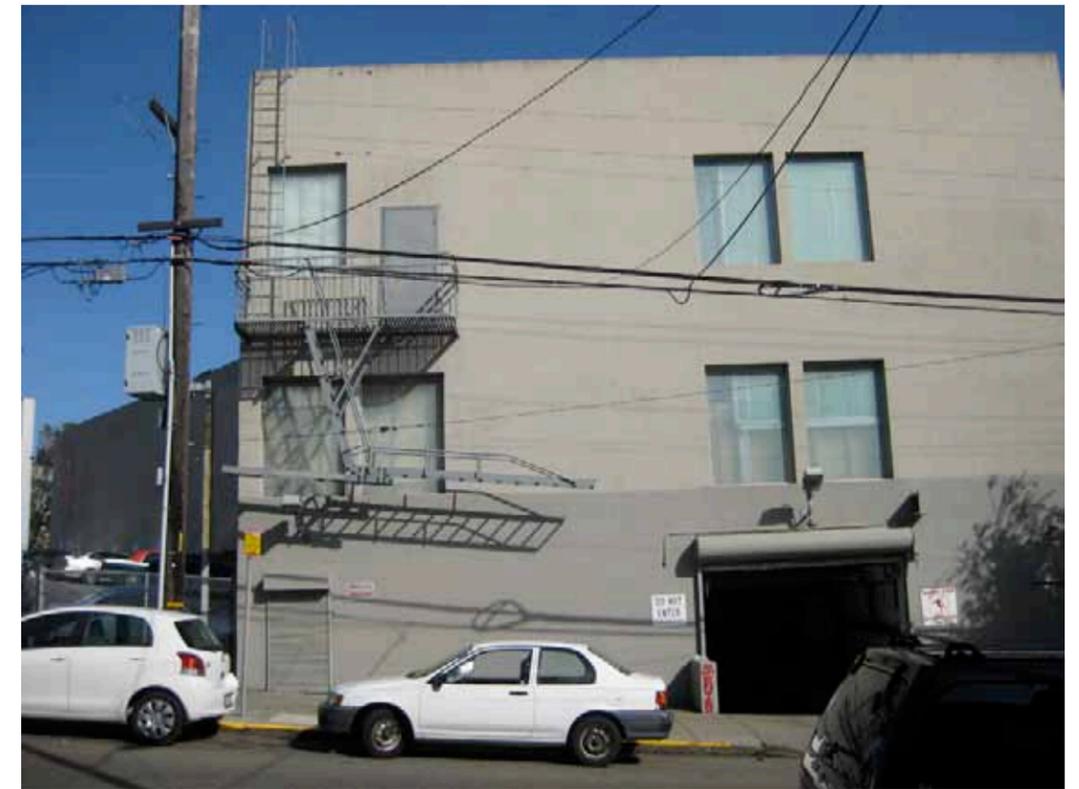
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5. EXISTING SITE PANORAMA FROM 15TH STREET LOOKING NORTH



6. EXISTING SITE VIEW FROM SHARON STREET



7. ADJACENT BUILDING - 15TH STREET LOOKING NORTH (REAR OF WALGREENS)

2175 MARKET STREET | EXISTING SITE PHOTOS

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8. MARKET STREET LOOKING NORTH



