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

APPEAL OF ENVIRONMENTAL IMPACT REPORT 800 Presidio Avenue (Booker T. Washington Community Services Center) Mixed-Use Project

DATE:	June 6, 2011
TO:	President David Chiu and Members of the Board of Supervisors
FROM:	Bill Wycko, Environmental Review Officer – (415) 575-9048 Michael Jacinto, Case Planner – (415) 575-9033
RE:	File No. 110675, Planning Department Case No. 2006.0868E Appeal of Environmental Impact Report Certification for 800 Presidio Avenue
PROJECT SPONSORS:	Booker T. Washington Community Services Center
APPELLANT:	**Stephen M. Williams** **on behalf of Neighbors for Fair Planning**
HEARING DATE:	June 14, 2011
ATTACHMENTS:	A: Appeal Letter B: EIR Figure 12 (Revised) C: Project Sponsor Correspondence related to Existing Community Center Conditions D: MOH Loan Agreement to Sponsor E: Motion No. 18340 (EIR Certification) F: Resolution No. 18341 (CEQA Findings) Exhibit 1, Mitigation Monitoring and Reporting Program

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INTRODUCTION

This memorandum and the attached document ("Appeal Response") are a response to the letter of appeal ("Appeal Letter") to the Board of Supervisors ("the Board") regarding the issuance of a Final Environmental Impact Report ("FEIR") under the California Environmental Quality Act ("CEQA Determination") for the 800 Presidio Avenue (Booker T. Washington Community Services Center) Mixed-Use Project ("the proposed project"). The FEIR was certified by the Planning Commission ("the Commission") on April 28, 2011. The appeal to the Board was filed on May 18, 2011 by Mr. Stephen M. Williams on behalf of the Neighbors for Fair Planning ("Appellant").

The Appeal Letter is included with this Memorandum as Attachment A. The FEIR, which consists of the Draft Environmental Impact Report ("DEIR") and the Comments and Responses document ("C&R"), were provided to the Clerk of the Board on June 6, 2011.

The decision before the Board is whether to uphold the certification of the FEIR by the Commission and deny the appeal, or to overturn the Commission's decision to certify the FEIR and return the project to the Planning Department for additional review.

ENVIRONMENTAL REVIEW PROCESS FOR THE PROJECT

The initial project proposal for the Booker T. Washington Community Services Center Mixed Use Project, filed on October 12, 2006, was documented in the Notice of Preparation (NOP), published on March 8, 2008. This proposal consisted of a mixed-use structure encompassing 85,000 square feet of space on seven levels (six above grade) at a height of 65 feet along Presidio Avenue, and included a 20,059-square-foot community center and 72 residential units. The NOP was circulated for 30 days for public review and comment. Subsequent to publication of the NOP in 2008, the project sponsor modified the proposal to a 55-foot (five-story) building with 47 units for low-income households and a 19,000 square foot community center. The EIR analyzed this version of the project and the Planning Department, the lead agency under CEQA, published a Draft EIR ("DEIR") for public review and comment on June 23, 2010. The DEIR comment period extended from June 23, 2010, through August 10, 2010. During the 48-day public review period, the Planning Department received written comments sent through the mail or by hand-delivery, fax, or email. Oral testimony was transcribed at the public hearing on the Draft EIR held on August 5, 2010.

The Planning Department then prepared a Comments and Responses document ("C&R") to address environmental issues raised by the public during the comment period for the DEIR. The C&R document, which was published on April 14, 2011, contained additional analysis that verified, clarified and/or expanded upon the DEIR contents. The Planning Department prepared minor 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. The C&R document also contained a further refined description of the proposed project, described under below under Project Description, intended to address public comments related to the project's height and bulk that were conveyed during the DEIR public comment period. The Planning Commission certified the FEIR on April 28, 2011 and approved the project as proposed.

PROJECT DESCRIPTION

As described in the FEIR, the project sponsors, Booker T. Washington Community Services Center ("BTWCSC") propose to demolish the existing 12,600-square-foot BTWCSC building (on Assessor's Block 1073, Lot 013), presumed an historic resource for purposes of environmental review, and to construct a mixed-use structure, which would replace and expand the community/recreation center and include new residential uses. The project would encompass about 68,206 square feet of space on six levels, five above grade and one below at a height of 55 feet along Presidio Avenue. The roughly 20,726 square-foot community center space would accommodate the center's current and future programs and would include a gymnasium, program space, and a childcare center. The project also includes a total of 50 affordable residential units, including 24 units for emancipated foster youth, 24 affordable units for persons or households earning up to 60 percent of area median income, and two units for on-site building managers. The project proposes 21 parking spaces in a basement garage accessible from Sutter Street. The project requires amendments to the Planning Code to establish a "Presidio-Sutter

Affordable Housing Special Use District," subject to approval by the Board of Supervisors to reclassify the site's maximum height limit from a 40-X height and bulk district to a 40-X to 55-X height and bulk district, and to increase the allowable dwelling unit density beyond that established by the Planning Code. The project also requested exceptions to Planning Code provisions related to street trees, rear yard, usable open space and dwelling unit exposure through a Planned Unit Development subject to Conditional Use authorization by the Planning Commission. After considering and certifying the FEIR, the Planning Commission approved the Conditional Use authorization, granted the requested Code exceptions, and conveyed its affirmative recommendation of the Special Use District to the Board of Supervisors for its consideration.

CONCERNS RAISED AND PLANNING DEPARTMENT RESPONSES

The Planning Department has grouped the Appellant's concerns into seven categories: 1) DEIR Public Review and Circulation; 2) De Facto Project Approval Prior to Completion of Environmental Review; 3) Baseline Conditions and Neighborhood Character; 4) Historic Architectural Resources; 5) Range of EIR Alternatives; 6) Potential *General Plan* Conflicts; and 7) Project Approval and Statement of Overriding Considerations. The Appellant's concerns are stated as summary excerpts from the Appeal Letter, and each concern is followed by the Department's response to that concern. The full text of the Appellant's letter of appeal is provided in Attachment A to this document.

In most instances, the Appellant states a general opinion that the EIR is deficient with regard to certain topics, but does not provide evidence or argument to support such claims. Further, the Department finds that the concerns stated by the Appellant do not raise any issues not already addressed in the DEIR and C&R. The Department's responses rely on summary text from the full CEQA record, which includes the Draft EIR, C&R, and background studies, as appropriate.

DEIR Public Review and Circulation

Concern 1: The Appellant states that the EIR should have been re-circulated because significant new information was added to the EIR; the section of the EIR dealing with Alternatives and other sections were rewritten; and feasible project alternatives and mitigation measures were considerably different from others previously analyzed. The Appellant further alleges that the public was not given adequate opportunity to comment on the feasible range of alternatives.

Response 1: The Planning Department complied with all CEQA requirements regarding circulation of the environmental review documents and opportunity for public comment. Recirculation of the EIR is required if the C&R contained significant new information. Revisions contained in the C&R document do not represent significant new information; instead, they verify or clarify information in the DEIR in response to public comments, which is permissible under CEQA. Thus, no recirculation of the DEIR is necessary.

As part of the environmental review process for this project, the Planning Department made non-substantive revisions to the DEIR and provided

additional text in the C&R document to clarify project alternative descriptions and/or analyses, with no substantive changes made to the conclusions reached concerning the project's potential environmental effects.

The C&R document did not add significant new information that would trigger a requirement to recirculate the document under CEQA Guidelines Section 15088.5. Under the Guidelines, "significant new information" requiring recirculation includes, for example, a disclosure showing that:

(1) a new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented;

(2) a substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance;

(3) a feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the project's proponents decline to adopt it; or

(4) the draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

In the case of the subject EIR, none of the foregoing conditions exist.

Guidelines Section 15088.5(b) Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR. In this case, the C&R document clarifies, revises, and elaborates on information that was already presented in the DEIR. None of the revisions made in the C&R document fall into the category of "significant new information" as defined above in the Guidelines, because:

(1) The revisions do not identify a new significant environmental impact or mitigation measure that was not already included in the DEIR. The DEIR found a project-specific and cumulative significant and unavoidable impact associated with the demolition of the existing Booker T. Washington Community Services Center building on the subject property, which is considered a historical resource for purposes of CEQA review. No additional significant impacts or mitigation measures were identified in the C&R document that were not already presented in the DEIR.

(2) The C&R does not identify a substantial increase in the severity of an environmental impact. The C&R (pp. C&R 4-15) describes a "Modified Project" that was developed in response to community concerns related to the project described in the DEIR. The Planning Department's review of the Modified Project indicates that the changes are not substantial and impacts would be incrementally less than those of the project, because the Modified Project incorporates upper-level setbacks along its Sutter Street facade, reducing the project's overall bulk and mass. The C&R states that Modified Project's "slight changes in impacts would not be substantial" based on a review of all CEQA topics in light of the effects reported in the DEIR.

(3) Alternatives or mitigation measures are not considerably different from others previously analyzed. The DEIR analyzes a No Project Alternative and A Code Compliant Alternative. The EIR also reviews a Preservation Alternative and an Adaptive Reuse Alternative and rejects both from further consideration because the EIR found that neither alternative would meet most of the sponsor's objectives. No additional alternatives were added to the C&R document.

(4) The revisions indicate in any way that the DEIR was "so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded." In contrast, the DEIR generated robust public comments that largely concerned the merits of the proposed project, and not the adequacy of the DEIR.

The Appellant states that "the revised EIR describes a feasible project alternative or mitigation measure considerably different from others previously analyzed which would clearly lessen the environmental impacts of the project, but the project proponents decline to adopt it"; however, the Appellant provides no explanation as to the nature of such a newly added or revised alternative or mitigation measure. In fact, the C&R document includes no new alternatives or mitigation measures that were not already analyzed in the DEIR. The C&R's revisions to the Alternatives chapter provide additional description of the Preservation Alternative, which was described in the DEIR but found infeasible and for that reason rejected from further consideration. The revisions clarify the description of the Preservation Alternative, and that new residential units would be constructed in the rear yard as well as within the existing parking lot on Presidio Avenue, to accommodate a number of residential units that are closer to the number provided by the proposed project. The reasons for rejecting this alternative from further consideration are also clarified. This new text does not alter the conclusions of the DEIR.

Likewise, the Appellant claims that "the EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded because the public was not given an opportunity to comment on reasonable and feasible alternatives," but provides no evidence or detail to support this allegation. Therefore, no further response is possible.

The Appellant claims that the C&R document adds a new alternative that would lessen environmental impacts, but that the project sponsor has declined to adopt such an alternative. The C&R document presents a modification to the proposed project, with a small decrease in floor area and upper-story setbacks to reduce building massing in response to public comments. The modification to the design would reduce effects, compared to those of the project analyzed in the DEIR, and now reflects the project sponsor's preferred project. In other words, the project sponsor now proposes a project that would have incrementally less physical effects than the project analyzed in the DEIR.

The Appellant is incorrect in his allegation that the mitigation measures included in the C&R document are "considerably different from others previously analyzed." One minor revision was made to the mitigation measures in the C&R document -- on page C&R-127, under Mitigation Measure M-CP-1, HABS-Level Recordation and Interpretation, the "Interpretation" requirement was added, with text revised to state that documentation and recordation of the Booker T. Washington Center as a historic resource "can be displayed at a public location, such as within the lobby of the proposed project." This does not change the intent or meaning of this mitigation measure, nor does it change the impact determination, which remains significant and unavoidable even with implementation of Mitigation Measure M-CP-1.

In summary, the revisions made in the C&R document are entirely permissible within the context of CEQA and do not require the recirculation of the DEIR as requested by the Appellant.

De Facto Project Approval Prior to Completion of the Environmental Review Process

Concern 2: The project has already been "approved" because the City has already committed substantial funding to the project as an affordable housing project and all other alternatives are foreclosed. The Mayor's Office of Housing has paid the developer, architect and environmental consulting substantial amount of money before the environmental review was completed, committing itself to the project and, therefore, the approval has already occurred.

Response 2: The Mayor's Office of Housing is neither the project sponsor nor the lead agency and provided strictly pre-development funding to the proposed project. In doing so, the Mayor's Office of Housing made clear that its partial funding of CEQA review and other pre-development costs was not an approval of the project, and the City retained full discretion to decide to disapprove or modify the project.

CEQA requires the lead agency to review projects for the potential to cause adverse physical impacts prior to project approval. In the case of the proposed project, the Planning Department was responsible with carrying out the requirements of CEQA, while the Planning Commission was responsible for certifying the EIR as adequate, accurate and objective, reflecting the independent judgment of the Planning Department. Subsequent to the FEIR certification, the Planning Commission reviewed the Department's staff reports for the approval actions and approved the proposed project.

The Appellant is incorrect in his assertion that Mayor's Office of Housing (MOH) is a project sponsor. The MOH is neither the lead agency nor the project sponsor, as stated numerously in the C&R document (corrected from the DEIR), and therefore has not been involved in the environmental review or project approval. As corrected throughout Section E. Staff-Initiated Text Changes of the C&R document (e.g., pp. C&R-118, -119, and -138), the project sponsor is BTWCSC. The Appellant does not provide any evidence that communication occurred

between the MOH and the Planning Commission that would suggest that project approval was a foregone conclusion. Also, the Appellant provides no evidence to suggest that the MOH influenced the Planning Department or Planning Commission in any way in preparing or certifying the EIR.

Development projects typically require a certain amount of funding to undertake the planning, design, and environmental reviews processes, with such funding provided in this case to undergo CEQA requirements. However, this type of funding does not predetermine the outcome of the approval process, which is made independently by the Planning Commission and Board of Supervisors. Thus, the CEQA process was properly followed and the Appellant's claims to the contrary are unsupported and unsubstantiated.

The actual facts are that the project sponsor, BTWCSC, sought and obtained a loan of $788,484 for "Predevelopment Activities" from MOH for the proposed project. (The loan agreement and related documents are attached as Attachment D to this Appeal Response.) Of this amount, approximately half has been drawn on by BTWCSC. The total loan amount represents approximately 4 percent of the total project costs estimated at around $20 million. As stated in the loan agreement between the borrower, BTWCSC and MOH, "predevelopment activities" are architectural and engineering design, survey and appraisal preparation, preparation of environmental studies, CEQA and NEPA review, legal expenses, loan fees, cost estimates and associated administrative. The City, through MOH, did not approve the Project and expressly stated so in the loan agreement:

> "By entering into this Agreement, MOH and Borrower intend to preserve the possibility of developing the Project as affordable housing by lending funds to Borrower for the Predevelopment Activities. The City does not, however, commit to or otherwise endorse the Project by entering into this Agreement. The Project remains subject to review by City agencies and City discretion to disapprove or modify the Project." (Loan Agreement, Recitals, Paragraph E.)

