



# SAN FRANCISCO PLANNING DEPARTMENT

**MEMO**

**DATE:** July 1, 2010  
**TO:** President Miguel and Members of the Commission  
**FROM:** Debra Dwyer  
**CC:** Linda D. Avery  
Planning Commission Secretary  
**RE:** 2005.1074E, 935-965 Market Street, CityPlace

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Certification of the Final EIR will be before you for your consideration at the Planning Commission hearing on July 8, 2010. I am enclosing for your review and consideration a letter from Arthur Levy submitted yesterday as testimony in opposition to the EIR certification.

In addition, I am enclosing a draft motion for EIR certification which has been revised to reflect the adoption by the Bay Area Air Quality Management District of its CEQA Guidelines update. The new guidelines were adopted June 2<sup>nd</sup>.

Please contact me at 415-575-9031 if you have any questions regarding these documents.

Best regards,

Debra Dwyer

enclosures


Memo



"Arthur Levy"  
<arthur@yesquire.com>  
06/29/2010 04:46 PM

To <debra.dwyer@sfgov.org>  
cc "Mark Ellinger" <tobemarx@gmail.com>, "Katherine Petrin"  
<katherine@argsf.com>, <jim.miller@sfgov.org>  
bcc

Subject 935-965 Market Street, CityPlace 2005.1074E,  
2008.0217CVX

History:  This message has been replied to and forwarded.

Dear Ms. Dwyer:

I request that my attached letter of today be placed in the official record of proceedings relating to the agenda items on this project before the Planning Commission on July 8. Thank you.

Arthur D. Levy



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[attachment "Planning Commission ltr 10.06.29.pdf" deleted by Debra Dwyer/CTYPLN/SFGOV]



ARTHUR D. LEVY  
ATTORNEY

June 29, 2010

HAND DELIVERED

President Ron Miguel and Members of the Planning Commission  
City & County of San Francisco  
1650 Mission Street  
Suite 400  
San Francisco, California 94103

Re: 935-965 Market Street, CityPlace  
Case Nos. 2005.1074E, 2008.0217CVX  
On Calendar for July 8, 2010

Dear President Miguel and Members of the Planning Commission:

My name is Arthur Levy. I am the author of Comment Letter A, attached to the Comments and Responses to the Draft EIR for this project. Due to a pre-planned vacation during the week of July 5, I am submitting this letter as my testimony in opposition to the certification of the Final EIR and all entitlements requested for this project, including items 7 and 8a through 8d, which appeared on the June 10 calendar and were continued for hearing to July 8.

**The Commission's Procedure of Considering Public Comment "Closed" and Not Conducting "Public Review" of Final EIRs Does Not Comply with CEQA.**

The Commission's procedure of considering public hearing "closed" and not conducting "Public Review" of the Final EIR is improper. Although the Commission conducted a hearing on the DEIR in December 2009, there has been no opportunity for the public to present testimony on the Final EIR, which is only now before the Commission.

CEQA requires a public hearing. CEQA Guideline 15202(b) states "If an agency provides a public hearing on its decision to carry out or approve a project, the agency should include environmental review as one of the subjects for the hearing."

The Responses to Comments state that there will be a public hearing on the Final EIR. They state "The DEIR, together with this C&R document, will be presented to the Planning Commission in an advertised public hearing, and will be certified as a Final Environmental Impact Report (FEIR) if deemed adequate

with respect to its accuracy, objectiveness, and completeness.” (C&R.1, emphasis added.)

In sum, the Commission's procedures of failing to give public notice of a hearing on the Final EIR, of stating on its agenda that public comment is "closed" on the FEIR, of refusing to conduct "public review" of the FEIR, and of allowing speakers to address the issue only through a generalized public comment opportunity does not comply with Guideline 15202(b). It is also contrary to the statement in the Responses to Comments that there will be an "advertised public hearing" on the certification of the FEIR.

### **The Responses to Comments are Deficient.**

**The Project Description.** The Responses to Comments fail to respond my objection to the inadequacy of the Project Description. (C&R.68-70.) The project description in the DEIR is artificially narrow because it limits the development to the sponsor's preference for a "large retail project." In so doing, it improperly constrains the scope and breadth of the entire environmental analysis in the DEIR and FEIR. They instead treat my comment as an objection to the alternatives analysis, which it is not. My comment on the Project Description is a point entirely distinct from the selection and adequacy of alternatives.

**Statement of Environmental Characteristics.** The Responses to Comments fail to respond my objection to the inadequacy of the Statement of Environmental Characteristics and, in particular, to the lack of an any context statement that provides an adequate baseline from which to evaluate the project's impacts on the character of this most distinctive stretch of the West's most historic thoroughfare, and its visual, aesthetic, and historic character. (C&R.73-75.)