9. SHARON STREET



10. MIXED-USE BUILDING AT 15TH AND MARKET STREET INTERSECTION

2175 MARKET STREET | VICINITY PHOTOS

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VIEW FROM EAST



VIEW FROM ACROSS MARKET



VIEW AT CORNER



2175 MARKET STREET | MARKET STREET VIEWS

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VIEW DOWN 15TH STREET



VIEW FROM SHARON STREET



VIEW UP 15TH STREET



15TH STREET ELEVATION

METAL PANEL

STUCCO

LAP SIDING

WOOD

2175 MARKET STREET | 15TH STREET STREET VIEWS

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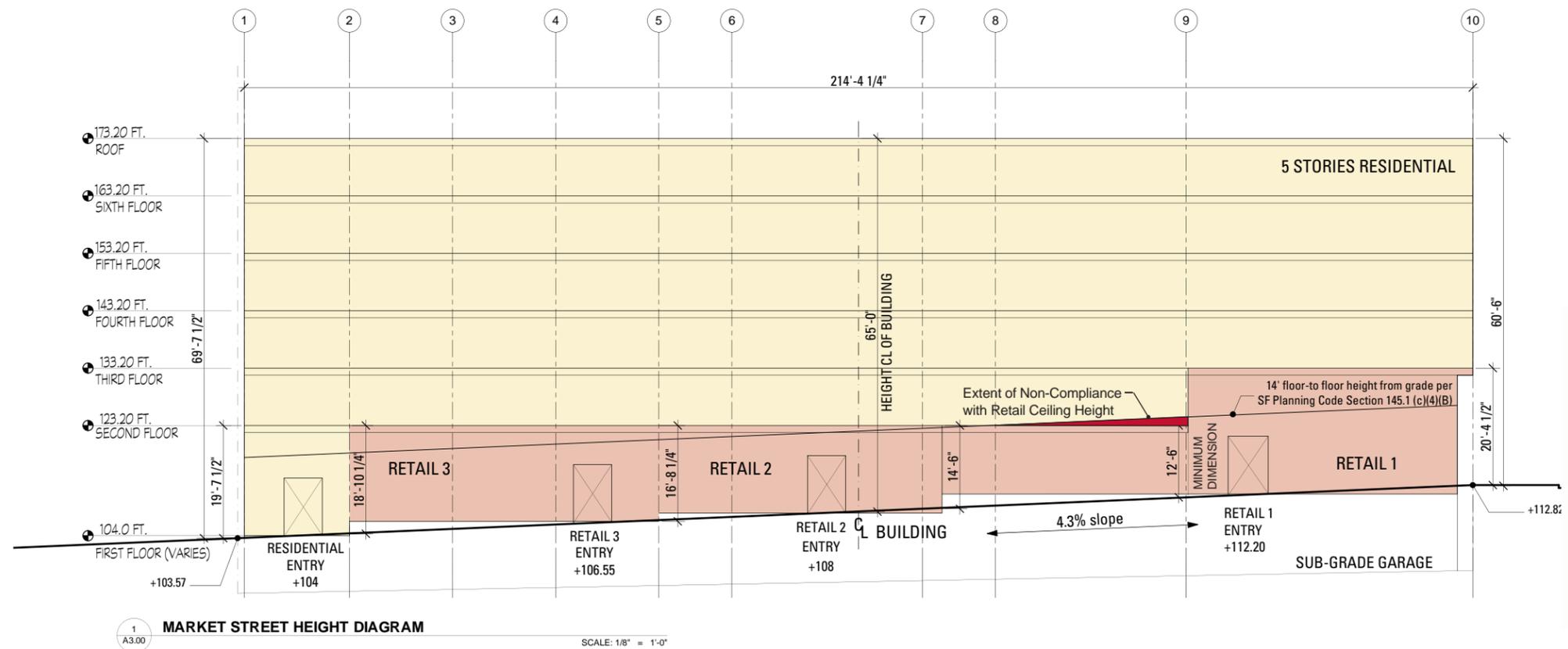
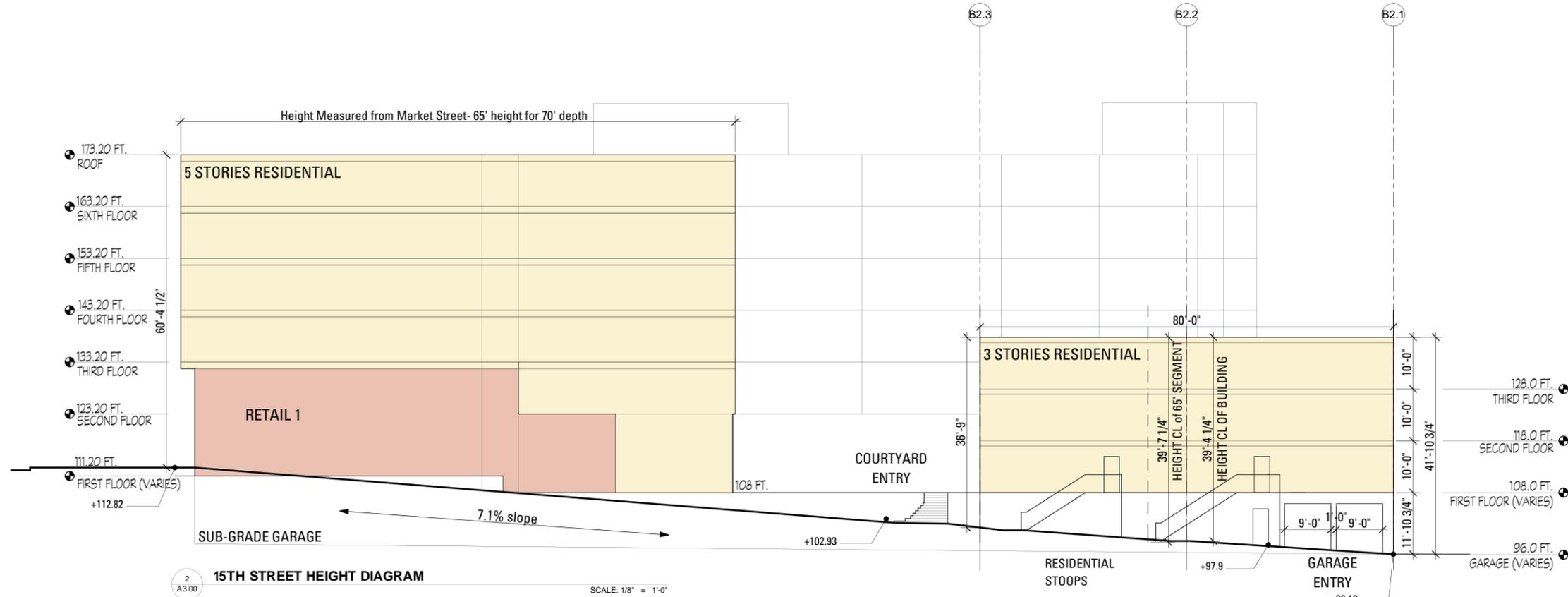
VIEW FROM EAST