Further, the loan agreement provided that the City retained sole discretion to decide whether to provide additional financing at a later point. (Loan Agreement, Para. 2.5) Finally, the loan must be paid back, whether or not the project is approved, and, if the Special Use District legislation that is needed for the project is not approved by the Board of Supervisors, the loan must be paid back immediately thereafter. (Loan Agreement, Para. 3.1)

The facts are that MOH has made a loan to BTWCSC that must be paid back in full whether or not the project is approved and must be paid back immediately if not approved. The loan funds may only be used for activities that will not result in any physical change in the environment, the equivalent of planning and

feasibility studies that are exempt from environmental review. (CEQA Sections 21102, 21150, CEQA Guidelines Section 15262)

CEQA defines the approval of a project as a decision that commits a public agency to a definite course of action with respect to a project that will result in a physical change in the environment (Guidelines Section 15352). As the loan agreement makes clear, the MOH has in no way taken an action that commits the City to undertake or authorizes the project sponsor to undertake the construction of the proposed development.

In the case cited by Appellant, *Save Tara v. City of West Hollywood* (45 Cal. 4th 116; 2008), the California Supreme Court stated that in determining when project approval occurs the courts must determine whether, "as a practical matter," the agency's overall conduct with respect to the proposed activity amounts to a de facto commitment to the activity." A key consideration is whether the action taken by the agency forecloses alternatives or mitigation measures. The court rejected a bright line rule and instead said that courts should look not only to the "terms of the agreement but to the surrounding circumstances to determine whether, as a practical matter, the agency has committed itself to the project as a whole or to any particular features, so as to effectively preclude any alternatives or mitigation measures that CEQA would otherwise require to be considered, including the alternative of not going forward with the project." (See Cal. Code Regs, tit. 14, § 15126.6, subd. (e))

In this case the facts are clear: MOH has not made any irretrievable commitment of resources; it has loaned money, all of which must be paid back. It has stated in the loan agreement that it is not approving the project and the City retains full discretion to disapprove the project in the future. The funds may only be spent on items that are necessary to bring the project forward for consideration, namely, completion of the CEQA and NEPA documents required for the project, completion of design documents necessary to complete these documents, completion of documents necessary for Planning to review the project to determine whether to approve it. The facts do not support the Appellant's assertion that funding from third parties, in this instance the Mayor's Office of Housing is tantamount to project approval. The project has been subject to the Planning Department's procedures for environmental review and in no way has a de facto project approval been granted. The City has carried out the CEQA process appropriately.

Baseline Conditions and Neighborhood Character

Concern 3: The EIR contains inaccurate information regarding the existing character of the surrounding neighborhood by mischaracterizing the heights of the surrounding buildings. The conclusion that the project is "generally compatible with" said neighborhood character is, thus, based on an erroneous baseline. DEIR Figure 12 is also inaccurate in that in fails to include two-story structures in the project vicinity.

Response 3: The EIR accurately and thoroughly describes the character of the project vicinity, both in a narrative form and graphically. The printing error in Figure 12, which has been corrected (see Attachment B), does not alter the conclusions reached in the FEIR regarding land use and aesthetic impacts.

The DEIR and the C&R documents include extensive discussion of the project vicinity's character under the Project Description, in the presentation of the land use and aesthetic settings, and in the evaluation of potential land use and aesthetics impacts. The EIR provides thorough and sufficient information regarding the surrounding buildings' heights, massings, lot coverages, street widths, and architectural styles for purposes of evaluating the project's potential to cause adverse physical effects.

DEIR Figure 11 (DEIR, p. IV-3) illustrates the lot coverages and building setbacks in the project vicinity while Figure 12 (DEIR, p. IV-5, and corrected in Attachment B of this submittal) illustrates building heights on the project block and surrounding lots. Moreover, DEIR Figures 14-17 render the DEIR project in photo montages of the surrounding neighborhood and Figures C&R 36, 37 and 38 show updated views of the modified project building from surrounding public viewpoints.

Figure 12 contained a printing error and, as a result, did not depict all two-story buildings in the project vicinity. As shown on that figure, the graphical legend assigns color codes to number of stories – Figure 12's legend had erroneously combined the two and three story building type categories. The figure has been corrected for this submittal (see Attachment B). Additional figures in the C&R further illustrate the overall physical character of the surrounding area, including the photographs submitted by the commenter on C&R A1-80 to C&R A1-96. Figure 33 on p. C&R-37 illustrates the bulk pattern along Presidio Avenue, while Figure 35 on p. C&R-40 shows the proposed building height to street width ratios. Both of these figures are also discussed in the C&R narrative (pp. 32-41) of effects on neighborhood character. The public and the decisionmakers had extensive information available to them regarding the existing character of the project's vicinity as well as the proposed project's impact on the character of the surrounding neighborhood. In certifying the EIR, the Planning Commission has concurred with the less-than-significant land use and aesthetic impact determinations reached in the EIR.

The EIR makes it clear that the proposed project would be taller than the adjacent buildings along Presidio Avenue and Sutter Street by stating on DEIR p. IV-8 that "the project would be taller than other residential and non-residential buildings in the general project area, which includes a mix of uses and building types ranging from one- and two-story houses to four- and eight-story commercial and hospital buildings, respectively." The EIR finds that the proposed project would have a less-than-significant impact on the existing surrounding character because it would be generally compatible with the surrounding buildings in height, bulk, and design. As stated on p. C&R-35,

height and bulk compatibility considerations take into account the character of neighboring areas in all directions (e.g., "the character of the vicinity") and not just the size and character of the residential buildings immediately adjacent to the project site.

As shown in Figure 35 on p. C&R-40, the proposed building's western façade would be 25 feet shorter than the width of Presidio Avenue, and the northern façade would be about nine feet shorter than the width of Sutter Street. These relatively similar ratios of building-height-to-street-width would not overwhelm or otherwise dominate the existing height and bulk character of the area. The ratios of the proposed building to the widths of Presidio Avenue and Sutter Street would be similar to the historic street-wall-height-to-street-width ratios found in other areas of San Francisco, as shown along the bottom half of Figure 35. Also, as stated on p. C&R-32, there are several four-story residential structures along Presidio Avenue and Sutter Street, as well as other relatively large structures like the MUNI Presidio Yard building, across the street from the project site, and the City Center building (former Sears department store) one-and-one-half blocks west that contribute to the area's setting.

The Appellant is also incorrect in stating that the EIR misrepresents the height of the proposed building, which will "exceed 65 feet as it moves down the steep slope of Sutter Street)." In fact, the EIR accurately follows San Francisco Planning Code methodology for determining building height (DEIR, p. II-12, Figure 8). Section 102.12 of the Planning Code states that building heights are to be measured from the mid-point of the street and that, where a lot has frontage on two or more streets, the owner may choose the street or streets from which the measurements are taken, consistent with the rules set forth in that Code section. Using this approach, the heights of the proposed project are 55 feet for the residential building and 43 feet 6 inches for the project's community center building. The height of the proposed building as it moves down Sutter Street is shown in the photomontages on C&R-38 and C&R-66.

Based on the above, the Planning Department maintains that the description of the surrounding project vicinity is accurate and complete and that the less-than-significant conclusion reached regarding the project's impact on the existing neighborhood character surrounding the site is appropriate and is based on correct information when viewed in its entirety (i.e., all relevant figures and narrative discussions).

Historic Architectural Resources

Concern 4: The building on the 800 Presidio Avenue property is a significant work of an important architect and the site is surrounded by historic resources.

Response 4: The EIR provides a thorough and factual historical context and accurately evaluates individual and cumulative impacts to historic architectural resources as required by CEQA.

The standards for identifying historic resources, including historic districts, are described in CEQA Section 15064.5 (a)(3), which states that, "Any object, building, structure, site, district [emphasis added], place, record, or manuscript which a lead agency determines to be historically significant or significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California may be considered to be an historical resource, provided the lead agency's determination is supported by substantial evidence in light of the whole record. Generally, a resource shall be considered by the lead agency to be "historically significant" if the resource meets the criteria for listing on the California Register of Historical Resources (CRHR) including the following:

(1) Is associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage;

(2) Is associated with the lives of persons important in our past;

(3) Embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values; or

(4) Has yielded, or may be likely to yield, information important in prehistory or history."

The National Park Service (NPS) defines a historic district as one that possesses, "a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united historically or aesthetically by plan or physical development."

It was with these standards and definitions in mind that the identification of potential historic resources on the project site and vicinity, including potential historic districts, was completed for the proposed project. The historic resource evaluation (HRE) prepared by a professional architectural historian found that the BTWCSC property appears eligible for listing in the CRHR under Criterion 1 due to its association with a pattern of events important to the history of San Francisco; specifically, the founding and development of a social, educational and recreational institution, the BTWCSC. The institution is associated with a historically significant pattern of events; the history of African Americans in San Francisco and California, and their efforts for social advancement in the first half of the 20th century via the creation of the BTWCSC as a progressive institution. As such, the BTWCSC property was identified as a historical resource for CEQA purposes. The subject property was not identified as eligible for the CRHR under any of the remaining three criteria.

With regard to the existence of potential historic districts in the project area, the HRE noted that while the project vicinity contains a number of late nineteenth century to early twentieth century residential buildings similar to other established San Francisco neighborhoods, there are no existing or potential historic districts in the immediate project vicinity (i.e., on the project block or within one block). The HRE did, however, identify a potential historic district

centered on Baker and Pine Streets about two blocks northeast of the project site, which has a substantial concentration of unique, older buildings. This potential historic district is identified in Figure 18 on DEIR page IV-43.

The Historic Resources Evaluation Response (HRER) prepared by the San Francisco Planning Department concurred with the findings of the HRE. The findings of the HRE and HRER were presented in the DEIR on pages IV-40 – 45.

Impacts to historic resources were identified by applying the standard significance criteria provided in CEQA Section 15064.5, as modified by the San Francisco Planning Department for projects in San Francisco. As described on DEIR p. IV-45, "A project would have a significant effect on the environment in terms of Cultural Resources if it would cause a substantial adverse change in the significance of a historical resource as defined in Section 15064.5, including those resources listed in Article 10 or Article 11 of the San Francisco Planning Code." As further described on DEIR p. IV-45, a substantial adverse change is defined by State CEQA Guidelines Section 15064.5(b)(1) as "physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of an historical resource would be materially impaired." The significance of an historical resource is "materially impaired," according to Guidelines Section 15064(b)(2)(A), when a project "demolishes or materially alters, in an adverse manner, those physical characteristics" of the resource that convey its historical significance and that justify its inclusion in, or eligibility for, inclusion in the CRHR."

The proposed project would demolish (i.e., materially impair) an historical resource under CEQA; therefore the EIR identified a significant impact to historic resources. With regard to effects on adjacent historical resources, DEIR p. IV-48 stated that, "It does not appear that the proposed project would have a significant adverse impact on any eligible off-site historic resources. While there are identified potential resources on the subject block, they are located several lots away from the subject property and the proposed structured would not have an adverse effect on them. Furthermore, while there are potential districts in the vicinity, the subject building is not part of or adjacent to any of them." As such, the EIR appropriately identified a less-than-significant impact to adjacent known and potential historical resources.

The Appellant incorrectly states that the BTWCSC is the work of an "important" architect, Lloyd Gartner. As described on C&R pp. 83-84, additional information about the life and work of architect Lloyd Gartner was provided. This additional information was also included in Section E, Staff Initiated Text Changes, on C&R pp. 126-127. Based on the additional research performed, it was determined that Gartner was primarily known as an architect of shopping centers and other retail establishments in the Bay Area in the 1950s through the 1970s, including the Westlake Town and Country Shopping Center in Daly City. His design for the BTWCSC is not mentioned in his list of principle works by the American Institute of Architects or other publications. There is no indication that Gartner

was considered an "important" architect, and the additional information about his life and work does not change the conclusion in the EIR that the BTWCSC building is a historic resource for CEQA purposes (for its associations with historic events), and that its demolition would represent a significant an unavoidable impact on the environment. Additional information about the building's architect does not make the property "more historic," because an historic resource need only be eligible under one of the four eligibility criteria listed in the CRHR, as well as retain sufficient integrity.

The Appellant is also incorrect when stating that the property is surrounded by historic resources that could be adversely affected by development at the project site. DEIR p. IV-4 correctly describes the immediate project setting as containing a number of residential uses that were constructed in architectural styles typical for the late nineteenth or early twentieth centuries. Here Today: San Francisco's Architectural Heritage, which is considered by the Planning Department as an adopted local register of historical resources, was consulted to identify historic resources which may exist on the project site, the project block, or immediately across Presidio and Sutter Streets from the project site.

Of the many buildings on the project block and across the street from the project site, three are identified in the book Here Today; located at 1405 Lyon Street near Post Street, 2701 Sutter Street near Lyon Street and 2600-2602 Post Street, also near Lyon Street. These resources were fully disclosed on DEIR pp. IV-34-37, and no adverse impacts to these resources were identified as a result of the proposed project. No other historical resources listed in the federal, state, or local registers (or designated historic districts) have been identified on the project block or immediately across Presidio or Sutter Streets from the project site. While other buildings identified in Here Today are located in the general project vicinity, such as those on the 2600 blocks of Post and Sutter Streets as noted by the Appellant, they are not on the project block or immediately across the street from the project site. These resources on Post and Sutter Streets are between 175 feet and 470 feet away, respectively, from the project site. Given the relatively large distances between the project site and these resources, and the buffer provided by intervening streets and residential development, no significant impacts to these resources are anticipated as a result of the proposed project. The additional information provide by the Appellant that there are additional resources listed in Here Today on adjacent city blocks from the project site would not change the conclusions of the EIR.

The Appellant alleges that the historical survey completed for the EIR was insufficient to identify the environmental setting, and therefore, the EIR's assessment of impacts to known and potential off-site historic resources are also insufficient. To determine whether potential individual historical resources or potential historic district(s) exist in the project area, a reconnaissance-level survey of a 12-block radius around the project site was prepared. As described in Response CR-1, C&R pp. 75-78, and in the HRE prepared for this project, a

reconnaissance-level survey was completed based on a walking and driving (i.e., "windshield") visual review of the neighborhood by a professional architectural historian, who is qualified to make judgments and offer professional opinions about the historical and architectural character of a given urban area. This first-tier, "screening level" analysis is considered sufficient to characterize the nature of the historic setting of the neighborhood. As such, the Draft EIR adequately characterized the existing setting of the neighborhood from an historical architectural perspective. As no potential individual historical resources or potential historic districts were identified on the subject block or immediate vicinity as a result of this survey, the EIR correctly concluded that the proposed project would have no indirect impact on existing or potential historic districts.

