



# SAN FRANCISCO PLANNING DEPARTMENT

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## Planning Commission Motion 19010

HEARING DATE: October 24, 2013

*Hearing Date:* October 24, 2013  
*Case No.:* **2010.0222E**  
*Project Address:* **248-252 9<sup>th</sup> Street**  
*Zoning:* Regional Commercial District (RCD)  
Western SoMa Special Use District (SUD)  
55-X Height and Bulk District  
*Block/Lot:* 3518/006 & 007  
*Project Sponsor:* Stanley Chia  
P.O. Box 424703  
San Francisco, CA 94142  
Project Contact: Dominic Maionchi, (415) 385-8278  
*Staff Contact:* Kei Zushi – (415) 575-9036  
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ADOPTING FINDINGS RELATED TO THE APPEAL OF THE PRELIMINARY MITIGATED NEGATIVE DECLARATION, FILE NUMBER 2010.0222E FOR THE PROPOSED DEVELOPMENT ("PROJECT") AT 248-252 9<sup>th</sup> Street

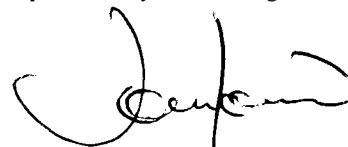
MOVED, that the San Francisco Planning Commission (hereinafter "Commission") hereby AFFIRMS the decision to issue a Mitigated Negative Declaration, based on the following findings:

1. On March 26, 2010, pursuant to the provisions of the California Environmental Quality Act ("CEQA"), the State CEQA Guidelines, and Chapter 31 of the San Francisco Administrative Code, the Planning Department ("Department") received an Environmental Evaluation Application for the Project, in order that it might conduct an initial evaluation to determine whether the Project might have a significant impact on the environment.
2. On March 6, 2013, the Department determined that the Project, as proposed, could not have a significant effect on the environment.
3. On March 6, 2013, a notice of determination that a Mitigated Negative Declaration would be issued for the Project was duly published in a newspaper of general circulation in the City, and the Mitigated Negative Declaration posted in the Department offices, and distributed all in accordance with law.
4. On April 3, 2013, an appeal of the decision to issue a Mitigated Negative Declaration was timely filed by Jakkee Bryson.

5. A staff memorandum, dated October 17, 2013, addresses and responds to all points raised by appellant in the appeal letter. That memorandum is attached as Exhibit A and staff's findings as to those points are incorporated by reference herein as the Commission's own findings. Copies of that memorandum have been delivered to the City Planning Commission, and a copy of that memorandum is on file and available for public review at the San Francisco Planning Department, 1650 Mission Street, Suite 400.
6. On October 17, 2013, amendments were made to the Preliminary Mitigated Negative Declaration, to correct an error related to the final date of the comment period and to reflect adoption of the Western SoMa Plan Area. Such amendments do not include new, undisclosed environmental impacts and do not change the conclusions reached in the Preliminary Mitigated Negative Declaration. The changes do not require "substantial revision" of the Preliminary Mitigated Negative Declaration, and therefore recirculation of the Preliminary Mitigated Negative Declaration would not be required.
7. On October 24, 2013, the Commission held a duly noticed and advertised public hearing on the appeal of the Preliminary Mitigated Negative Declaration, at which testimony on the merits of the appeal, both in favor of and in opposition to, was received.
8. All points raised in the appeal of the Preliminary Mitigated Negative Declaration at the October 24, 2013 City Planning Commission hearing have been responded to either in the Memorandum or orally at the public hearing.
9. After consideration of the points raised by appellant, both in writing and at the October 24, 2013 hearing, the San Francisco Planning Department reaffirms its conclusion that the proposed project could not have a significant effect upon the environment.
10. In reviewing the Preliminary Mitigated Negative Declaration issued for the Project, the Planning Commission has had available for its review and consideration all information pertaining to the Project in the Planning Department's case file.
11. The Planning Commission finds that Planning Department's determination on the Mitigated Negative Declaration reflects the Department's independent judgment and analysis.

The San Francisco Planning Commission HEREBY DOES FIND that the proposed Project, could not have a significant effect on the environment, as shown in the analysis of the Mitigated Negative Declaration, and HEREBY DOES AFFIRM the decision to issue a Mitigated Negative Declaration, as prepared by the San Francisco Planning Department.

I hereby certify that the foregoing Motion was ADOPTED by the City Planning Commission on October 24, 2013.