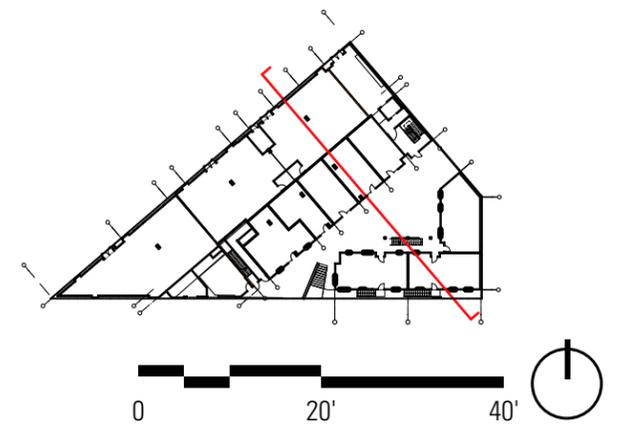
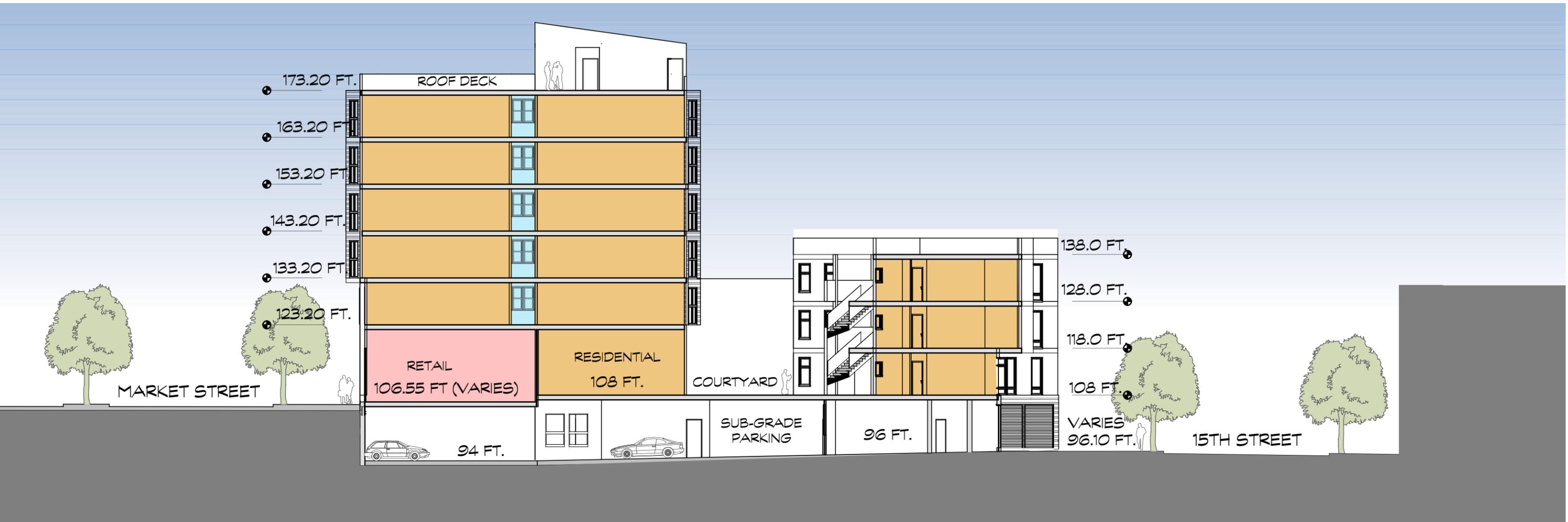