As described on C&R p. 77, a "reconnaissance-level" survey is compared with an "intensive-level" survey, where each building in a survey area is formally recorded on California State Department of Parks and Recreation (DPR) forms, with photos, architectural descriptions, and statements of historical significance based on intensive background research focused on each building's association with significant historical events, important architects or builders, and important current or former occupants. More detailed and intensive-level historic surveys of neighborhoods are necessary and required for plan area documents in San Francisco, such as specific plans or neighborhood plans, where area-wide changes to zoning and height districts would occur. As the proposed project is a site-specific project and not a specific plan or neighborhood plan, the reconnaissance-level survey of potential historical resources in the project vicinity was deemed adequate for CEQA purposes by the Planning Department. Therefore, no further detailed or intensive-level historic district surveys would be necessary. Additional surveys themselves would provide more detailed information about the history of the neighborhood, but they would not reduce the severity of the project and/or cumulative impacts.

As noted on C&R p. 75, if an intensive-level survey of the project vicinity were conducted in the future as requested by the Appellant, and a potential historic district were identified comprised of small, simple, Victorian-era workmen's cottages, the BTWCSC would not be considered a contributor to such a district because it sits on a large lot on the edge of the neighborhood, is characterized by 1950s Modern architecture, and has a community center use that is distinct from adjacent residential uses. The BTWCSC would either be a 'non-contributor' to such a potential district, or would lie entirely outside of any potential district boundaries because it has a use, history, and architectural style that is distinct from the smaller scale residential uses that might comprise such a potential district. If such a district were identified immediately adjacent to the project site, the proposed project would not cause a potential district to become ineligible for local, state, or federal listing because it would be:

1) constructed outside of the district,

2) constructed on the far western edge of the neighborhood as opposed to its center, leaving the vast majority of the potential district visually intact, and

3) would have no direct effects such as demolition or substantial alteration to the surrounding Victorian-era cottages, as these cottages would remain physically unaltered.

As such, these potential district contributors would remain contributory after completion of the proposed project.

The EIR does not overlook the project's potential effects on 'off-site resources' as alleged by the Appellant. As described above and on DEIR p. IV-47, the proposed project would have no adverse impacts to the properties at 1405 Lyon Street, 2701 Sutter Street or 2600-2602 Post Street because they are located several lots away from the project site, with numerous intervening properties providing a buffer between them. Additionally, DEIR p. IV-48 notes that none of the buildings immediately adjacent to the subject property, including those at 2755 Sutter Street and 842-844 Presidio Avenue, have been identified as historical resources either individually or contributors to an existing or potential historic district. As such, the EIR appropriately concluded that the proposed project would have no significant adverse impact on off-site resources.

The EIR does not 'miss-identify' [sic] the location of important historical resources in the area. The historical survey accurately identified a concentration of unique older residential architecture centered at Baker and Pine Streets located two blocks northeast of the project site (see discussion above and DEIR p. IV-41). There are a also a handful of residences which date to the 1870s and 1880s in the project area; however no similar high-level concentration of potential architectural resources such as those found at Baker and Pine Streets were identified on the project block or immediately across the project streets that could be indirectly affected by the proposed project. As such, the EIR accurately identified that no material impairment to any existing or potential historical resources would occur as a result of the proposed project.

Please see Response CR-1 on C&R p. 78 with regard to the request for photos of the properties on the 2600 and 2700 block of Sutter Street and the 2600 and 2500 block of Post Street. Some of these properties are partially visible in the existing and proposed views provided on DEIR pp. IV-15 to IV 17 (Figures 14-17), as well as Figures 33, 36, and 37 in the C&R document. While not all of the block frontages requested by the Appellant are shown on these figures, the project setting was appropriately described as containing a number of Victorian-era residences in the Aesthetics and Cultural Resources sections of the EIR (see DEIR pp. IV-12 and IV-38). Additional photos of these block frontages would not alter the conclusions of the EIR which state that the proposed project would have a

less-than-significant effect on off-site historical resources (not 'no impact' as alleged by the Appellant).

None of the cases cited by the Appellant provide any guidance on the proper approach to the analysis of historic architectural resources in CEQA documents. All are either cited for general CEQA principles (e.g., CEQA is a public information statute), or concern issues not relevant to the issues raised by the Appellant concerning historic resources (e.g., *Sierra Club v. State Board of Forestry* (7 Cal. 4th 1215; 1994), (issue was adequacy of information on biological species and habitat requested by the California Department of Fish and Game, the state agency "charged with conservation and maintenance of the wildlife resources of the state."; *Cadiz Land Co. v. Rail Cycle* (83 Cal. App. 4th 74; 2000), (landfill project was found inadequate because of the failure to analyze water quality effects on a wide-ranging aquifer that underlies the proposed landfill site.) The present EIR complies with both the letter and the spirit of CEQA in its disclosure of potential impacts of the proposed project, in identifying feasible mitigation measures, and in analyzing alternatives that would avoid or lessen the significant effects of the project.

In summary, an adequate and good faith effort was made in describing the environmental setting per CEQA Guidelines Section 15151.

Reasonable Range of Alternatives

Concern 5: (a) The EIR did not analyze a reasonable range of alternatives. Feasible alternatives are available which would reduce or mitigate the severe impacts of the project but these are not analyzed. The "code compliant" and new "preservation alternatives" are far preferable to the proposed project and the public should have been given a chance to comment on those alternatives. The alternatives analyzed constitute variations of the proposed project.

(b) The EIR also fails to adequately disclose and analyze the Project's adverse environmental impacts on traffic, land use, the historic resources in the neighborhood, aesthetics, parking, hazardous materials, solid waste, and other areas. The EIR's No Project Alternative is inadequate.

(c) The EIR does not consider off-site alternatives.

(d) Further, the EIR rejects feasible mitigation measures and impermissibly defers mitigation.

Response 5: (a) The EIR presents a reasonable range of alternatives to the proposed project, as required by CEQA, including the No Project Alternative, and describes these alternatives at a sufficient level of detail.

(b) The EIR analyzes all environmental topics on Appendix G of the CEQA checklist, thereby complying with all *CEQA* Guidelines Section 15126 requirements.

(c) CEQA does not require analysis of off-site alternatives if the project sponsor has no control or ownership of other sites.

(d) The EIR does not reject feasible mitigation measures or impermissibly defer mitigation.

(a) The DEIR, on pp. VI-1 through VI-12, presents the analysis of project alternatives in accordance with CEQA Guidelines Section 15126.6(a), which states that an EIR must describe a reasonable range of alternatives to the project that would reduce or eliminate significant impacts of the project. The "range of alternatives" is governed by the "rule of reason," which requires the EIR to set forth only "those alternatives necessary to permit informed public participation and an informed and reasoned choice by the decision-making body (CEQA Guidelines Section 15126.6(f)).

A reasonable range of alternatives for comparison must include those alternatives that "would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project" (CEQA Guidelines Section 15126.6(a); emphasis added). Therefore, the alternatives should attain most of the project sponsor's objectives.

CEQA generally defines a "feasible" alternative to mean an alternative that is "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, technological, and legal factors" (CEQA Guidelines Section 15364). The following may also be taken into consideration when assessing the feasibility of alternatives: site suitability, economic viability, availability of infrastructure, General Plan consistency, other plans or regulatory limitations, jurisdictional boundaries, and the ability of the proponent to attain site control (Guidelines Section 15126.6(f)(1)).

The EIR identifies significant effects in the area of cultural resources. Accordingly, the alternatives analysis focuses on alternatives that would avoid or lessen these impacts by avoiding demolition of the existing community center building.

The DEIR considers two alternatives in detail—the No Project Alternative and the Code Compliant Alternative. As stated on DEIR p. VI-2, the No Project Alternative would avoid the significant unavoidable project and cumulative impacts to historic resources because this alternative would retain the existing structure on the project site, which is considered a historic resource under CEQA.

However, the No Project Alternative would not meet the basic objectives of the project, as stated on DEIR p. VI-2. As explained further in the Comments & Responses document, p. C&R-134, The No Project Alternative "would not advance the objectives of BTWCSC, because it would not allow construction of a larger community center to accommodate expanded services, including but not limited to a child care center and to provide adequate space to update current programs. Under this alternative, the programs that are currently located in the basement level would remain inaccessible to the disabled. This alternative would

not provide affordable housing to low income households, especially transitional youths who will require the supportive services provided by the BTWCSC." The No Project Alternative was rejected by the project sponsor and Planning Commission. Thus, the No Project Alternative is adequately and accurately covered in the EIR.

In terms of adequacy of the No Project Alternative, the EIR properly followed CEQA requirements in defining and analyzing the No Project Alternative. CEQA Guidelines Section 15126.6(e)(2) state that "the 'no project' analysis shall discuss the existing conditions at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, as well as what would be reasonably expected to occur in the foreseeable future if the project were not approved, [emphasis added] based on current plans and consistent with available infrastructure and community services. The Guidelines further state in Section 15126.6(e)(3)(B) that "the 'no project' alternative is the circumstance under which the project does not proceed." On p. VI-1, the DEIR states that under this alternative, without further improvements, portions of the existing structure would continue to remain unusable on a full-time basis due to their poor condition. According to the community center director, the lower level of the existing building is seldom used due to poor lighting and windows that are not weather-tight, and because, despite repeated attempts at repair, the large teen room on that level continues to be plagued by water infiltration during rain storms (see Attachment C).

The DEIR also analyzed the Code Compliant Alternative, which was developed to address and comply with provisions for RM-1 use districts and 40-X Height and Bulk district. As such, the Code Compliant Alternative would not require an amendment to the Planning Code to establish a "Presidio-Sutter Special Use District (SUD)" and could be constructed as-of-right. The Code Compliant Alternative would further reduce the less-than-significant impacts of the proposed project related to land use, visual quality, transportation, air quality and others primarily because it would contain 30 dwelling units (as opposed to 50 under the proposed project) within a 40-foot-tall building (as opposed to a 55-foot-tall building under the proposed project). However, this alternative would result in significant impacts to historic resources that are similar to the proposed project: since the existing structure on the project site is considered to be a historic resource, its demolition would result in a significant and unavoidable impact – both individually and cumulatively – to cultural resources.

The Appellant asserts that a smaller project would avoid or reduce significant unavoidable impacts of the project – in fact, the smaller "Code Compliant Alternative" (DEIR pp. VI-2 through IV-9) would also require the demolition of the existing community center, which would result in significant impacts to cultural (historic architectural) resources, both individually and cumulatively because, as described in the DEIR, the existing facility is inadequate due to its poor condition (see Attachment C for more information).

CEQA Guidelines Section15126.6(c) also requires an EIR to identify and briefly discuss any alternatives that were considered by the Lead Agency but were

rejected as infeasible during the scoping process. In identifying CEQA alternatives, primary consideration was given to alternatives that would reduce significant impacts while still meeting most of the basic project objectives. Accordingly, the DEIR (p. VI-10 – VI-11) identifies the Preservation Alternative (as revised in the Comments & Responses document at pp. C&R-136 – C&R-138) as having been rejected from full consideration because it would require the project's residential component to be developed as a separate structure in the project site's rear yard, resulting in access constraints and a lack of residential open space, and because this alternative would provide only about half the residential units of the proposed project and would not result in an expanded community center. Thus, this alternative would fail to meet most of the basic project objectives. Additionally, as stated on p. C&R-138, the Preservation Alternative would entail structural upgrades to the existing Community Center building.

The DEIR (p. VI-11) also identifies an Adaptive Reuse Alternative that would that would retain and preserve the existing building and adapt the structure to contain approximately 25 affordable housing units for emancipated foster youth, thereby displacing the Booker T. Washington Community Center, which, as the DEIR notes, is "the very institution which conveys the building's historical significance" (DEIR p. VI-11). Because this alternative would not meet the fundamental objective of providing continued community center uses at the project site, this alternative was rejected from full consideration.

Having considered and rejected the two alternatives noted above, the DEIR concludes that only the No Project Alternative would avoid the proposed project's significant impact on historical resources of demolition of the existing community center building, which is the only significant impact of the project that cannot be mitigated to a less-than-significant level. However, as noted above, the No Project Alternative would fail to meet the basic objectives of the project of constructing housing on the site and providing upgraded community center facilities and gymnasium space.

As stated above, the EIR states that both the No Project Alternative and both the Preservation and Adaptive Reuse Alternatives would avoid the project's significant impacts on historical resources; however, none of these alternatives would meet the basic objectives of the proposed project. CEQA Guidelines Section 15126.6 (f) (3) states that "An EIR need not consider an alternative whose effect cannot be reasonably ascertained and whose implementation is remote and speculative." An off-site alternative, which was not considered in the EIR, would not be feasible, because the project sponsor has no control or ownership of other potential project sites, rendering its consideration of an off-site alternative remote and speculative. Furthermore, an off-site alternative would not meet basic project objectives associated with redeveloping the project site with a new community center and affordable residential units.

The Appellant is incorrect in stating that project's impacts on historic resource were not "quantified" and that no mitigation was proposed. In fact, both the DEIR and the C&R document include a thorough analysis of the proposed

project's potential impacts on cultural resources, with impact discussion supported by a historical resources report prepared by professional architectural historian Mark Hulbert as well as the Planning Department's Historic Resource Evaluation Response prepared by Aaron D. Starr (see previous Concern and Response 5, for a detailed discussion of historic architectural resources). The discussion of these impacts is presented in a narrative form, with "quantification" not required by CEQA nor appropriate in this instance, because the analysis of historical resources properly focuses on the quality, condition, location, integrity and importance of such known and potential resources, and is not typically numerical in nature. Mitigation Measure M-CP-1, HABS-Level Recordation and Interpretation, is developed for the proposed project, although the EIR repeatedly states on DEIR pp. S-4, S-5, S-6, IV-46 through IV-50, IV-51, and V-2 that this mitigation would not reduce either direct or cumulative impacts to cultural resources to a less than significant level and that these impacts would remain significant and unavoidable.

The Preservation Alternative is not new to the C&R document. It is discussed on DEIR pp. VI-10 through VI-11 under Section VI.C, Alternatives Considered and Rejected from Further Consideration. As stated above, under Response 1, the C&R document provides additional text to clarify certain components of the alternatives, with no meaningful changes made to the descriptions of the alternatives or to the conclusions reached concerning their potential environmental effects. The minor revisions made to the narrative concerning the Preservation Alternative, specifically, are to provide additional information related to its infeasibility.