Jonas Ionin  
Acting Commission Secretary

**Motion No. 19010**  
**Hearing Date: October 24, 2013**

**Case No. 2010.0222E**  
**248-252 9<sup>th</sup> Street**

AYES: Wu, Antonini, Hillis, Moore, Sugaya

NOES:

ABSENT: Borden, Fong

ADOPTED: October 24, 2013



# SAN FRANCISCO PLANNING DEPARTMENT

**MEMO**

## Exhibit A Planning Department Response to Appeal of Preliminary Mitigated Negative Declaration

CASE NO. 2010.0222E – 248-252 9<sup>TH</sup> STREET PUBLISHED ON MARCH 6, 2013

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### BACKGROUND

An environmental evaluation application (2010.0222E) for the proposed project at 248-252 9<sup>th</sup> Street (Assessor's Block 3518, Lots 006 and 007) was filed by the project sponsor, Stanley Chia, on March 26, 2010. The project sponsor proposes: 1) merger of the two lots, totaling 5,000 square feet (sf), on the project site; 2) demolition of two existing one-story, approximately 15-foot-tall buildings currently used for storage; and 3) construction of a five-story, 55-foot-tall, 18,697-sf, mixed-use building containing 15 dwelling units and approximately 2,858 sf of ground-floor commercial space. The building would also contain an approximately 1,200-sf roof-top deck (common open space), an approximately 750-sf common deck on the fifth floor, and a 1,130-sf common deck on the second floor. The residential use (8 one-bedroom units and 7 two-bedroom units) would be approximately 11,406 sf in size. The proposed development would include no off-street parking spaces. Access for the commercial space would be located in the middle of the 9<sup>th</sup> Street frontage. Primary pedestrian access for the residential portion of the project would be on the south end of the proposed building's 9<sup>th</sup> Street facade.

The project site is located midblock on the west side of 9<sup>th</sup> Street between Howard and Folsom streets in the South of Market (SoMa) area of San Francisco, approximately two- and one-half blocks south of Market Street, and approximately two blocks northeast of U.S. 101.<sup>1</sup> The project site is located within the Regional Commercial District (RCD), the Western SoMa Special Use District (SUD), the Western SoMa Light Industrial and Residential Historic District, and a 55-X (no bulk controls) Height and Bulk District. The floor area ratio (FAR) limit in RCD is 2.5:1 for commercial uses. There are no residential density limits in RCD.

The proposed project would require the following project approvals: 1) lot merger approval from the Department of Public Works (DPW); and 2) street tree permit, grading permit, and right-of-way permit from DPW. In addition, prior to commencement of any excavation work, the Department of Public Health (DPH) would determine whether a Site Mitigation Plan (SMP) is required for this project based on the results of a Phase II soil investigation that has been submitted to DPH. If required, the SMP shall be submitted for review and approval by DPH prior to the commencement of any excavation work.

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<sup>1</sup> For ease of reference throughout this document, the northwest/southeast alignment of 9<sup>th</sup> Street is assumed to run in a north/south direction, and all other compass reference points are adjusted accordingly. Thus, while the project is located on the southwest side of 9<sup>th</sup> Street, it is described as being on the west side of 9<sup>th</sup> Street. All other reference points have been similarly adjusted.

A Preliminary Mitigated Negative Declaration (PMND) was published on March 6, 2013. The PMND stated that the review period for comment was 20 calendar days following publication of the PMND “i.e., by 5:00 p.m. on April 3, 2013.” The review period as stated was 28 days. This error has been corrected on the cover page of the PMND where it occurred. On April 3, 2013, Jakkee Bryson filed a letter appealing the PMND. Her concerns listed below are from the appeal letter, a copy of which is included within this appeal packet. Her concerns are listed in the order presented in the appeal letter.

After the PMND for this project was published on March 6, 2013, the Western SoMa Community Plan, which includes new zoning controls, was adopted on March 19, 2013. The Western SoMa Community Plan became effective April 27, 2013. The proposed project as described in the March 6, 2013 PMND did not fully comply with the new zoning controls included in the Western SoMa Community Plan. The proposed project has since been modified to comply with the new zoning controls in the Western SoMa Community Plan and the attached amended PMND reflects the modified plans that comply with the Western SoMa Community Plan.

**CONCERN 1: The appellant asserts that the noise, dust and privacy issues generated from the proposed project would negatively impact nearby residents, some of whom are in poor health.**

“The noise, dust and privacy issues would negatively impact those like me who are in poor health if this negative declaration were to be made final. I am asthmatic and suffer from allergies. I am stress-disordered, have arthritis throughout my entire skeletal system. I have high blood pressure and walk with a walker. I require a minimum of 6 ½ hrs sleep and general quiet surroundings. “Quiet hours” for my building end at 9 a.m. Many (if not most) tenants are in poor health: (cancer, H.I.V., high blood pressure, substance abuse) and have enjoyed relative quiet since 2005.”