VIEW FROM SOUTH

2175 MARKET STREET | OVERALL VIEWS

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2175 MARKET STREET | BUILDING SECTION

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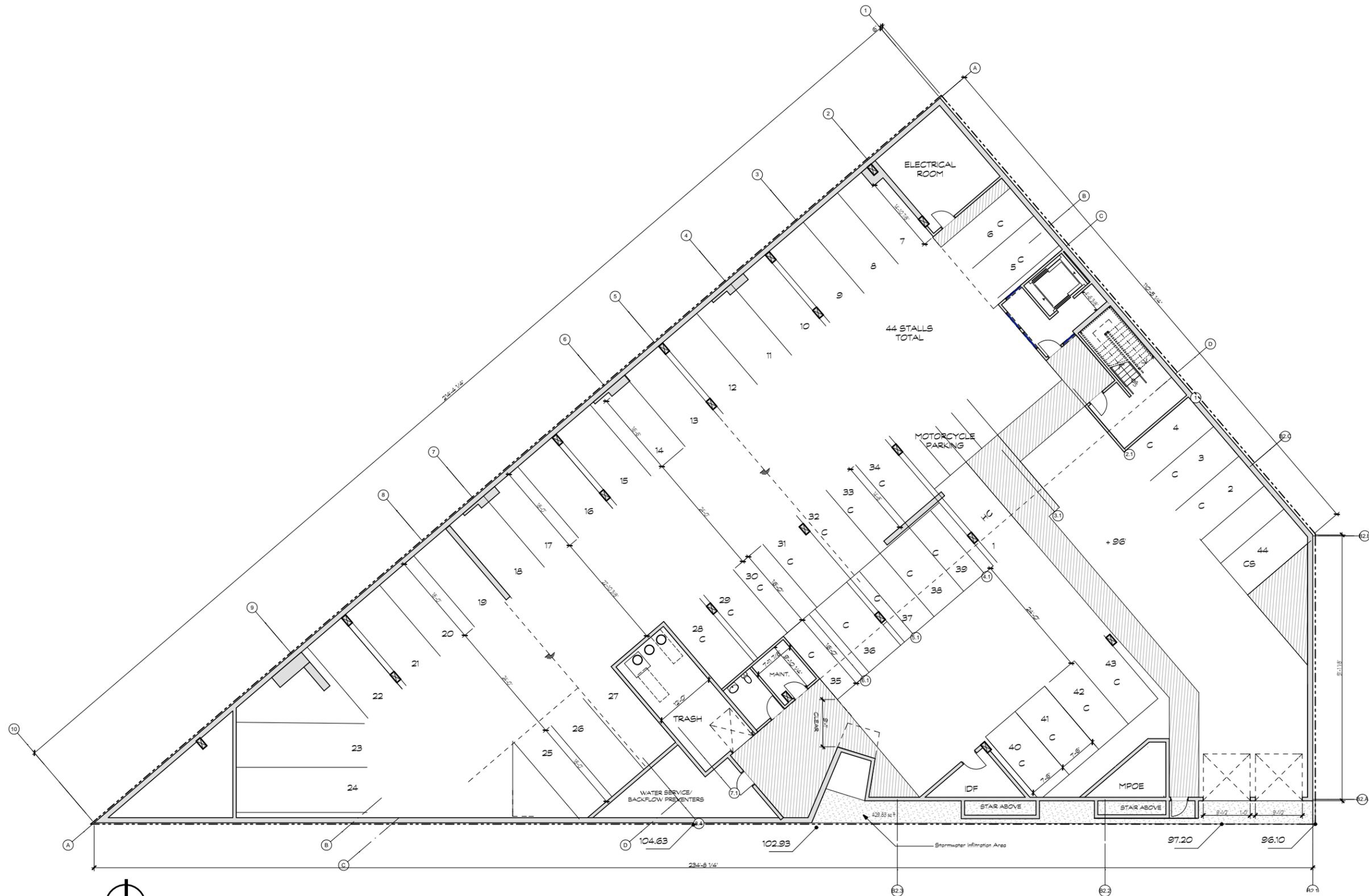