(b) The Appellant incorrectly asserts that the EIR fails to adequately disclose and analyze the project's adverse environmental impacts concerning other environmental topics (i.e., traffic, land use, historic resources, aesthetics, parking, hazardous materials, solid waste, and other areas). The EIR analyzes all environmental topics included in Appendix G of CEQA Guidelines and includes discussions of project-specific and cumulative impacts that would result with project implementation. The Appellant disagrees with the conclusions reached in the EIR, but does not provide substantial evidence to the contrary. The EIR provides a complete and accurate disclosure of the project's potential impacts, thus properly carrying out the requirements of CEQA.

The Appellant's support for the Code Compliant and Preservation Alternatives and opposition to the proposed project are noted.

(c) The Appellant indicates that an off-site alternative should have been considered in the EIR. However, CEQA Guidelines Section15126.6 states that "An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decision making and public participation…. There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason." As discussed further in Response 5, above, the EIR considered a reasonable range of project alternatives and met all content

requirements as set forth by CEQA Guidelines Section 15126.6. The project sponsor has no control or ownership of other potential project sites, rendering consideration of an off-site alternative remote and speculative.

(d) The EIR identifies feasible mitigation measures and does not improperly implementation of mitigation measures. The EIR includes Mitigation Measure M-CP-1, which requires documentation of the existing community center building in accordance with the National Park Service's Historical American Building Survey procedures. Other measures identified in the EIR include: M-CP-2 addressing archeological impacts; M-BI-1 addressing breeding birds; and M-HZ-2 addressing hazardous building materials. The full description of these measures is included in a Mitigation Monitoring and Reporting Program (MMRP) adopted as part of project approval. Contrary to the Appellant's assertion, the EIR neither rejects nor defers feasible mitigation measures.

Potential General Plan Conflicts

Concern 6: (a) The EIR is flawed because "the Department has already determined that this project violates the Urban Design Element of the General Plan."

(b) The EIR does not study cumulative impacts, and potential development on other sites is unstudied or is based on incorrect information. The EIR fails to accurately disclose project's impacts on historical resources and moreover, the establishment of the proposed Special Use District as part of the project will incentivize development of other nearby lots, threatening other historic resources in the neighborhood.

Response 6: (a) The EIR sufficiently evaluates the proposed project's potential to conflict with the General Plan and analyzes potential conflicts with the Urban Design Element.

(b) The EIR also adequately evaluates the potential for the project and its characteristics, including the establishment of a Special Use District, to combine with past, present and reasonably foreseeable future projects in its evaluation of cumulative impacts.

(a) 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. CEQA directs lead agencies to evaluate whether a project would conflict with a General Plan based on the following criterion: "Would the project conflict with any applicable land use plan, policy or regulation of an agency with jurisdiction over the project (included, but not limited to the general plan, specific plan, local coastal program or zoning ordinance) adopted *for the purpose of avoiding or mitigating an environmental effect*?" [emphasis added]. The role of an EIR is not to illustrate how a project complies with the General Plan, but to identify possible conflicts that could result in substantial adverse physical effects. Contrary to the Appellant's assertion, the Planning Department did not "already determine that this project violates the Urban Design Element of the General Plan."

The DEIR, on pp. III-1 through III-2, identified General Plan objectives and policies with which the proposed project could potentially conflict, including policies in the Residence Element, Transportation Element and Urban Design Element. Additionally, C&R Response LU-1 (C&R pp. 29-32) clarifies why the project would not substantially conflicts with the Urban Design Element policies to result in significant land use and aesthetic impacts. Responses LU-5 and LU-6 in the C&R elaborate on the project's relationship to General Plan housing policies and why the project's residential density would not substantially and adversely affect neighborhood character or public services. The DEIR, p. III-8 discusses the eight priority policies in the Accountable Planning Initiative (Proposition M, Section 101.1 of the Planning Code) and indicated that the project would not obviously or substantially conflict with any of these policies with the exception of Priority Policy (2), since it would alter the existing character of the neighborhood (in a less-than-significant manner), and Priority Policy (7), as it would demolish a structure considered to be a historic resource for purposes of environmental review.

Overall, with the exception of Policy 2 and Policy 7 of the Accountable Planning Initiative, the EIR determined that the project would not conflict with the General Plan objectives and policies listed above such as to cause substantial adverse physical effects. The EIR's assessment of land use, aesthetics, historical resources and transportation and other environmental impacts take into account the project's relationship with these pertinent General Plan policies. The Planning Department did not determine that "the project violates the Urban Design Element of the General Plan." Contrary to the Appellant's assertion, the evaluation of the proposed project's compatibility with the General Plan was appropriately handled for purposes of environmental review, and CEQA does not require further analysis of this issue.

(b) Cumulative Impact Assessment

The Appellant alleges that the EIR fails to adequately consider other cumulative projects in the area. The EIR adequately considers cumulative impacts for all environmental issues covered in the EIR.

The DEIR analyzes the proposed Special Use District as part of the project's potential to cause adverse land use and other physical changes based on the specific land use intensity (building height, density, onsite population, gym and community center use characteristics, etc.). The Appellant provides no specific evidence how the establishment of the Special Use District would incentivize development of other nearby lots and threaten other potential historic resources in the neighborhood.

The Planning Department addresses this concern in Response LU-8 on C&R pp. 52-53. In summary, the response states that: "The proposed Special Use District would apply only to the project site and would provide a density bonus and height increase for affordable housing. It would not relax development standards or otherwise alter Planning Code provisions on other parcels in the project site vicinity…." The allegation that the development would foreseeably

and substantially influence development in the area or result in the establishment of other Special Use Districts is speculative and without basis. This approach is consistent with CEQA Guidelines Section 15145, Speculation: "If, after thorough investigation, a Lead Agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact."

The DEIR (LU Impact LU-3, p. IV-10) conservatively evaluates the project's potential to result in cumulative impacts associated with foreseeable growth by analyzing the project's impacts in conjunction with other known projects for which the Planning Department has development applications on file or are reasonably foreseeable, such as the proposal to redevelop the Westside Courts, a 2.55 acre, 136-unit public housing development built in the 1940s located at 2501 Sutter Street about two blocks northeast of the subject property on a block bound by Broderick, Baker, Sutter and Post Streets. With regard to the potential for the project's effects to combine with those of the Westside Courts project, the DEIR found that, "While the Westside Court project may intensify land uses in the project vicinity, potentially resulting in greater residential densities in the project area, this in itself would not constitute a significant cumulative land use impact in combination with the proposed project, as such uses would be constructed within areas that permit and accommodate those uses at a range of densities that are typical for urbanized parts of San Francisco. Therefore, the contribution of the proposed project to the cumulative context is not cumulatively considerable." The cumulative impact assessment also conservatively applies a growth factor to account for possible increases in resident population over a 20-year planning horizon and finds no cumulatively considerable project impacts (land use, traffic or otherwise), with the exception of those to historic resources. The Appellant speculates that the project would result in cumulatively considerable impacts without providing evidence to substantiate these allegations. The EIR's analysis of project-specific and cumulative impacts, including the analysis of the Special Use District, is adequate for the purposes of environmental review.

Project Approval and Statement of Overriding Considerations

Concern 7: The City may not approve the project on the basis of a Statement of Overriding Considerations because feasible alternatives exist.

Response 7: The EIR evaluated a reasonable range of project alternatives, rejected infeasible alternatives in the EIR and CEQA Findings, based on facts in the record. The Planning Commission adopted a Statement of Overriding Considerations, which allows for lead agencies to approval projects despite significant, unavoidable environmental impacts.

CEQA Guidelines Section 15092 states:

"After considering the final EIR and in conjunction with making findings under Section 15091, the Lead Agency may decide whether or how to approve or carry out the project. A public agency shall not decide to approve or carry out a project for which an EIR was prepared unless either (1) The project as approved will not have a significant effect on the environment, or (2) The agency has:

(A) Eliminated or substantially lessened all significant effects on the environment where feasible as shown in findings under Section 15091; and

(B) Determined that any remaining significant effects on the environment found to be unavoidable under Section 15091 are acceptable due to overriding concerns as described in Section 15093.

(c) With respect to a project which includes housing development, the public agency shall not reduce the proposed number of housing units as a mitigation measure if it determines that there is another feasible specific mitigation measure available that will provide a comparable level of mitigation."

Because the EIR identifies a significant, unavoidable impact to historic architectural resources, Section 15092(2)(B) applies, and the Planning Department prepared a Statement of Overriding Considerations for the project. These overriding considerations address specific reasons in support of the Commission's approval action based on the final EIR and/or other information in the record. The Planning Commission's adoption of the Statement of Overriding Considerations and approval of the project is therefore appropriate despite the project's residual significant and unavoidable impacts to historical resources.

CONCLUSION

The Planning Department prepared a full EIR for the proposed project, analyzed all CEQA topics, both individually and in terms of cumulative impacts. The Appellant does not make a fair argument that substantial evidence exists that the EIR is in any way incomplete or inaccurate. Most of the Appellant's assertions are purely speculative, with no proof in the record to substantiate the claims. Because the EIR adequately analyzed the environmental impacts of the proposed project, it does not require recirculation. Furthermore, no evidence exists that the project will set precedent for establishment of SUD districts in the area or the redevelopment of other historic resources in the area. Contrary to Appellant's assertion, the project site is not within the City's "Better Neighborhoods" planning area. The Appellant does not raise any new issues that were not already covered in EIR.

For all of the reasons provided in this Appeal Response, we believe that the Final EIR complies with the requirements of CEQA and the CEQA *Guidelines*, provides an adequate, accurate, and objective analysis of the potential impacts of the 800 Presidio Avenue (Booker T. Washington Community Center) Mixed Use Project. Therefore, the Planning Department respectfully recommends that the Board uphold the Planning Commission's certification of the Final EIR.

ATTACHMENT A: NEIGHBORS FOR FAIR PLANNING APPEAL LETTER

SMW | LAW OFFICES OF
STEPHEN M. WILLIAMS

1934 Divisadero Street | San Francisco, CA 94115 | TEL: 415.292.3656 | FAX: 415.776.8047 | smw@stevewilliamslaw.com

Honorable David Chiu, President
San Francisco Board of Supervisors
City Hall, 1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94103

May 17, 2011

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2011 MAY 18 PM 3: 26

Re: 800 Presidio Avenue –**Notice of Appeal of Certification of Final EIR**

Dear President Chiu and Members of the Board:

INTRODUCTION

Neighbors For Fair Planning are residents and owners of property in the immediate vicinity of the low density, Victorian era neighborhood surrounding the site of the proposed out-of scale project at The Booker T. Washington Community Service Center, (BTW). We have been working closely with Supervisor Farrell to reach a compromise and actually reluctantly agreed to *not oppose* a four story --40 unit project with restrictions on parking. The developer refused any compromise and refused to cut its $1.5M fee and is insisting on the absurd, 70,000 square foot building which violates numerous provisions of the Planning Code and all common sense or fairness in planning.

BTW is located at 800 Presidio, at the corner of Sutter Street and Presidio Avenue.

The above view is from Masonic Avenue looking east at BTW across the Muni yard —Note Adjacent TWO story buildings misidentified in the EIR. The EIR incorrectly identifies more than 25 buildings (a majority) on the subject block.

May 17, 2011

The site is currently zoned RM-1, Residential Mixed Use-Low Density, has a 40 foot height limit and is surrounded on all sides by small wooden Victorian era houses of one and two stories. (NOT three stories as again mistakenly set forth in the Final EIR—See, C&R-124, Revised Figure 12) The EIR is simply incorrect on the scale of the area and the "setting" or scope for the project. Accordingly, it also follows that it misjudges the impacts and potential impacts of the project by failing to establish an accurate baseline.

Many buildings on the block and in the surrounding area are historically significant and date from the late 1870's-1880's when the area was first settled as part of the "western addition" to San Francisco. There are some apartment buildings dating from the early 1900's across Sutter Street to the north. BTW is located on a large lot of a little more than ½ acre in size and has residential uses on all sides. Historically, the subject lot was part of the .Sutter Street Cable Car turnaround in conjunction with the Muni Building and bus yard are located across Presidio Avenue to the west. Presently BTW fits in with the residential neighborhood and blends in seamlessly because of its relatively small scale. **Under the proposal the square footage on the lot would increase from its current 11,600 s.f to an astounding increase of more than 500% to 70,000 s.f.**

Above is the same view with the new proposed "monster" project which unfairly exceeds the maximum zoning in all categories.

The project is so far out of step with the zoning of the area that the only way to achieve the overambitious project is to "spot re-zone" this particular lot and to amend the Planning Code and create the "Presidio Sutter Special Use District at 800 Presidio" just for its lot. This unfair spot zoning will create exceptions to the Planning Code which will allow BTW to replace the one story 11,600 square foot building at the site with a new

building at 70,000 square feet (more than 500% larger). The proposed project will also exceed the height limit of 40 feet and be 55 feet tall on Presidio and up to 65 feet tall as it moves down the hill on Sutter Street. The maximum density of the current zoning is 28 dwelling units; the project would nearly double that maximum density at 50 units (leaping up not just one zoning classification but four). The project would eliminate the rear yard requirements and would extend some 25 feet into the required minimum rear yard. The project is presented as a Planned Unit Development in order to eliminate required parking and will have 22 spaces (11 are "tandem") instead of 62 required because of the 200 seat gym.

Hundreds of neighboring residents and homeowners oppose the project as do the associated near-by Neighborhood Groups, Pacific Heights Residents' Association, Jordan Park Improvement Association, The Presidio Heights Association of neighbors and the Laurel Heights Improvement Association. The neighbors and residents believe the proposed project is grossly out of scale and far too bulky, tall and dense to fit in with this low density, smaller scale historic neighborhood. The neighbors believe this project represents the worst type of "spot-zoning" and special gift for a particular lot and a particular development and developer. It is an unfair and inequitable increase in density without respect for numerous provisions of the Planning Code which controls and binds all other lots in the vicinity. The neighbors are requesting that any project at the site conform to the Planning Code as all other lots must and that it be dramatically reduced in size and scale to be compatible with this historic neighborhood.

CEQA ISSUES

1. The EIR Should Have Been Recirculated for Comment

Under CEQA, a Draft EIR is normally circulated for one public review period, and recirculation for a second public review period is the exception to this normal rule. Under the case law and the CEQA Guidelines, recirculation is required when significant new information is added to the EIR after public notice is given of the availability of the Draft EIR for public review but before certification. (14 Cal. Code Regs. § 15088(a))

The Comment period was closed on the EIR more than eight months ago in August 2010. Significant new information was added to the EIR and the Section of the EIR dealing with "Alternatives" was essentially completely rewritten as were other sections. The public was entitled to an opportunity to comment on those new and revised alternatives, which have the potential to mitigate to a less than insignificant the acknowledged, unmitigated and overwhelmingly significant impacts of the proposed project.

The revised EIR describes a feasible project alternative or mitigation measure considerably different from others previously analyzed which would clearly lessen the environmental impacts of the project, but the project proponents decline to adopt it; and the EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded because the public was not given an opportunity to comment on reasonable and feasible alternatives.