The Responses instead treat my objections to the Statement of Environmental Characteristics as a comment on "Land Use/Aesthetics" impacts. The Response omits any discussion or recognition of the organic and integral character of Mid-Market. It instead improperly narrows the analysis to whether the project itself is not in an historic district or itself contains any historic resources. The Responses fail to consider the impact of a massive new, glass-front shopping center in an environmental setting that contains numerous historic resources, including historic buildings and historic districts. That the project is not itself located within the strict boundaries of an historic district and, at least in the view of the Planning Department, does not contain any historic resources, is not a sufficient response or analysis to whether the new structures are consistent with the environmental context that the numerous and significant adjacent historical resources create.

The DEIR's piecemealing of contextual analysis by simply stating what the current site conditions do not contain fails to provide a sufficient contextual baseline to evaluate how the proposed project, if built, will affect the character of the surrounding environs. Context must not only frame the impact of what will be torn down to build this project; it must also enable analysis of how the project, if built, will affect the characteristic environment that surrounds it. The FEIR is deficient in providing sufficient context to enable the analysis that CEQA requires.

**Historic, Cultural and Aesthetic Environmental Setting.** The Responses to Comments likewise conflate aesthetic impacts with historic impacts. (C&R.73-75.) Quite apart from historic impacts, the project needs to be evaluated for its impact on the aesthetic and local character of the environs. The FEIR fails to analyze the non-historic characteristics in any meaningful way, and the Responses are deficient in this respect as well.

With respect to the St. Francis Theater, the Responses concede that the building appears eligible for listing as an individual resource by virtue of its ratings under existing surveys and inclusion in the California Historic Resource Inventory with a status of 3S. (C&R.87.) The Responses also recognize that the façade of the building could itself qualify as an historical resource under National Park Service criteria.<sup>1</sup> (C&R.89.) Under these criteria, the façade of the St. Francis alone can be considered an historic resource "if the significant form, features and detailing are not obscured." (Emphasis in original.)

Today, much of John Galen Howard's original form, features and detailing are not obscured; they remain evident on the façade of the building. As the DEIR itself shows, most of this historic fabric remains evident and is only partially covered up by modern signage. (DEIR at IV.B.2.)

Even if the modern signage could be considered to substantially obscure the form, features, and detailing of the Galen Howard façade, there has been no investigation and analysis of whether the non-historic signage can be feasibly be removed and the now-hidden portions of the façade restored to full integrity. The NPS guidance states: "If the false front, curtain wall, or non-historic siding is

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<sup>1</sup> U.S. Department of the Interior, National Park Service, "How to Apply the National register Criteria for Evaluation," at p. 46, available at <http://www.nps.gov/history/nr/publications/bulletins/nrb15/nrb15.pdf>. (as of 6/28/10).

removed and the original building materials are intact, then the property's integrity can be re-evaluated."

This project necessarily includes the removal of the modern signage, etc. as part of the demolition of the building. The integrity of the façade must be determined before, not after, the certification of the EIR. Otherwise, environmental analysis will be impermissible deferred. The time for evaluating the integrity of the façade is now, not during demolition. This is a major deficit in the analysis of the historical resources for this project.

The opinion of the Page & Turnbull report that "documented changes to the building have been so great that a reevaluation of the building's integrity would not yield different results" does not address the question whether the entire façade can feasibly be restored. (C&R.89.)

A study in contrast is Burnham & Root's DeYoung Building at Third and Market Streets. For 40 years, it was sheathed in white enamel siding that covered up its Richardsonian Romanesque exterior.<sup>2</sup> According to Chronicle architecture critic, John King, "The masonry facade is virtually all that's left of the original [building]."<sup>3</sup> Beginning in 2005, the siding was removed



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<sup>2</sup> Photo from Curbed (12/27/07), "De Young Building: A Photo History", available at [http://sf.curbed.com/archives/2007/12/27/de\\_young\\_building\\_a\\_photo\\_history.php](http://sf.curbed.com/archives/2007/12/27/de_young_building_a_photo_history.php) (as of 6/28/10).

<sup>3</sup> John King (San Francisco Chronicle, 12/27/07), "S.F.'s Restored De Young Building Stunning at Street Level," available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2007/12/27/BA6MU0UMF.DTL> (as of 6/28/10).

and the facade of the building was restored. It is now the Ritz Carleton Club and Residences. The building is now San Francisco Landmark No. 743.

The De Young Building demonstrates that huge expanses of siding and signage can effectively and feasibly be removed, and exteriors restored, to create landmarks whose only remaining characteristics is the facade. There is no showing that it would be infeasible to accomplish this for the St. Francis Theater facade.