**RESPONSE TO CONCERN 1: The project’s noise and dust impacts were fully addressed in the PMND, and the PMND found that the project would not result in significant noise or air quality impacts. The appellant does not state what privacy issues are related to environmental impacts.**

#### Noise

The appellant does not specify what type of noise resulting from the proposed project is of concern. The proposed project would generate construction noise and operational noise, which were addressed on pages 54 through 58 of the PMND. The PMND found that the proposed project’s noise impacts, both individually and cumulatively, would be less than significant.

### *Construction Noise*

As discussed in the PMND, pile driving, which often generates the highest level of construction noise, would not be used for the proposed project which would have a mat slab foundation. Construction noise impacts for this project would generally be limited to the period during which the new foundation and exterior structural and façade elements are undertaken. Interior construction noise would be substantially reduced by exterior walls. The project's construction noise would be regulated by the San Francisco Noise Ordinance (Article 29 of the *Police Code*). Section 2908 of the Noise Ordinance prohibits construction work between 8:00 p.m. and 7:00 a.m. if noise would exceed the ambient noise level by 5 dBA at the project property line, unless a special permit is authorized by the Director of DPW or the Director of DBI. Based on this, construction would not disrupt normal sleep hours. Construction activities would temporarily and intermittently contribute to the ambient noise level over the 9 months of construction, with more construction noise generated in the initial months of project construction.

The PMND acknowledges that the project's construction noise could be considered an annoyance by the occupants of the existing dwelling units located adjacent to the south and west sides of the project site. Typical construction equipment generates noise levels ranging from about 76 to 98 dBA at a distance of 50 feet from the source without noise controls or features such as improved mufflers, equipment redesign, and use of silencers, shields, shrouds, ducts, and engine enclosures.

The sensitive noise receptors near the project site are in an area that has higher than average (75 dBA) existing ambient noise levels, primarily due to vehicle traffic along 9<sup>th</sup>, Folsom, and Howard Streets. While closed windows generally help reduce daytime interior noise levels to acceptable levels, given the proximity of construction activities to sensitive receptors and the area's high ambient noise levels, Mitigation Measure M-NO-2 was included in the PMND. Mitigation Measure M-NO-2 requires that the project sponsor implement a number of measures intended to minimize the construction noise. These measures include the use of the best available noise control techniques such as improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures, and acoustically attenuating shields or shrouds (see pages 57 and 58 of the PMND).

Because the construction noise would not be expected to exceed noise levels commonly experienced in an urban environment, and with the implementation of Mitigation Measure M-NO-2, the PMND found that construction noise impacts would be considered less than significant.

### *Operational Noise*

The PMND addressed the noise impacts resulting from the operation of the proposed project on pages 54 and 55. No uses that generate a significant level of noise would be established as part of the project as the proposed building would include residential and restaurant uses. The project's

operational noise would be generated primarily from two sources: (1) increased vehicular traffic generated by project residents and employees and by service and delivery trucks servicing the building; and (2) mechanical building noise.

Generally, traffic must double in volume to produce a noticeable increase in average noise levels. Based on the trip generation calculations prepared for the project (see page 45 of the PMND), traffic volumes would not double on area streets as a result of the proposed project or expected cumulative traffic growth; therefore, traffic generated by the proposed project would not cause a noticeable increase in the ambient noise level in the project vicinity, nor would the project contribute to any potential cumulative traffic noise effects.

The project would include mechanical equipment that could produce operational noise, such as heating and ventilation systems. These operations would be subject to Section 2909 of the Noise Ordinance. As amended in November 2008, this section establishes a noise limit from mechanical sources, such as building equipment, specified as a certain noise level in excess of the ambient noise level at the property line. For noise generated by residential uses, the limit is 5 dBA in excess of ambient levels. Compliance with Section 2909 of the Noise Ordinance would minimize noise from building operations. Based on this, the PMND found that noise effects related to building operation would not be significant, nor would the building contribute a considerable increment to any cumulative noise impacts from mechanical equipment.

### **Air Quality**

In accordance with the Bay Area Air Quality Management District's (BAAQMD's) CEQA Air Quality Guidelines, the PMND fully addressed the project's potential impacts for both the construction and operation phases with respect to fugitive dust, criteria air pollutants including reactive organic gases (ROG), oxides of nitrogen (NO<sub>x</sub>), PM<sub>2.5</sub>, and PM<sub>10</sub>, and toxic air contaminants (TACs), and found that the project would result in less-than-significant impacts with mitigation measures incorporated (see pages 71 - 73 and 75 of the PMND). The PMND found that the proposed project would result in less-than-significant air quality impacts, both individually and cumulatively.