2175 MARKET STREET | PROPOSED SITE PLAN / COURTYARD LEVEL PLAN

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FORESTCITY

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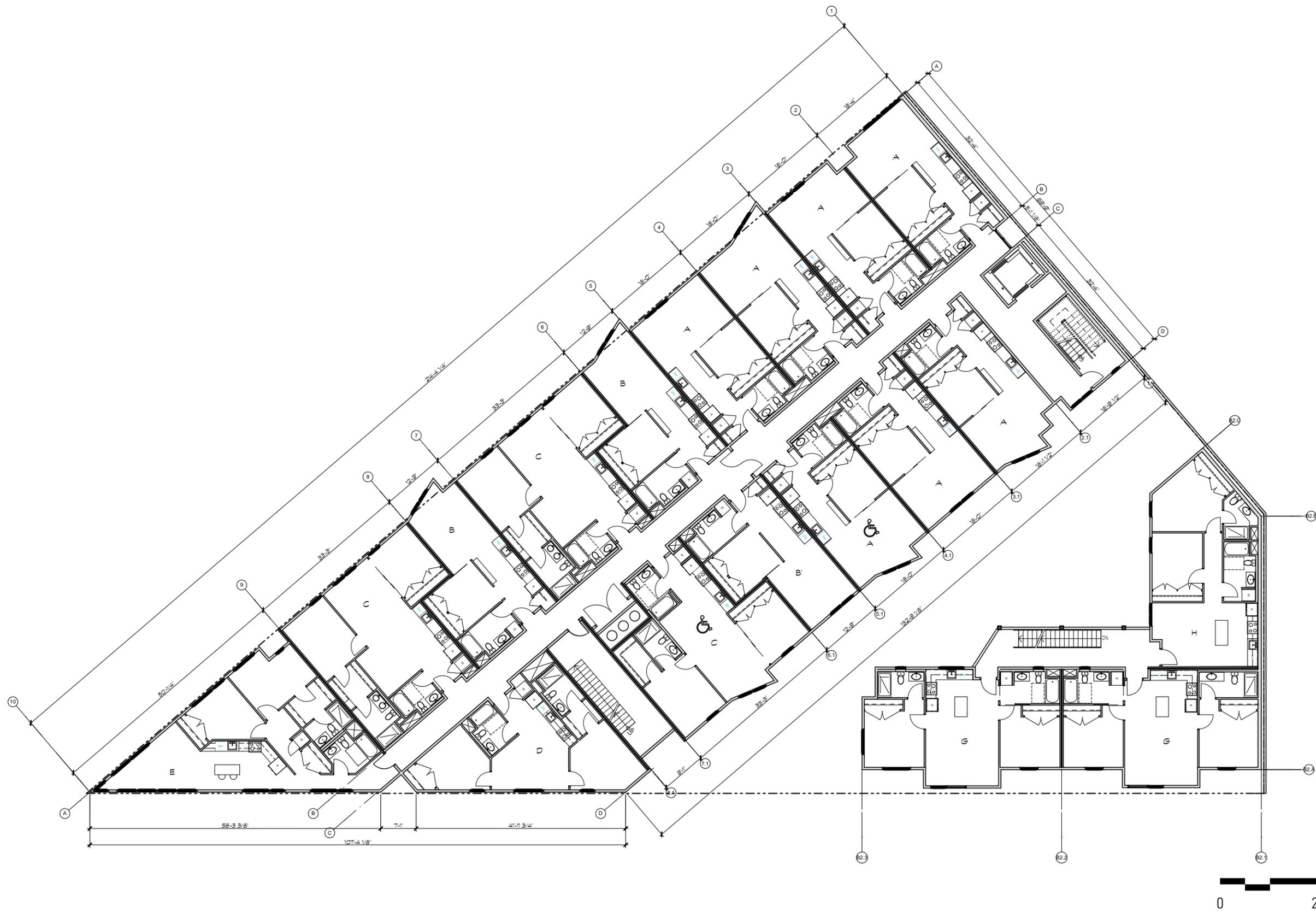
2175 MARKET STREET | GARAGE PLAN