2. **<u>The Project Has Been Improperly "Pre-Approved" and the EIR Process is a Sham to Justify What has Already Been Approved and *Paid for* by the City</u>**

The EIR review process "is intended to be part of the decision making process itself, and not an examination, *after the decision has been made*, of the possible environmental consequences of the decision."*Save Tara v. City of West Hollywood*

This project has already been "approved" because the City has already committed substantial overwhelming funding to the project as an affordable housing project and all other alternatives are foreclosed. The Mayor's Office of Housing is already paying the developer, the architect, the environmental consultant (and many others) directly hundreds of thousands of dollars. This is not BTWCC's project, it belongs to the MOH and although the Final EIR took great pains to delete the phrase "in association with the Mayor's Office of Housing" from dozens of entries in the EIR, they had it right the first time. THE MOH HAS ALREADY PAID OUT APPROXIMATELY $500,000 FOR THIS PROJECT. MOH documents show payments of $300,000 in February 2011 and $150,000 last July. All before the environmental review was completed. This was a MOH project and MOH took great pains to remove its name as the "proposing" and sponsoring party from the EIR. However, the damage was done and the die was cast long ago.

This project violates CEQA as a "pre-approval." The circumstances demonstrate that an agency (MOH) has already fully and completely committed itself to the project, and therefore, the approval has already occurred. Numerous courts have held this is improper and violates CEQA. The CEQA Guidelines define agency approval as occurring upon the agency's "*earliest* commitment" to a project (this is a quote from the CEQA Guidelines, Cal. Code Regs., tit. 14, §15352(b). The City's own Administrative Code and sunshine ordinance also define this project as having been "approved" because of the funding dumped into it many months before the CEQA process was completed.

MOH has signed commitments for millions and already paid some $500,000 for the proposed project. Awarding these funds at a time when the City is cutting basic services everywhere else is "approving" the project as defined by the City's own Codes. The project has already acquired so much "bureaucratic and financial momentum" that a strong incentive existed to ignore environmental concerns. The money awarded to Booker T. Washington is part of a binding written agreement between BTWCSC and the City and completely undermines CEQA's goal of demonstrating to the public that the environmental implications of a project have in fact been analyzed. Instead, such pre-approvals make clear that the EIR will be what it already appears to be, as a *post hoc* rationalization of the agency's action. The MOH paid the architect to draw a particular project and ignored all others. This is a violation of CEQA and none of the myriad of reasonable alternatives were considered.

The courts have made clear the general principle: Before conducting CEQA review, agencies must not 'take any action' that significantly furthers a project in a manner that forecloses alternatives or mitigation measures that would ordinarily be part of CEQA

review of that public project. That is exactly what a $500,000 dollar award as part of a multimillion dollar award has done. The MOH has already told the community that the project must be an oversized monster and cannot be reduced (or mitigated) because of economic considerations. Its award of these funds is nothing short of full and final approval of the project as it is proposed or at least at something very close to what is proposed. This completely eliminates the agencies (and the other City agencies) discretion based on the eventual environmental findings.

The recent California Supreme court case of *Save Tara v. City of West Hollywood* is directly on point in this instance. To assist in making the determination, the court set forth a two-step approach: (i) whether the agency, in taking action indicated it would perform environmental review before making any further commitment to the project, and if so, whether the agency nevertheless limited its discretion regarding environmental review; and (ii) whether the record showed the agency committed significant resources to shape the project and foreclosed consideration of meaningful alternatives (citations and quotations omitted). In Tara, the commitment of $500,000 was enough to persuade the Court that "approval" had occurred and that other alternatives were foreclosed. In this case, just as in the Tara Case, both the provisions in the City's agreements and the surrounding factual circumstances make clear that the City has improperly committed itself to a definite course of action regarding the project before fully evaluating its environmental effects. That is what sections 21110 and 21151 of the Public Resources Code prohibit.

3. **<u>The Conclusions of "Less Than a Significant Impact" Are Not Credible and are Based on an Incorrect Analysis of the Surrounding Neighborhood</u>**

The logic employed in the EIR is muddy or simply not credible. The conclusion of the final EIR in regard to the General Plan and its numerous mandates that new construction be "compatible" with existing neighborhoods are gleaned from thin air. The bare conclusions of the final EIR that the new proposed building will not have negative visual impacts and is "generally compatible" in scale with the existing neighborhood is absurd and unsupported. In fact, the EIR continues to be mistaken about the neighborhood and fails to note that the adjacent buildings on Presidio are two stories tall, not three stories.

The Dept simply has the nature of this neighborhood completely wrong AGAIN. It is as if those drafting the EIR and Comments & Responses HAVE NEVER VISITED THE NEIGHBORHOOD. The (Revised) diagrams and figures in the EIR illustrating heights in the neighborhood are completely and utterly wrong AGAIN. In its zeal to make the neighborhood seem over grown the EIR ignores all TWO STORY STRUCTURES. Twenty five buildings are incorrectly depicted as three stories in height. The conclusions in the FEIR and in the staff report on the project are drawn from patently incorrect data. The environmental setting and impacts section utilizes completely false data to conclude: "The proposed five-story (above ground) building would be only slightly taller or similar in height to other residential and non-residential buildings in the general project

area..."(C&R-p.123) This is completely in error and the actual height of the proposed monster building will exceed 65 feet as it moves down the steep slope of Sutter Street.

The building will actually be more than six stories on Sutter Street and as is clear from the data used, the EIR is simply and completely in error about this neighborhood and this statement is false. Since the EIR has the Environmental Setting and the Impacts completely wrong, it has not provided information to the decision-makers which allowed for informed intelligent decisions, options or choices.

4. **<u>The Alternatives to the Project Are Preferable and Should be Recommended</u>**

The EIR proposed completely inadequate "no project alternative" and acknowledged that the proposed plan policies have the potential to create impacts on historic resources yet the impacts were not quantified and no mitigation proposed. The revised EIR should be recirculated so that comments may be made on the completely rewritten "alternatives" portion of the document.

The "code compliant" and new "preservation alternatives" are far preferable to the proposed project and the public should have been given a chance to comment on those alternatives.

5. **The Building is the Significant Work of an Important Architect and the Site <u>is Surrounded by Historic Resources</u>**

In the EIR the author stated that "Queries about Gartner found no other information about his like or work." Apparently the first EIR was written by someone without computer access because Lloyd Gartner was one of the most successful and active architects of his time. The conclusion in the revised EIR that he "must not be a master" because of the abject failure to find information about him is absurd. Information was as close as a "Goggle" search and the EIR was just poorly and haphazardly written. The modern style employed at the subject building is echoed in his other work at that time which was "cutting edge" development with the era's most famous and important builder Henry Doelger. Gardner teamed with Doelger in the same time period to build Westlake Shopping Center

Just as the Dept and the FEIR misjudges the scope, scale and nature of the neighborhood, it also misses the rich nearly unbroken patterns of known and acknowledged historic resources in the immediately vicinity. The area is replete with historic resources and the subject block could certainly fall within a potential historic district. Many of the buildings are listed in HERE TODAY. These are all over looked by the HRE and HRER. The Dept only conclusion is that the subject building would not be included in such a historic district; however, it completely overlooks the fact that this monster building would destroy and overwhelm any such district and will negatively impact historic resources for blocks around. No mention is made at all of the negative impact this project would have on off-site resources and the resources have not even been identified.

Initially it should be noted that no survey of historic resources in the area in the immediate vicinity of the project was conducted. The methodology of the "reconnaissance" is not explained and is entirely incomplete and incorrect on many points. In fact, it now appears no "survey" was done at all as the Dept is unable to produce ANY documentation of the alleged survey. When asked to produce the "survey" for review the Dept stated that "no survey forms were submitted" for the claimed 12 block survey of the area by Historian Mark Hulbert, the same researcher who could find no evidence at all on the architect Lloyd Gartner.

The Application miss-identifies the location of important resources in the area. The Department's initial broad brush analysis was that the project would have no significant impacts on nearby historic resources and that no mitigation measures are necessary, again stands as a bare conclusion without adequate discussion or support. Not only is this position wrong as a matter of law, even to the casual observer, it was obvious from the beginning that it was reasonable to believe that that the project, unless mitigated *may* lead to some adverse impacts.

The FEIR (quoting from the HRE states at page iv-41:

"Throughout these blocks, there are many surviving structures from the period of the late-1880s to 1915, and especially so in the northern half of the vicinity, consisting of four blocks in particular: from Sutter to Pine in the north-south direction, and east-west from Lyon to Broderick. The primary concentration of unique older residential architecture is centered at Baker and Pine Streets, located two blocks northeast of the project site."

This is incorrect and moves the focus on the resources away from the project site. There are many more buildings within one block or less of the site dating from much earlier in the 1870's (not late 1880's as asserted in the EIR).

The subject block itself contains rows of unbroken Victorian structures. Numerous other buildings date from the 1870's in the vicinity and from the early 1880's making them some of the oldest intact structures in the City as a whole. The unique and interesting thing about this neighborhood is that there are unbroken rows of these structures which have survived. Nearly the entire block face of the 2600 and 2700 block of Sutter and the 2600 and 2500 block of Post Streets have not been broken up with more modern structures. There are no photos included in the EIR to illustrate these rows of intact resources nor has any explanation of the alleged "evaluation" done in the HRER or the EIR been explained or documented.

What is required is a comprehensive Neighborhood Historic Resources Survey (Survey), of potentially eligible properties within the larger neighborhood area. The blocks of the "impact zone" of the project area are all fully developed blocks that are characterized by numerous potential and acknowledged historic resources that are predominantly over 100 years of age and some more than 130 years old. These resources represent a variety of important architectural styles from the mid to late 19th and early 20th century. This neighborhood also exhibits a consistent development pattern including height, scale,

bulk, massing, rhythm, architectural detail and use of materials that creates cohesive groupings of buildings, districts and neighborhoods.

The EIR indicates numerous potential and acknowledged historic resources and potential historic districts will not be evaluated but concludes without explanation that no impacts will occur. Therefore, the EIR and HRER do not meet accepted professional standards. By design, a Survey or HRER is intended to prioritize the evaluation of properties that are directly impacted by the proposed project. The approach used here is inadequate as a matter of law. The full and complete analysis of the impacts of the project cannot be deferred or separated from approval and certification of the final EIR. In order to comply with law the FEIR must adequately and completely fully disclose all potential impacts to the historic resources in the area impacted by the project.

The EIR inadequately identifies or discusses the numerous important known historic resources in the direct area which will be visible and actually shadowed by the new development. There are four buildings included in *Here Today* in the 2600 block of Post Street. There are five buildings in the 2600 block of Sutter Street which are unmentioned. These are KNOWN resources within one block of the subject site. This is an area that is rich beyond imagination in historic resources which have mostly gone untouched and unaltered. A "Sutter Hill Historic District which would include nearly every building on both sides of the 2700 and 2600 block of Sutter and on the 2600 and 2500 block of Post is entirely viable and should be surveyed before this highly visible and disruptive project is allowed to go forward. Without the survey and without the discussion the EIR is completely inadequate.

More specifically, the EIR analysis is inadequate because it fails to include a comprehensive up-to-date historic resources survey of the properties in the impacted project area. Sierra Club v. State Board of Forestry (1994) 7 Cal.4th 1215 held that the Forest Practice Act and CEQA were violated because of a failure to collect adequate information regarding old-growth-dependent species. Said failure to proceed in the manner required by law precluded adequate environmental analysis of the impacts of timber harvesting.

A parallel scenario involving water resources was addressed in Cadiz Land Company v. County of San Bernardino (2000) 83 Cal.App.4th 74, where the Court of Appeal found that it was not possible to assess water supply impacts without full knowledge of the underlying water resources that would be affected. The court concluded that the very purpose of CEQA is to fully inform Public Officials and the public *before* the project is accepted or certified. not only the environment but also informed self-government demands that all of the information be reviewed.' (Laurel Heights [Improvement Assn. v. Regents of University of California] [(1988)] 47 Cal.3d [376,] 392 [253 Cal.Rptr. 426, 764 P.2d 278].)" (Citizens of Goleta Valley, supra, at p. 564.)

In this regard the court stated:

"Because the EIR must be certified or rejected by public officials, it is a document of accountability. If CEQA is scrupulously followed, the public will know the basis on which its responsible officials either approve or reject environmentally significant action, and the public, being duly informed, can respond accordingly to action with which it disagrees. [Citations.] The EIR process protects not only the environment but also informed self government." (Laurel Heights Improvement Assn. v. Regents of University of California, supra, 47 Cal.3d 376, 392; Citizens of Goleta Valley v. Board of Supervisors, supra, 52 Cal.3d at p. 564.)

The EIR lacks an analysis of impacts on the potential historic resources in the proposed project neighborhood and simply concludes the historic resources are too remote from the site to be impacted. In lieu of the Survey being completed there is no analysis as to how this conclusion is reached. A specific analysis of the impact on the potential historic properties requires that an Application be adequate, complete, and a good faith effort at full disclosure per Guideline 15151. Further, the EIR needs to have sufficient analysis to provide decision makers with information to make a decision that intelligently takes account all known or potential environmental consequences and evaluates what is reasonably feasible. If the historic resources in the immediate vicinity are not identified, how can an honest assessment of the impacts be completed?

This is an environmental setting problem per Guideline 15151. The lack of a comprehensive survey (or any survey) to determine first what historic resources are in the vicinity and second what impact the project could have makes the APPLICATION inadequate. Much smaller project in areas of the City with far fewer historic resources have been required to conduct surveys to protect the historic resources nearby. It is unthinkable that this project could go forward without such a survey. The lack of comprehensive survey shifts the burden of monitoring to the neighborhood, creates a reactive process rather than proactively planning for the treatment of historic resources, and leaves open the potential for development decisions to be made about properties without the benefit of knowing whether they are historic resources.