### ***Fugitive Dust***

The PMND addressed the fugitive dust resulting from the project-related demolition, excavation, grading, and other construction activities on page 66. The project would be subject to the Construction Dust Control Ordinance (Ordinance 176-08, effective July 30, 2008), which was adopted 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 on-site workers, to minimize public nuisance complaints, and to avoid orders to stop work by the DBI. The PMND found that these regulations and procedures set forth by the San Francisco Building Code would ensure that potential dust-related air quality impacts would be reduced to less-than-significant levels.

### *Criteria Air Pollutants*

The PMND addressed the criteria air pollutants that would be emitted from the construction and operation of the proposed project on pages 68 and 69 and pages 73 and 74, respectively. The proposed project would include 15 dwelling units and approximately 2,858 square feet of ground floor restaurant space. The proposed project would be below the criteria air pollutant screening size for mid-rise residential development projects or restaurants identified in the BAAQMD's CEQA Air Quality Guidelines in terms of both construction and operation impacts. This means that the project could not result in significant impacts with respect to criteria air pollutants. Based on this, the PMND found that both the construction and operation of the proposed project would result in less-than-significant criteria air pollutant impacts.

### *Toxic Air Contaminants*

The PMND addressed toxic air contaminants (TACs) resulting from the construction of the proposed project on pages 69 through 73. While the project is not located within an air quality hot spot, Mitigation Measure M-AQ-2 was included in the PMND to reduce the potential impacts related to short-term emissions of diesel particulate matter and other TACs. Mitigation M-AQ-2 requires that the project sponsor: 1) prepare and submit to the Environmental Review Officer (ERO) a Construction Emissions Minimization Plan ("Plan") prior to issuance of a construction permit; 2) submit monthly reports to the ERO indicating the construction phase and off-road equipment information used during each phase; and 3) certify that the project complies with the Plan and that all applicable requirements of the Plan have been incorporated into contract specifications. The PMND found that the project would result in a less-than-significant construction emissions impact to nearby sensitive receptors with the implementation of Mitigation Measure M-AQ-2.

The PMND addressed TACs resulting from the operation of the proposed project on page 74. Given the relatively small scale of the project (i.e., the project would not increase the traffic volume on nearby streets to 10,000 or more vehicles per day), the PMND concluded that an assessment of project-generated TACs resulting from vehicle trips would not be required. Based on this, the PMND found that the proposed project would not generate a substantial amount of TACs that could affect nearby sensitive receptors.

### **Privacy Issues**

The appellant does not specify what type of privacy issues would result from construction and operation of the proposed project, or how privacy issues that may result from the proposed project would contribute to or be caused by physical changes in the environment. There is no evidence that the proposed project would result in privacy issues beyond normal conditions in an urban setting. In general, privacy issues are social effects and not considered changes in the physical environment resulting from the proposed project under CEQA. CEQA Guidelines



Section 15064(f)(6) provides that evidence of social impacts that do not contribute to or are not caused by physical changes in the environment is not substantial evidence that the project may have a significant effect on the environment.

Comments that do not pertain to physical environmental issues and comments on the merits of the proposed project will be considered in the context of project approval or disapproval, independent of the environmental review process. While local concerns or other planning considerations may be grounds for modifying or denying the proposal, in the independent judgment of the Planning Department, there is no substantial evidence that the proposed project could have a significant effect on the environment beyond the impacts identified, and mitigated in the PMND.

**CONCERN 2: The appellant asserts that an Environmental Impact Report (EIR) is warranted given the significant negative effects posed to the environment and nearby residents.**

“I feel Environmental Impact Report is warranted given the significant negative effects posed to the environment and those of us already here since 2005.”

**RESPONSE TO CONCERN 2: An EIR is not required for the proposed project because no significant impacts resulting from the project have been identified.**

As discussed in the PMND, the project would not result in a significant impact with the implementation of Mitigation Measures M-NO-2 (General Construction Noise Measures), M-AQ-2 (Construction Emissions Minimization), M-AQ-4 (Air Filtration Measures), and M-HZ-2A (Other Hazardous Building Materials including PCBs, Mercury, Lead, and Others). The project sponsor has agreed to implement all of the above mitigation measures as part of this project.

As a result, there is no substantial evidence in the record of the lead agency that warrants preparation of an EIR concerning the proposed project pursuant to CEQA Guidelines Sections 15081.5, 15060, and 15064.

## CONCLUSION

Staff recommends that the Planning Commission adopt the motion to uphold the Preliminary Mitigated Negative Declaration. No substantial evidence supporting a fair argument that a significant environmental effect may occur as a result of the project has been presented that would warrant preparation of an Environmental Impact Report. By upholding the PMND (as recommended), the Planning Commission would not prejudice or restrict its ability to consider whether the proposed project’s uses or design is appropriate for the neighborhood.