**Land Use Plans and Policies, Setting and Impacts.** The Responses to Comments fail to adequately respond to my objection that the project is inconsistent with the Priority Policy requiring the protection of neighborhood character. (C&R.6-7.) As stated above, the DEIR and NOP/IS do not provide sufficient context for evaluating the impacts of a large modern glass-front shopping center on the historic and aesthetic fabric of Mid-Market. For the same reasons, the DEIR and Responses are inadequate to evaluate consistency with Priority Policy 2. Since the new building is inconsistent with that neighborhood character, it is inconsistent with this Priority Policy.

The proposed finding for compliance with Priority Policy 2 fails to consider the character of the neighborhood and Mid-Market, instead limiting its consideration to "the addition of several new stores and shopping opportunities thereby enhancing the downtown San Francisco experience."

The Responses also do not adequately respond regarding Priority Policy 4, discouragement of commuter automobiles. As the EIR itself makes clear, the project will generate significant additional traffic. It proposes to authorize 234 parking spaces. This will encourage and add traffic in the congested Powell and Market area. That the project happens to be located on the Market Street transit corridor is an insufficient response to the traffic it will generate.

The proposed finding for Priority Policy 4 fails to recognize that the addition of 234 parking spaces will stimulate new commuter traffic. That the project is served by transit does not detract from the fact that significant new parking capacity will be introduced at Powell and Market.

The Project therefore does not comply with CEQA or the requirements of Planning Code Sections 101.1(b) and 303 for Conditional Use Approval.

The Responses improperly defer consideration of Land Use Impacts by postponing full evaluation of the project's consistency with Priority Policies pending the issuance of building and demolition permits, and to future findings

relating to project approval. (C&R.7.) This analysis must be performed prior to EIR certification and be included in the EIR in order to comply with CEQA.

**Alternatives.** The Responses are inadequate with respect to the selection of alternatives. (C&R.69-70.)

There is no alternative that incorporates at least the façade of the St. Francis, which as explained, appears likely to be an historical resource in its own right and enhances the aesthetic, historical and neighborhood character, and building scale of Mid-Market.

The proposed revision of the DEIR to reject incorporation of any of the existing buildings based on the sponsor's preference for "large floor plates to accommodate value-based retailers" is improper. This is a sponsor preference, and cannot be used to eliminate consideration of environmentally superior alternatives. Further, there is no evidence that incorporation of some or all of the existing buildings would necessarily prevent the use of large floor plates, or that large floor plates are indispensable to the feasibility of the project. The Responses contain no meaningful independent analysis of the validity of the sponsor's "large floor plate" claim, or that an alternative that incorporates some or all of the existing structures is infeasible.

The Responses fail to explain the basis for selecting the alternatives included in the EIR. They do not identify any alternatives (other than my proposed incorporation of some or all of the existing buildings) that were rejected. Neither is explained in the NOP/IS (page 103) or in the DEIR.

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In sum, I urge you not to certify the FEIR until the project is revised to better respect the character of the environment into which it is being dropped. A massive glass-front shopping center bears no relationship to Powell and Market of Mid-Market. It would not only unlawfully demolish the resource of the St. Francis façade, but introduce a jarring new presence that is better suited to a suburban shopping center.

Respectfully submitted,

  
Arthur D. Levy

ADL:mna



President Miguel and Planning Commission  
June 29, 2010  
Page 7

cc: Deborah Dwyer (by e-mail)  
Katherine Petrin (by e-mail)  
Mark Ellinger (by e-mail)

President Miguel and Planning Commission  
June 29, 2010  
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# SAN FRANCISCO PLANNING DEPARTMENT

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## Planning Commission Draft Motion (Revised)

HEARING DATE: July 8, 2010

*Date:* July 1, 2010  
*Case No.:* 2005.1074E  
*Project Address:* 935-965 Market Street (CityPlace)  
*Zoning:* C-3-G (Downtown General Commercial) and  
C-3-R (Downtown Retail) Districts  
120-X Height and Bulk District  
*Block/Lot:* Block 3704/Lots 071, 072, and 073  
*Project Sponsor:* Jim Abrams of Gibson, Dunn & Crutcher, LLP representing  
Urban Realty Co., Inc.  
*Staff Contact:* Debra Dwyer – (415) 575-9031  
debra.dwyer@sfgov.org

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ADOPTING FINDINGS RELATED TO THE CERTIFICATION OF A FINAL ENVIRONMENTAL IMPACT REPORT FOR A PROPOSED RETAIL SHOPPING CENTER (ALSO KNOWN AS "CITYPLACE") WITH APPROXIMATELY 375,000 GROSS SQUARE FEET AND FIVE STORIES IN HEIGHT (90 FEET TALL) WITH ABOUT 264,010 GSF OF RETAIL USES; 4,830 GSF OF COMMON AREAS; 10,900 GSF OF MECHANICAL AND STORAGE SPACE; AND APPROXIMATELY 95,960 GSF OF PARKING, LOADING, AND CIRCULATION SPACE WITH APPROXIMATELY 188 PARKING SPACES (HEREINAFTER "PROPOSED PROJECT") AT 935-965 MARKET STREET.