6. The EIR Fails to Analyze a Reasonable Range of Alternatives

Feasible alternatives are available which would reduce or mitigate the severe impacts the project will have and which are acknowledged. The focus is solely on pushing the project through and no reasonable discussion is included which explores alternatives. The Project Sponsors goals are made absolutely paramount in the discussions of the EIR and all other "goals " or reasonable alternatives are ignored If the Project will be considered further on its merits, the EIR must be made legally adequate. Currently, it omits adequate analysis of a reasonable range of alternatives that are formulated to reduce the project's impacts below significant levels. Instead, the alternatives analyzed in the EIR present a discussion centered mostly on variations of the proposed project. Additionally, the EIR fails to adequately disclose and analyze the Project's adverse environmental impacts on traffic, land use, the historic resources in the neighborhood, aesthetics, parking, hazardous materials, solid waste, and other

areas. Further, the EIR rejects feasible mitigation measures and impermissibly defers mitigation. Therefore, the EIR must be revised to include all missing impact and mitigation information and should be recirculated to the public before it may be certified by the City. The California Environmental Quality Act (CEQA) was enacted to ensure environmental protection and encourage governmental transparency. (*Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal. 3d 553, 564.) CEQA requires full disclosure of a project's significant environmental effects so that decision makers and the public are informed of these consequences before the project is approved, to ensure that government officials are held accountable for the consequences. (*Laurel Heights Improvement Ass'n of San Francisco v. Regents of the University of California* (1988) 47 Cal.3rd 376, 392 In order to satisfy CEQA, protect integrity of the neighborhood, and the quality of life in the surrounding area, Appellant requests that if the Project is not rejected outright, that the EIR be revised to address the deficiencies identified in these comments and be recirculated to the public prior to certification of the final EIR

7. **<u>EIR Does not Analyze the Violations of the General Plan</u>**

The Department has already determined this project violates the Urban Design Element of the General Plan and yet that fact has never been adequately addressed.The Dept and the developer offer no support or discussion of the Elements of the General Plan and the impacts of the project. The neighborhood is one of the oldest in the City and virtually intact with many buildings dating from the 1870's-1890's. Before the project goes forward a complete Historic Resources Survey of the buildings from Geary Street to California and from Divisadero to Presidio should be completed. The Application is inadequate and contains insufficient information to allow the decision makers to reach correct conclusions and findings regarding the project's impact on historical resources and the existing neighborhood. Cumulative impacts and the development of other sites are also completely unstudied based on completely incorrect information. The project calls for a new Special Use District ("SUD") and would relax existing development standards creating new incentives for development of other near-by lots and thereby threatening known and potential historic resources in historically sensitive neighborhoods—that too has not been reviewed or discussed in the Application.

8. **The City May Not Approve the Project on the Basis of a Statement of <u>Overriding Considerations Because Feasible Alternatives Exist</u>**

EIR identified some significant, unavoidable impacts, including loss of a historical resource and others. These significant impacts are caused by the proposed Project's massive size. In addition to the significant impacts acknowledged in the EIR, there are visual and land use impacts that could result from the Project though the EIR does not acknowledge the significance of these. This is an error. Any one of the Project's significant unavoidable would require

disapproval of the proposed Project unless feasible mitigation measures or alternatives do not exist *and* specific benefits outweigh the significant impact. (Pub. Resources Code §21081.) CEQA requires public agencies to deny approval of a project with significant adverse effects when feasible alternatives or feasible mitigation measures can substantially lessen such effects. (Pub. Resources Code § 21002; *Sierra Club v. Gilroy City Council* (6th Dist. 1990) 222 Cal.App.3d 30, 41.) The Legislature has stated:

"[I]t is the policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects." (Pub. Resources Code § 21002.)

The CEQA Guidelines require an agency to —Disclose to the public the reasons why a governmental agency approved the project in the manner the agency chose if significant environmental effects are involved.‖ In order to implement this policy, the CEQA Guidelines specify that:

"A public agency may approve a project even though the project would cause a significant effect on the environment if the agency makes a fully informed and publicly disclosed decision that:

(a) There is no feasible way to lessen or avoid the significant effect...‖ (CEQA Guidelines § 15043.) Feasible means —capable of being accomplished in a successful manner within reasonable period of time, taking into account economic, environmental, social, and technological factors.‖ (Public Resources Code § 21061.1) Project Alternatives remain feasible—even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly.‖ (CEQA Guidelines § 15126.6(b).)

CEQA's purpose of avoiding or substantially reducing environmental impacts of a project through the adoption of feasible alternatives is defeated where an EIR fails to ensure that information about potentially feasible alternatives is subject to public and decision maker review. It also fails where an EIR fails to include alternatives that actually reduce a project's impact below thresholds of significance. Smaller scale versions of the proposed project that avoid or reduce significant impacts would meet most of the objectives and should be adequately analyzed in the EIR

It is clear that the EIR fails to analyze that a scaled down version of the project would meet most of the Projects' goals. Perhaps most importantly, the projects objectives do not require a project of any specific size or scale; ***all of the City's***

objectives could be met with a scaled-down project that requires little, if any diversion from existing land use regulations.

Further, off-site alternatives were never considered at all. A clear error and violation of the EIR process. California courts have endorsed the use of rigorous off site alternatives analyses. (See, for example, *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553 [upholding EIR in part because of adequate analysis of an offsite alternative] and *Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal. App. 4th 1437 [EIR found inadequate for failure to assess an offsite alternative that would have reduced impacts].) In *Save Round Valley*, the court considered evaluation of an offsite alternative essential, even though the project applicant had stated that he did not wish to develop at other locations, and wanted to develop the specific site chosen because of its proximity to water and views of the Sierras. (Id. at 1457, 1465.) In the litigation over the Home Depot proposed nearby on Studebaker, the court rejected the applicant's rejection of off Site alternatives without a declaration that they were truly infeasible.

In this instance those alternatives were never considered at all. The multiple millions being spent by the Mayor's Office of Housing could achieve the goals of the Project more cheaply elsewhere. Further, we know for a fact that the MOH will cover any shortfalls in the expenses as it has offered to do so. Project proponents have reportedly asserted that various alternatives are financially infeasible. However, the EIR does not include financial information on the various alternatives considered. To support any findings ultimately made regarding the feasibility of alternatives and mitigation measures, the City must require the disclosure of this financial information and must provide the type of comparative economic data and analysis that will allow the public and the decision makers to fully understand why certain courses of action could be rejected as infeasible. This information should be in the EIR.

Our Supreme Court recognizes the need for economic analysis to be included as part of an EIR. In *Laurel Heights Improvement Association v Regents of the University of California* (1988) 47 Cal. 3d 376, the Court vacated an inadequate EIR and required the University of California to —explain in meaningful detail in a new EIR a range of alternatives to the project and, if [found] to be infeasible, the reasons and facts that…support its conclusion.‖ (*Id.* at 407: see also *Citizens of Goleta Valley v. Board of Supervisors*, (1990) 52 Cal.3d 557, 569 (—*Goleta II*‖) [EIR must set forth facts and—meaningful analysis‖ of alternatives rather than —just the agency's bare conclusions or opinions‖].) Numerous appellate courts have reached similar conclusions: see *Citizens of Goleta Valley v. Board of Supervisors* (1988) 197 Cal. App. 3d 1167, 1180-81 (—*Goleta I*‖) [—in the absence of comparative data and analysis, no meaningful conclusions regarding the feasibility of the alternative could [be] reached‖]; *Planning and*

Conservation League v. Department of Water Resources (2000) 83 Cal. App. 4th 892; *Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal. App. 4th 1437, 1461-62 [EIR deficient in part because there was —nothing in the EIR that informs the public or decision makers about the price or comparative value of a rejected alternative].)

We urge the City to correct the omission of financial data from the EIR and to provide sufficiently detailed economic analysis, including but not limited to comparative analysis, in a recirculated EIR so that the public and decision makers can understand why some alternatives and mitigation measures might be selected while others might be rejected.

CONCLUSION

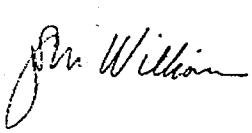
The Department is presenting an EIR to the Board which is incomplete and is based on completely wrong information. A request for certification on such a document is directly contrary to CEQA. "The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure." (CEQA Guidelines, 15151.)

The ultimate decision of whether to approve a project, be that decision right or wrong, is a nullity if based upon an EIR that does not provide the decision-makers, and the public, with the information about the project that is required by CEQA.' " (San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus, supra, 27 Cal.App.4th at pp. 721-722, quoting Santiago County Water Dist. v. County of Orange (1981) 118 Cal.App.3d 818, 829 [173 Cal.Rptr. 602].) If the description of the environmental setting of the project site and surrounding area is inaccurate, incomplete or misleading, the EIR does not comply with CEQA. Without accurate and complete information pertaining to the setting of the project and surrounding uses, it cannot be found that the EIR adequately investigated and discussed the environmental impacts of the development project.

Neighbors for Fair Planning believes the Project, as currently conceived, is the wrong project for this area of San Francisco because it is completely at odds with existing planning and should have been rejected wholesale. The Neighbors would welcome in a smaller scale project. The Project will also set precedents for land use decisions that will undermine the comprehensive stakeholder planning efforts that went into the City "Better Neighborhoods" planning and numerous other programs and policies to assure compatible uses in the residential neighborhoods. If the City does not reject the proposed Project altogether, we strongly recommend that the EIR be revised to remedy the informational deficiencies identified in this letter and be recirculated to the public. We look forward to analysis of alternatives that are not reliant on an excessively sized project. An analysis of an off-site alternative location for the Project should also be included.

May 17, 2011

Sincerely,



Stephen M. Williams

ATTACHMENT B: EIR FIGURE 12 (REVISED)

One-Story
Two-Story
Three-Story
Four-Story
Building Footprint
Project Site

0 200
Feet

Graphic intended to illustrate surrounding building heights and not lot coverage.

A residential story equals approximately 10 feet in height (basements and partial subgrade levels not included).

SOURCE: ESA

800 Presidio Avenue . 206386

Figure 12 (Revised)
Building Heights on Project Block and Surrounding Lots

ATTACHMENT C: SPONSOR CORRESPONDENCE RELATED TO EXISTING COMMUNITY CENTER CONDITIONS

Brad Brewster

From: Pat Scott [ibejps@me.com]
Sent: Monday, May 17, 2010 12:13 PM
To: Tania Sheyner
Cc: pscott@btwcsc.org; Brad Brewster
Subject: Re: 800 Presidio - EIR Questions

Tanya,
1. The large teen room on the bottom level is cold, drafty (windows need replacing) and it floods whenever it rains. I have been unable to correct the flooding problem after having many contractors analyze the problem and try their 'solution'. Two other program spaces are dark and drafty. We use them all on a limited basis.
2. Usually about 100 but as high as 200. The current occupancy limit is 299. I expect that in the new facility we would not exceed 299.
3. The staff levels are correct.
Pat
On May 17, 2010, at 9:50 AM, Tania Sheyner wrote:

> Hello Pat –
>
> A few more questions came up in the Planning Department's review of our last draft that I'm hoping you can help us answer.
>
> 1. Please substantiate the claim that some areas of the existing community center are unusable due to hazards, etc. Please state *why* these areas are unusable.
> 2. What is the estimated number of attendees to Center's events, such as basketball games? What attendance levels do you expect for the proposed building?
> 3. Our Traffic Study assumes that about 10 staff are currently employed at the Center and that this new number will be 20 staff once the project is implemented. Could you please confirm these assumption or provide accurate numbers if these are off.
>
> We are planning to submit the document to Michael in the next day or two, so a prompt reply would be greatly appreciated!
>
> Thanks,
> Tania
>
> Tania Sheyner, AICP, LEED AP
> ESA | Community Development
> 225 Bush Street, Suite 1700
> San Francisco, CA 94104
> 415.896.5900 | 415.896.0332 fax
>
> Please consider the environment before printing this e-mail

Pat Scott

ATTACHMENT D: MAYOR'S OFFICE OF HOUSING LOAN AGREEMENT TO SPONSOR

LOAN AGREEMENT
(CITY AND COUNTY OF SAN FRANCISCO
AFFORDABLE HOUSING FUND)

By and Between

THE CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, represented by the Mayor,
acting by and through the Mayor's Office of Housing,

and

BOOKER T. WASHINGTON COMMUNITY SERVICE CENTER,
a California nonprofit public benefit corporation,

for

800 Presidio Avenue
$788,484.00

Dated as of _____

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LOAN AGREEMENT
(City and County of San Francisco
Affordable Housing Fund)
(800 Presidio)

THIS LOAN AGREEMENT ("Agreement") is entered into as of _____ _____, by and between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation (the "City"), represented by the Mayor, acting by and through the Mayor's Office of Housing ("MOH"), and **BOOKER T. WASHINGTON COMMUNITY SERVICE CENTER**, a California nonprofit public benefit corporation ("Borrower").

RECITALS

A. Under the Jobs-Housing Linkage Program set forth in Sections 313 *et seq*. of the San Francisco Planning Code, the Citywide Affordable Housing Fund was established with fees paid by office developers to mitigate the increased demand for housing in the City. Under the Inclusionary Affordable Housing Program set forth in Sections 315 *et seq.* of the San Francisco Planning Code, the Citywide Affordable Housing Fund receives in-lieu fees paid by housing developers to satisfy requirements of the Inclusionary Affordable Housing Program. The City may use the funds in the Citywide Affordable Housing Fund under this Agreement (the "Funds") to finance housing affordable to qualifying households. The Director of City Planning has designated MOH to administer the Funds and enforce agreements relating to them.

B. Borrower owns a fee interest in the real property located at 800 Presidio Avenue, San Francisco, California (the "Site"). Borrower desires to use the Funding Amount (as defined below) for predevelopment activities prior to the start of construction of approximately 50-unit affordable rental housing development including 24 units targeted to Transition Age Youth which will be known as 800 Presidio (the "Project").

C. Borrower intends to form a limited partnership with the John Stewart Company, a California corporation ("John Stewart Company") as co-general partner to obtain tax credits, other financing, for predevelopment activities, and to own and operate the Project. Borrower and John Stewart Company are developing a memorandum of understanding to delineate the development and owner responsibilities of Borrower and John Stewart Company prior to formation of the limited partnership.

D. The City has reviewed Borrower's application for Funds and, in reliance on the accuracy of the statements in that application, has agreed to make a loan of Funds to Borrower (the "Loan") in the amount of Seven Hundred Eighty Eight Thousand Four Hundred Eighty Four and No/100 Dollars ($788,484.00) (the "Funding Amount") under this Agreement to fund certain costs related to the following predevelopment activities of the Project: architectural and engineering design, survey and appraisal preparation, preparation of environmental studies, CEQA and NEPA review, legal expenses, loan

fees, cost estimate, and associated administrative work (collectively, the "Predevelopment Activities").

E. By entering into this Agreement, MOH and Borrower intend to preserve the possibility of developing the Project as affordable housing by lending funds to Borrower for the Predevelopment Activities. The City does not, however, commit to or otherwise endorse the Project by entering into this Agreement. The Project remains subject to review by City agencies and City discretion to disapprove or modify the Project.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth in this Agreement, the parties agree as follows:

ARTICLE 1 DEFINITIONS.

1.1 Defined Terms. As used in this Agreement, the following words and phrases have the following meanings:

"Accounts" means all depository accounts, including reserve and trust accounts, required or authorized under this Agreement or otherwise by the City in writing. All Accounts must be maintained in accordance with **Section 2.3**.