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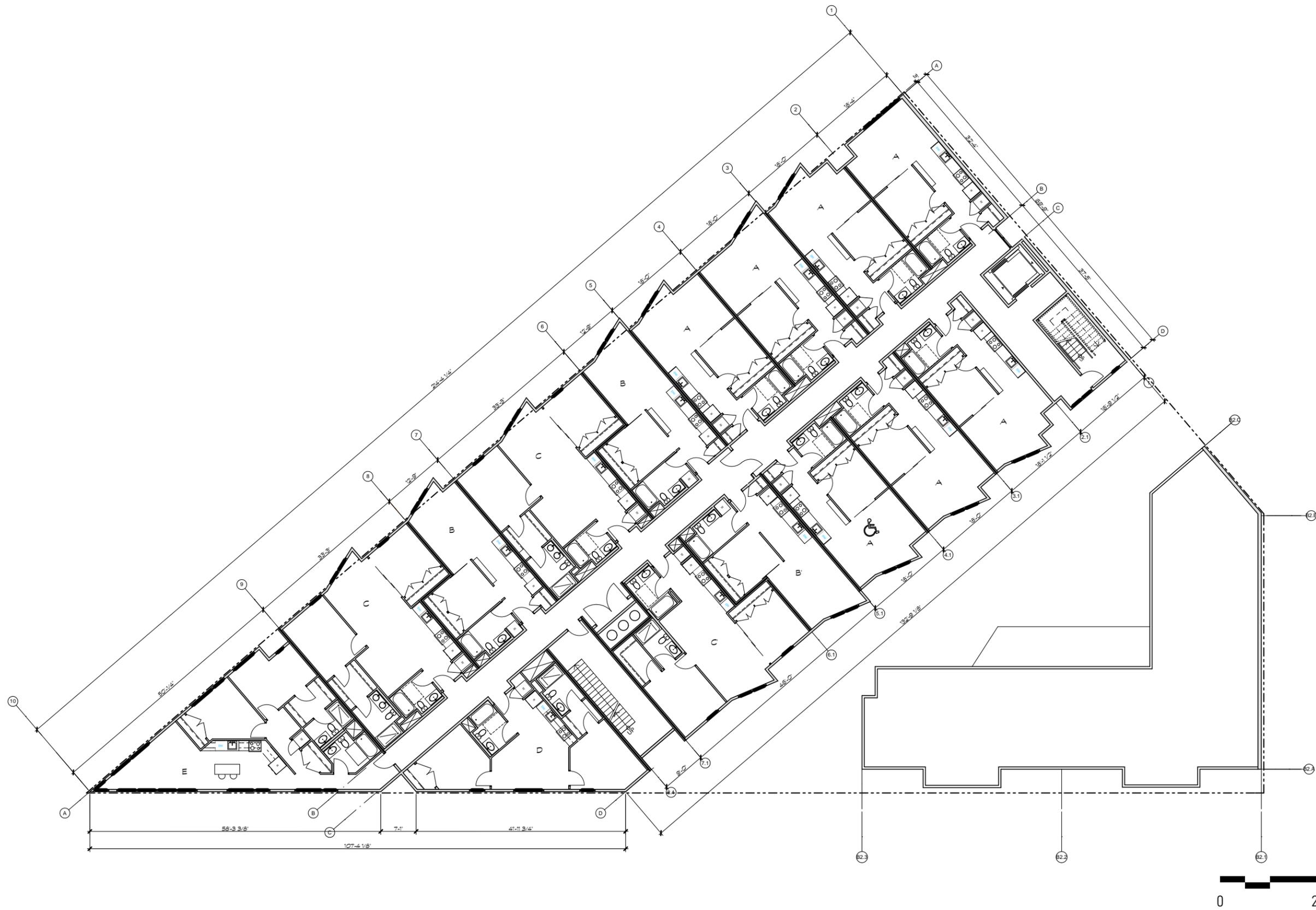
2175 MARKET STREET | SECOND FLOOR PLAN