MOVED, that the San Francisco Planning Commission (hereinafter "Commission") hereby CERTIFIES the Final Environmental Impact Report identified as Case No. 2005.1074E, 935-965 Market Street (hereinafter "Project"), based upon the following findings:

1. The City and County of San Francisco, acting through the Planning Department (hereinafter "Department") fulfilled all procedural requirements of the California Environmental Quality Act (Cal. Pub. Res. Code Section 21000 *et seq.*, hereinafter "CEQA"), the State CEQA Guidelines (Cal. Admin. Code Title 14, Section 15000 *et seq.*, hereinafter "CEQA Guidelines") and Chapter 31 of the San Francisco Administrative Code (hereinafter "Chapter 31").
  - A. The Department determined that an Environmental Impact Report (hereinafter "EIR") was required and provided public notice of that determination by publication in a newspaper of general circulation on October 1, 2008.
  - B. On November 4, 2009, the Department published the Draft Environmental Impact Report (hereinafter "DEIR") and provided public notice in a newspaper of general circulation of the availability of the DEIR for public review and comment and of the date and time of the Planning Commission public hearing on the DEIR; this notice was mailed to the Department's list of persons requesting such notice.

- C. Notices of availability of the DEIR and of the date and time of the public hearing were posted near the project site by the environmental consultant on November 4, 2009.
  - D. On November 4, 2009, copies of the DEIR were mailed or otherwise delivered to a list of persons requesting it, to those noted on the distribution list in the DEIR, to adjacent property owners, and to government agencies, the latter both directly and through the State Clearinghouse.
  - E. Notice of Completion was filed with the State Secretary of Resources via the State Clearinghouse on November 4, 2009.
2. The Commission held a duly advertised public hearing on said DEIR on December 10, 2009 at which opportunity for public comment was given, and public comment was received on the DEIR. The period for acceptance of written comments ended on December 21, 2009.
  3. The Department prepared responses to comments on environmental issues received at the public hearing and in writing during the 45-day public review period for the DEIR, prepared revisions to the text of the DEIR in response to comments received or based on additional information that became available during the public review period, and corrected errors in the DEIR. This material was presented in a Comments and Responses document, published on May 12, 2010, distributed to the Commission and all parties who commented on the DEIR, and made available to others upon request at Department offices.
  4. A Final Environmental Impact Report has been prepared by the Department, consisting of the Draft Environmental Impact Report, any consultations and comments received during the review process, any additional information that became available, and the Summary of Comments and Responses all as required by law.
  5. Project Environmental Impact Report files have been made available for review by the Commission and the public. These files are available for public review at the Department offices at 1650 Mission Street, 4<sup>th</sup> Floor, San Francisco, and are part of the record before the Commission.
  6. On July 8, 2010, the Commission reviewed and considered the Final Environmental Impact Report and hereby does find that the contents of said report and the procedures through which the Final Environmental Impact Report was prepared, publicized, and reviewed comply with the provisions of CEQA, the CEQA Guidelines, and Chapter 31 of the San Francisco Administrative Code.
  7. The project sponsor has indicated that the presently preferred alternative is the Proposed Project, described in the Final Environmental Impact Report.
  8. The Planning Commission hereby does find that the Final Environmental Impact Report concerning File No. 2005.1074E, 935-965 Market Street, reflects the independent judgment and analysis of the City and County of San Francisco, is adequate, accurate and objective, and that the Comments and Responses document contains no significant revisions to the DEIR, and hereby does CERTIFY THE COMPLETION of said Final Environmental Impact Report in compliance with CEQA and the CEQA Guidelines.

9. The Commission, in certifying the completion of said Final Environmental Impact Report, hereby does find that the project described in the Environmental Impact Report, and the project preferred by the project sponsor:
- A. Will have a project-specific significant effect on the environment by resulting in a significant and unavoidable traffic impact at the intersection of Fifth and Stevenson Streets; and
  - B. Will have a significant effect on the environment in that it would contribute to 2030 cumulative traffic increases and result in significant and unavoidable cumulative traffic impacts at the intersections of Fifth and Stevenson Streets and of Fifth and Mission Streets. In addition, the proposed project would result in a significant and unavoidable impact with respect to cumulative air quality due to the proposed project's greenhouse gas emissions under the recently adopted Bay Area Air Quality Management District (BAAQMD) *CEQA Guidelines Update*.

I hereby certify that the foregoing Motion was ADOPTED by the Planning Commission at its regular meeting of July 8, 2010.

Linda Avery  
Commission Secretary

AYES:

NOES:

ABSENT:

ADOPTED: July 8, 2010