"Agreement" means this Loan Agreement.

"Agreement Date" means the date first written above.

"Authorization" means any authorization, consent, approval, order, license, permit, exemption or other action by or from, or any filing, registration or qualification with, any Governmental Agency or other person.

"Authorizing Resolutions" means: (a) in the case of a corporation, a certified copy of resolutions adopted by its board of directors; (b) in the case of a partnership (whether general or limited), a certificate signed by all of its general partners; and (c) in the case of a limited liability company, a certified copy of resolutions adopted by its board of directors or members, satisfactory to the City and evidencing Borrower's authority to execute, deliver and perform the obligations under the City Documents to which Borrower is a party or by which it is bound.

"Borrower" means Booker T. Washington Community Service Center, a California nonprofit public benefit corporation, and its authorized successors and assigns.

"CFR" means the Code of Federal Regulations.

"Charter Documents" means: (a) in the case of a corporation, its articles of incorporation and bylaws; (b) in the case of a partnership, its partnership agreement and any certificate or statement of partnership; and (c) in the case of a limited liability company, its operating agreement and any limited liability company certificate or statement. Certified copies of the Charter Documents must be delivered to the City and as amended from time to time and be accompanied by a certificate of good standing for Borrower issued by the California Secretary of State and, if Borrower is organized under the laws of a state other than California, a certificate of good standing issued by the Secretary of State of the state of organization, issued no more than ninety (90) days before the Agreement Date.

"City" means the City and County of San Francisco, a municipal corporation, represented by the Mayor, acting by and through MOH. Whenever this Agreement provides for a submission to the City or an approval or action by the City, this Agreement refers to submission to or approval or action by MOH unless otherwise indicated.

"City Documents" means this Agreement, the Note, the Deed of Trust, the Declaration of Restrictions and any other documents executed or, delivered in connection with this Agreement.

"Compliance Term" has the meaning set forth in **Section 3.2**.

“Construction Contract” has the meaning set forth in **Section 5.2**.

“Contracting Manual” means the current edition of the MOH Contracting Manual.

"Declaration of Restrictions" means a recorded declaration of restrictions in form and substance acceptable to the City that requires Borrower and the Project to comply with the use restrictions in this Agreement for the Compliance Term, even if the Loan is repaid or otherwise satisfied, this Agreement terminates or the Deed of Trust is reconveyed.

"Deed of Trust" means the deed of trust executed by Borrower granting the City a lien on the Site and the Project to secure Borrower's performance under this Agreement and the Note, in form and substance acceptable to the City.

"Developer Fees" has the meaning set forth in **Section 15.1**.

"Disbursement" means the disbursement of all or a portion of the Funding Amount by the City as described in **Article 4**.

"Distributions" has the meaning set forth in **Section 13.1**.

"Environmental Activity" means any actual, proposed or threatened spill, leak, pumping, discharge, leaching, storage, existence, release, generation, abatement,

removal, disposal, handling or transportation of any Hazardous Substance from, under, into or on the Site.

"Environmental Laws" means all present and future federal, state, local and administrative laws, ordinances, statutes, rules and regulations, orders, judgments, decrees, agreements, authorizations, consents, licenses, permits and other governmental restrictions and requirements relating to health and safety, industrial hygiene or the environment or to any Hazardous Substance or Environmental Activity, including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (commonly known as the "Superfund" law) (42 U.S.C. §§ 9601 *et seq*.), the Resource Conservation and Recovery Act of 1976, as amended by the Solid Waste and Disposal Act of 1984 (42 U.S.C. §§ 6901 *et seq*.); the California Hazardous Substance Account Act (also known as the Carpenter-Presley-Tanner Hazardous Substance Account Law and commonly known as the "California Superfund" law) (Cal. Health & Safety Code §§ 25300 *et seq*.); and the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65") (Cal. Health & Safety Code §§ 25249.2 *et seq*.); and Sections 25117 and 25140 of the California Health & Safety Code.

"Escrow Agent" has the meaning set forth in **Section 4.2**.

"Event of Default" has the meaning set forth in **Section 19.1**.

"Expenditure Request" means a written request by Borrower for a Disbursement from the Funding Amount, which must certify that the cost of the Predevelopment Activities covered by the Expenditure Request have been paid or incurred by Borrower.

"Funding Amount" has the meaning set forth in **Recital D**.

"Funds" has the meaning set forth in **Recital A**.

"GAAP" means generally accepted accounting principles in effect on the date of this Agreement and at the time of any required performance.

"Governmental Agency" means: (a) any government or municipality or political subdivision of any government or municipality; (b) any assessment, improvement, community facility or other special taxing district; (c) any governmental or quasi-governmental agency, authority, board, bureau, commission, corporation, department, instrumentality or public body; or (d) any court, administrative tribunal, arbitrator, public utility or regulatory body.

"Hazardous Substance" means any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any Governmental Agency to pose a present or potential hazard to human health or safety or to the environment. Hazardous Substance includes any material or substance listed, defined or otherwise identified as a "hazardous substance," "hazardous waste," "hazardous material," "pollutant," "contaminant," "pesticide" or is listed as a chemical known to

cause cancer or reproductive toxicity or is otherwise identified as "hazardous" or "toxic" under any Environmental Law, as well as any asbestos, radioactive materials, polychlorinated biphenyls and any materials containing any of them, and petroleum, including crude oil or any fraction, and natural gas or natural gas liquids. Materials of a type and quantity normally used in the construction, operation or maintenance of developments similar to the Project will not be deemed "Hazardous Substances" for the purposes of this Agreement if used in compliance with applicable Environmental Laws.

"HSA" means the City of San Francisco Human Services Agency.

"HUD" means the United States Department of Housing and Urban Development acting by and through the Secretary of Housing and Urban Development and any authorized agents.

"Income Restrictions" means the maximum household income limits for Qualified Tenants, as set forth in **Exhibit A**.

"Indemnify" means, whenever any provision of this Agreement requires a person or entity (the "Indemnitor") to Indemnify the Indemnitee (as defined hereinafter), that the Indemnitor will be obligated to defend, indemnify and protect and hold harmless the Indemnitee, its officers, employees, agent, constituent partners, and members of its boards and commissions harmless from and against any and all Losses arising directly or indirectly, in whole or in part, out of the act, omission, event, occurrence or condition with respect to which the Indemnitor is required to Indemnify an Indemnitee, whether the act, omission, event, occurrence or condition is caused by the Indemnitor or its agents, employees or contractors, or by any third party or any natural cause, foreseen or unforeseen; *provided that* no Indemnitor will be obligated to Indemnify any Indemnitee against any Loss arising or resulting from the gross negligence or intentional wrongful acts or omissions of the Indemnitee or its agents, employees or contractors. If a Loss is attributable partially to the grossly negligent or intentionally wrongful acts or omissions of the Indemnitee (or its agents, employees or contractors), the Indemnitor must Indemnify the Indemnitee for that part of the Loss not attributable to its own grossly negligent or intentionally wrongful acts or omissions or those of its agents, employees or contractors.

"Indemnitee" has the specific meaning set forth in **Section 23.1** and the general meaning set forth in the definition of "Indemnify."

"Indemnitor" has the meaning set forth in the definition of "Indemnify."

"Laws" means all statutes, laws, ordinances, regulations, orders, writs, judgments, injunctions, decrees or awards of the United States or any state, county, municipality or Governmental Agency.

"Loan" has the meaning set forth in **Recital D**.

“Local Operating Subsidy” means an operating subsidy that may be provided to Borrower by the City (in its sole discretion), the amount of which is sufficient to permit Borrower to operate the Project in accordance with the terms of this Agreement with Qualified Tenants at income levels specified by MOH in writing which are below those set forth in **Exhibit A**.

"Local Operating Subsidy Program" means the program administered by MOH that regulates the distribution of Local Operating Subsidy.

"Loss" or "Losses" includes any loss, liability, damage, cost, expense or charge and reasonable attorneys' fees and costs, including those incurred in a proceeding in court or by mediation or arbitration, on appeal or in the enforcement of the City's rights or in defense of any action in a bankruptcy proceeding.

"Maturity Date" has the meaning set forth in **Section 3.1**.

"Median Income" means area median income as determined by HUD for the San Francisco area, adjusted solely for household size, but not high housing cost area.

"MOH" means the Mayor's Office of Housing or its successor.

“MOH Monthly Project Update” has the meaning set forth in **Section 10.2**.

"Note" means the promissory note executed by Borrower in favor of the City in the original principal amount of the Funding Amount.

"Payment Date" means the first May 1st following the Completion Date and each succeeding May 1st until the Maturity Date.

"Permitted Exceptions" means liens in favor of the City, real property taxes and assessments that are not delinquent, and any other liens and encumbrances the City expressly approves in writing in its escrow instructions.

"Predevelopment Activities" has the meaning set forth in Recital D.

"Project" means the development described in **Recital B**.

"Project Expenses" means the following costs, which may be paid from Project Income in the following order of priority to the extent of available Project Income: (a) all charges incurred in the operation of the Project for utilities, real estate taxes and assessments and premiums for insurance required under this Agreement or by other lenders providing secured financing for the Project; (b) salaries, wages and any other compensation due and payable to the employees or agents of Borrower employed in connection with the Project, including all related withholding taxes, insurance premiums, Social Security payments and other payroll taxes or payments; (c) required payments of interest and principal, if any, on any junior or senior financing secured by the Site and

used to finance the Project that has been approved by the City; (d) all other expenses actually incurred to cover operating costs of the Project, including maintenance and repairs and the fee of any managing agent as indicated in the Annual Operating Budget; (e) required deposits to the Replacement Reserve Account, Operating Reserve Account and any other reserve account required under this Agreement; (f) the approved annual asset management fees indicated in the Annual Operating Budget and approved by the City; and (g) any extraordinary expenses approved in advance by the City (other than expenses paid from any reserve account). Project Fees are not Project Expenses.

"Project Fees" means asset management fees, annual partnership management fees in the amount of $20,000 (plus whatever increase is shown in the Annual Operating Budget and approved by the City) and deferred Developer Fees approved by the City.

"Project Income" means all income and receipts in any form received by Borrower from the operation of the Project, including rents, fees, deposits (other than tenant security deposits), any accrued interest disbursed from any reserve account required under this Agreement for a purpose other than that for which the reserve account was established, reimbursements and other charges paid to Borrower in connection with the Project. Subsidies, or grants, or contributions for supportive services or community programs or capital projects, and Interest accruing on any portion of the Funding Amount are not Project Income.

"Qualified Tenant" means a Tenant household earning no more than the maximum permissible annual income level allowed under this Agreement as set forth in **Exhibit A**. The term "Qualified Tenant" includes each category of Tenant designated in **Exhibit A**.

"Rent" means the aggregate annual sum charged to Tenants for rent and utilities in compliance with **Article 7**, with utility charges to Qualified Tenants limited to an allowance determined by the SFHA.

"Rent Restrictions" means the limitations on Rents set forth in **Section 7.3** and **Exhibit A**.

"Residual Receipts" means Project Income remaining after payment of Project Expenses and Project Fees. The amount of Residual Receipts must be based on figures contained in audited financial statements.

"Section 8" means rental assistance provided under Section 8(c)(2)(A) of the United States Housing Act of 1937 (42 U.S.C. § 1437f) or any successor or similar rent subsidy programs.

"Senior Lender" has the meaning set forth in **Section 24.1(c)**.

"Senior Lien" has the meaning set forth in **Section 24.1**.

"SFHA" means the San Francisco Housing Authority.

"Site" means the real property described in **Recital B** of this Agreement.

"Table of Sources and Uses" means a table of sources and uses of funds attached hereto as **Exhibit B**, including a line item budget for the use of the Funding Amount, which table may not be adjusted without the City's prior written approval.

"TCAC" means the California Tax Credit Allocation Committee.

"Tenant" means any residential household in the Project, whether or not a Qualified Tenant.

"Title Policy" means an ALTA extended coverage lender's policy of title insurance in form and substance satisfactory to the City, issued by Escrow Agent, together with any endorsements and policies of coinsurance and/or reinsurance reasonably required by the City, in a policy amount equal to the Funding Amount, insuring the Deed of Trust and indicating the Declaration of Restrictions as valid liens on the Site, each subject only to the Permitted Exceptions.

"Transition Age Youth" means a young adult between the ages of 18 and 24 who is homeless or at-risk of homelessness.

"Unit" means a residential rental unit within the Project.

1.2 Interpretation. The following rules of construction will apply to this Agreement and the other City Documents.

(a) The masculine, feminine or neutral gender and the singular and plural forms include the others whenever the context requires. The word "include(s)" means "include(s) without limitation" and "include(s) but not limited to," and the word "including" means "including without limitation" and "including but not limited to" as the case may be. No listing of specific instances, items or examples in any way limits the scope or generality of any language in this Agreement. References to days, months and years mean calendar days, months and years unless otherwise specified. References to a party mean the named party and its successors and assigns.

(b) Headings are for convenience only and do not define or limit any terms. References to a specific City Document or other document or exhibit mean the document, together with all exhibits and schedules, as supplemented, modified, amended or extended from time to time in accordance with this Agreement. References to Articles, Sections and Exhibits refer to this Agreement unless otherwise stated.

(c) Accounting terms and financial covenants will be determined, and financial information must be prepared, in compliance with GAAP as in effect on the

date of performance. References to any Law, specifically or generally, will mean the Law as amended, supplemented or superseded from time to time.

(d) The terms and conditions of this Agreement and the other City Documents are the result of arms'-length negotiations between and among sophisticated parties who were represented by counsel, and the rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not apply to the construction and interpretation of the City Documents. The language of this Agreement must be construed as a whole according to its fair meaning.

1.3 Websites for Statutory References. The statutory and regulatory materials listed below may be accessed through the following identified websites.

(a) CFR provisions: www.access.gpo/nara/cfr

(b) OMB circulars: www.whitehouse.gov/OMB/circulars

(c) S.F. Administrative Code: www.sfgov.org/site/government_index.asp#codes

1.4 Contracting Manual. Borrower shall use the Contracting Manual as a guide to Borrower's responsibilities under Laws and regulations regarding soliciting, awarding and administering contracts associated with projects assisted by federal funds. In the event of a conflict between the terms of the Contracting Manual and this Agreement, the terms of the Agreement shall prevail.

ARTICLE 2 FUNDING.

2.1 Funding Amount. The City agrees to lend to Borrower a maximum principal amount equal to the Funding Amount in order to finance the Predevelopment Activities related to the proposed development of the Project. The Funding Amount will be disbursed according to the terms and subject to the conditions set forth in this Agreement.