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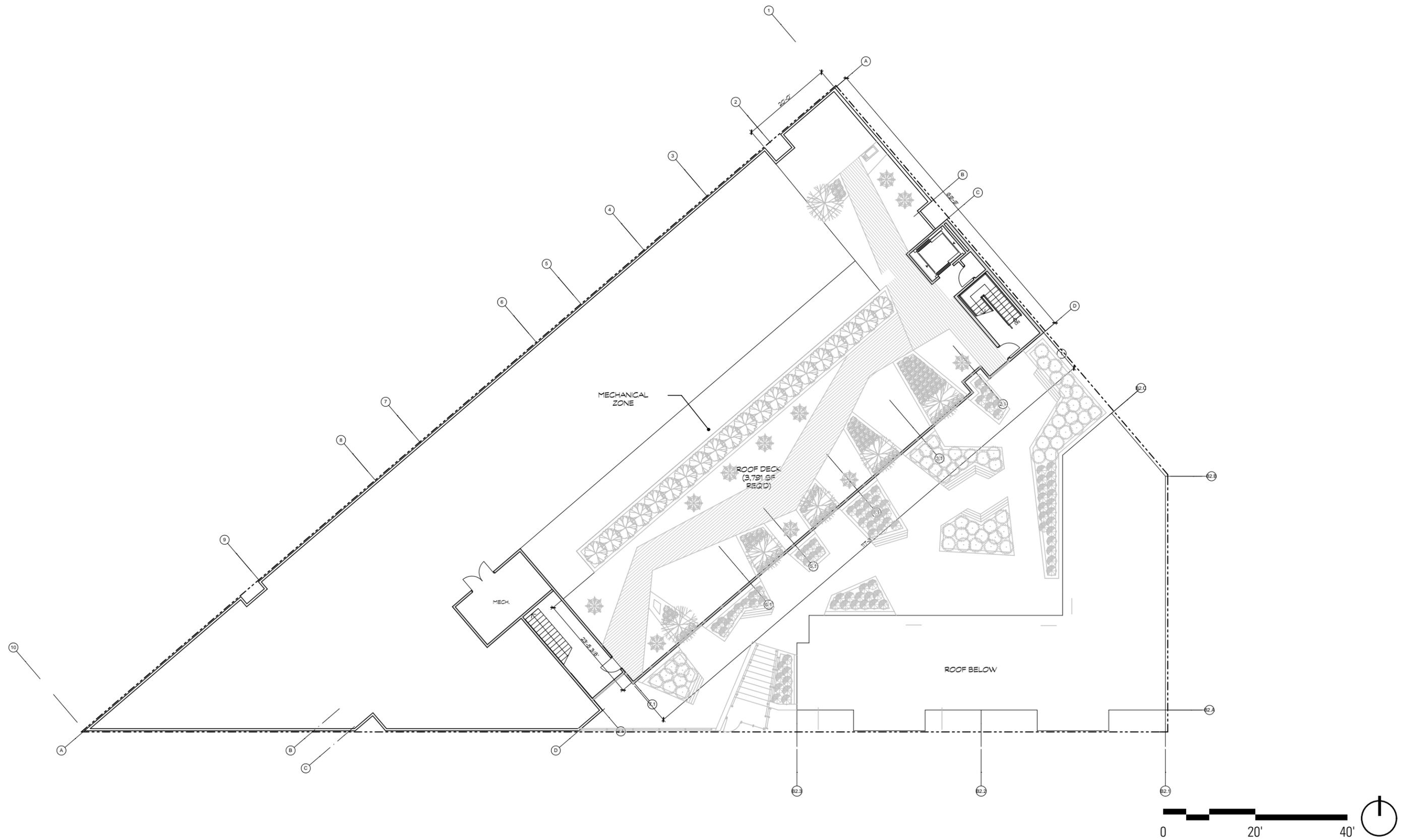
2175 MARKET STREET | THIRD FLOOR PLAN

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2175 MARKET STREET | TYPICAL FOURTH -SIXTH FLOOR PLAN

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2175 MARKET STREET | ROOF PLAN

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