2.2 Use of Funds. Borrower acknowledges that the City's agreement to make the Loan is based in part on Borrower's agreement to use the Funds solely for the purpose set forth in **Section 2.1** and agrees to use the Funding Amount solely for that purpose in accordance with the approved Table of Sources and Uses.

2.3 Accounts; Interest. Each Account to be maintained by Borrower under this Agreement must be held in a bank or savings and loan institution acceptable to the City as a segregated account that is insured by the Federal Deposit Insurance Corporation or other comparable federal insurance program. With the exception of tenant security deposit trust accounts, any interest earned on funds in any Account must be used for the benefit of the Project.

2.4 Records. Borrower must maintain and provide to the City upon request records that accurately and fully show the date, amount, purpose and payee of all expenditures from each Account authorized under this Agreement or by the City in writing and keep all estimates, invoices, receipts and other documents related to expenditures from each Account. In addition Borrower must provide to the City promptly following Borrower's receipt, complete copies of all monthly bank statements, together with a reconciliation, for each Account until all funds (including accrued interest) in each Account have been disbursed for eligible uses.

2.5 Conditions to Additional Financing. The City may grant or deny any application by Borrower for additional financing for the Predevelopment Activities of the Project or financing for the Project in its sole discretion. At a minimum, the following conditions precedent shall be satisfied prior to City approval of any proposed additional financing from the City:

(i) Borrower must submit to MOH and the HSA for their review and approval a comprehensive services plan and budget addressing how the Transition Age Youth and other Units will be developed. The services plan and budget must identify funding to be provided by First Place for Youth and other agencies.

(ii) Borrower must demonstrate that it is on schedule with fundraising $120,000 for predevelopment activities before an application for 2011-12 CDBG funds will be considered.

(iii) Borrower must demonstrate that the community center construction fundraising goals identified in the approved fundraising plan are being met prior to submitting a request for construction financing for the construction of the Project and community center.

ARTICLE 3 TERMS. Borrower's repayment obligations with respect to the Funding Amount will be evidenced and governed by the Note, which will govern in the event of any conflicting provision in this Agreement.

3.1 Maturity Date. Borrower must repay all amounts owing under the City Documents on the date that is the fifty-fifth (55th) anniversary of the date the Deed of Trust is recorded in the Recorder's Office of San Francisco County (the "Maturity Date"); provided, however, that in the event that the Special Use District Legislation (as defined in Section 3.8 below) is not approved by June 30, 2011, the Maturity Date shall be June 30, 2011, unless otherwise extended by the City.

3.2 Compliance Term; Declaration of Restrictions. Borrower must comply with all provisions of the City Documents relating to the use of the Site and the Project, as set forth in the Declaration of Restrictions to be recorded in the official records of San Francisco County, for the period commencing on the date on which construction of the Project is complete in accordance with the plans and specifications approved by the City,

as evidenced by the Department of Building Inspection's final sign-off on the job inspection card for the Project's building permit, and ending on the fifty-fifth (55th) anniversary of that date (the "Compliance Term"), even if the Loan is repaid or is otherwise satisfied or the Deed of Trust is reconveyed before that date.

3.3 Interest. The outstanding principal balance of the Loan will bear simple interest at a rate of three percent (3%) per annum, as provided in the Note.

3.4 Default Interest Rate. Upon the occurrence of an Event of Default under any City Document, the principal balance of the Loan will bear interest at the default interest rate set forth in the Note. In addition, the default interest rate will apply to any amounts to be reimbursed to the City under any City Document if not paid when due or as otherwise provided in any City Document.

3.5 Repayment of Principal and Interest. The outstanding principal balance of the Loan, together with all accrued and unpaid interest will be due and payable on the Maturity Date according to the terms set forth in full in the Note.

3.6 Changes In Funding Streams. The City's agreement to make the Loan on the terms set forth in this Agreement and the Note is based in part on Borrower's projected sources and uses of all funds for the Project, as set forth in the Table of Sources and Uses. Borrower covenants to give written notice to the City within thirty (30) days after Borrower receives written notice of any significant changes in budgeted funding or income set forth in documents previously provided to the City. Examples of significant changes include loss or adjustments (other than regular annual adjustments) in funding under Shelter + Care, Section 8 or similar programs. The City reserves the right to modify the terms of this Agreement based upon any new information so provided, in its reasonable discretion and upon reasonable written notice.

3.7 Additional Borrower Covenants. Borrower hereby acknowledges that approval of this Loan does not include approval of the proposed parking and allocation of cost between the proposed community center and proposed housing portions of the Project. Borrower shall submit a completed schematic design with parking plan along with a cost estimate for City approval prior to proceeding with Project design development.

3.8 City Approval Provisions.

(a) Borrower acknowledges that the City's willingness to provide financing is contingent upon the City's approval of the proposed Project, including: (i) Borrower's identification of sources of funding acceptable to the City sufficient to complete the Project; (ii) completion of all required environmental review for the Project under the California Environmental Quality Act ("CEQA"); and (iii) approval by the Planning Commission and Board of Supervisors acting on behalf of the City of legislation providing a special use district that allows for the uses contemplated by the Project (the "Special Use District Legislation").

(b) During the Predevelopment Activities and prior to initiation of the construction of the Project, Borrower shall use good faith best efforts to obtain City approval of the Special Use District Legislation.

(c) Borrower understands and agrees that City is entering into this Agreement in its proprietary capacity and not as a regulatory agency with certain police powers. Borrower understands and agrees that neither entry by City into this Agreement nor any approvals given by City under this Agreement shall be deemed to imply that Borrower will obtain any required approvals from City departments, boards or commissions which have jurisdiction over the Site. By entering into this Agreement, City is in no way modifying or limiting the obligations of Borrower to develop the Project in accordance with all local laws. Borrower understands that any development of the Project shall require approvals, authorizations and permits from governmental agencies with jurisdiction over the Project, which may include, without limitation, the San Francisco City Planning Commission and the San Francisco Board of Supervisors.

(d) Both parties understand that the sole purpose of this Loan is to finance predevelopment expenses in order to preserve the possibility of developing the Project as affordable housing. Notwithstanding anything to the contrary in this Agreement, no party is in any way limiting its discretion or the discretion of any department, board or commission with jurisdiction over the Project or the proposed Special Use District Legislation, including but not limited to a party hereto, from exercising any discretion available to such department, board or commission with respect thereto, including but not limited to the discretion to (i) make such modifications deemed necessary to mitigate significant environmental impacts, (ii) select other feasible alternatives to avoid such impacts, including the "No Project" alternative; (iii) balance the benefits against unavoidable significant impacts prior to taking final action if such significant impacts cannot otherwise be avoided, or (iv) determine not to proceed with the proposed Project or proposed Special Use District Legislation.

ARTICLE 4 CLOSING; DISBURSEMENTS.

4.1 Generally. Subject to the terms of this Agreement, the City will make Disbursements in an aggregate sum not to exceed the Funding Amount to or for the account of Borrower in accordance with this Agreement and the approved line item budget contained in the Table of Sources and Uses.

4.2 Closing. Unless otherwise agreed by the City and Borrower in writing, Borrower will establish an escrow account with the title company issuing the Title Policy, or any other escrow agent Borrower chooses, subject to the City's approval (the "Escrow Agent"). The parties will execute and deliver to the Escrow Agent written instructions consistent with the terms of this Agreement. In the event the escrow does not close on or before the expiration date of escrow instructions signed by the City, or any other mutually agreed date, the City may declare this Agreement to be null and void.

4.3 Conditions Precedent to Closing. The City will authorize the close of the Loan upon satisfaction of the conditions in this Section.

(a) Borrower must have delivered to the City fully executed (and for documents to be recorded, acknowledged) originals of the following documents, in form and substance satisfactory to the City: (i) the Note; (ii) this Agreement (in triplicate); (iii) the Deed of Trust; (iv) the Declaration of Restrictions; (v) the Authorizing Resolutions; (vi) the Developer Fee Agreement; (vii) subordination, nondisturbance and attornment agreements from each commercial tenant in possession, or holding any right of possession, of any portion of the Site; and (viii) any other City Documents reasonably requested by the City.

(b) Borrower must have delivered to the City: (i) Borrower's Charter Documents; and

(c) Borrower must have delivered to the City satisfactory evidence that Borrower has obtained commitments for any additional financing that may be required for the Project, in amounts and from lenders or investors satisfactory to the City in its sole discretion.

(d) Borrower must have delivered to the City insurance endorsements and, if requested by the City, copies of policies for all insurance required under **Exhibit F** of this Agreement.

(e) Borrower must have delivered to the City a preliminary report on title for the Site dated no earlier than thirty (30) days before the Agreement Date.

(f) Borrower must have submitted a "Phase I" environmental report for the Site, or any other report reasonably requested by the City, prepared by a professional hazardous materials consultant reasonably acceptable to the City.

(g) The Declaration of Restrictions and Deed of Trust shall be recorded at closing in the Official Records of San Francisco County, subject only to the Permitted Exceptions.

(h) The Escrow Agent must have committed to provide to the City the Title Policy in form and substance satisfactory to the City.

4.4 Disbursement of Funds. Following satisfaction of the conditions in **Section 4.3**, the City will authorize disbursement of the Funding Amount.

4.5 Disbursements. The City's obligation to approve any expenditure of the Funding Amount after Loan closing is subject to Borrower's satisfaction of the following conditions precedent.

(a) Borrower must have delivered to the City an Expenditure Request in form and substance satisfactory to the City, together with: (i) copies of invoices, contracts or other documents covering all amounts requested; (ii) a line item breakdown of costs to be covered by the Expenditure Request; and (iii) copies of checks issued to pay expenses covered in the previous Expenditure Request. The City may grant or withhold its approval of any line item contained in the Expenditure Request that, if funded, would cause it to exceed the budgeted line item as previously approved by the City.

(b) No Event of Default, or event that with notice or the passage of time or both could constitute an Event of Default, may have occurred that remains uncured as of the date of the Expenditure Request.

(c) As of the Agreement Date, Borrower has submitted a capital campaign plan for City review and approval (the "Capital Campaign Plan"), which includes a timeline and benchmarks for raising $2 million for the proposed community center construction on the Site. City shall have no obligation to disburse funds until the Capital Campaign Plan has been approved by City in its sole reasonable discretion. Thereafter, City shall have no obligation to disburse funds at any time that Borrower has not submitted, and City has not approved in its sole discretion, the quarterly Capital Campaign Plan progress reports required under Section 10.10 of this Agreement.

(d) City shall have no obligation to disburse any funds that would cause the total amount disbursed under this Agreement to exceed $550,000 until completion of all required environmental review for the Project under CEQA.

(e) Per benchmarks identified in the Capital Campaign Plan, City shall have no obligation to disburse any funds that would cause the total amount disbursed under this Agreement to exceed $400,000 until Borrower has delivered evidence to the City that at least $100,000 has been raised pursuant to the Capital Campaign Plan;

(f) City shall have no obligation to disburse any funds that would cause the total amount disbursed under this Agreement to exceed $650,000 until Borrower has delivered evidence to the City that at least $400,000 has been raised pursuant to the Capital Campaign Plan.

4.6 Intentionally Omitted.

4.7 Intentionally Omitted.

4.8 Limitations on Approved Expenditures. The City may refuse to approve any expenditure: (a) during any period in which an event that, with notice or the passage

of time or both, would constitute an Event of Default remains uncured, or during the pendency of an uncured Event of Default; or (b) for disapproved, unauthorized or improperly documented expenses. The City is not obligated to approve expenditure of the full Funding Amount unless approved Expenditure Requests support disbursement of the full Funding Amount, and in no event may the aggregate amount disbursed to Borrower under this Agreement exceed the Funding Amount.

ARTICLE 5 CONSTRUCTION.

5.1 Selection Requirements. In the selection of all contractors and professional consultants for the Predevelopment Activities for the Project, Borrower must comply with the City's procurement requirements and procedures as described in the Contracting Manual and with the requirements of Chapter 14B of the San Francisco Administrative Code ("LBE Ordinance") according to the procedures established by the City's Human Rights Commission.

5.2 Construction Contract. Borrower must have delivered to the City, and the City must have reviewed and approved, the construction contract for the Project entered into between Borrower and Borrower's general contractor (the "Construction Contract").

ARTICLE 6 INTENTIONALLY DELETED

ARTICLE 7 AFFORDABILITY AND OTHER LEASING RESTRICTIONS.

7.1 Term of Leasing Restrictions. Borrower acknowledges and agrees that the covenants and other leasing restrictions set forth in this Article will remain in full force and effect: (a) for the Compliance Term and survive the prior repayment or other satisfaction of the Loan, termination of this Agreement or reconveyance of the Deed of Trust; (b) for any Unit that has been subject to a regulatory agreement with TCAC, for a period ending three (3) years after the date of any transfer of the Project by foreclosure or deed-in-lieu of foreclosure; and (c) with respect to any Unit occupied by a Qualified Tenant at expiration of either the Compliance Term or the 3-year period referred to in **Subsection (b)** above, until the Qualified Tenant voluntarily vacates his/her Unit or is evicted lawfully for just cause. The requirements to comply with the provisions of Internal Revenue Code Section 42, including Section 42(h)(6)(E)(ii), are hereby acknowledged.

7.2 Borrower's Covenant.

(a) Borrower covenants to rent all Units (except two Units reserved for the managers of the Project) at all times to households certified as Qualified Tenants at initial occupancy, as set forth in **Exhibit A**. In addition, twenty four (24) Units must be rented to Transition Age Youth.

(b) A Tenant who is a Qualified Tenant at initial occupancy may not be required to vacate the Unit due to subsequent rises in household income, except as provided in **Section 7.3**. After the over-income Tenant vacates the Unit, the vacant Unit must be rented only to Qualified Tenants as provided in **Section 7.1**.

7.3 Rent Restrictions.

(a) Maximum Rent charged to each Qualified Tenant may not exceed the amounts set forth in **Exhibit A**, *provided that* maximum Rent for Qualified Tenants or Units for which Section 8 assistance is available is the fair market rent established by SFHA and HUD or other Governmental Agency with jurisdiction over the rental subsidy program.

(b) Unless prohibited under any applicable Law, including but not limited to Section 42 of the U.S. Internal Revenue Code, each residential lease must provide for termination of the lease upon 120 days' prior written notice in the event that Borrower's annual income certification indicates that the Tenant's household income exceeds 120 percent of Median Income.

(c) Subject to **Section 7.3(d)**, annual Rent increases for Units will be limited as follows:

(i) for Units with Section 8, Local Operating Subsidy (if applicable) or similar rental assistance, annual Rent increases may be up to the maximum amount approved by HUD and/or the SFHA, for as long as rental assistance is available; and

(ii) for all other Units, except as permitted under Sections 7.3 (c)(iii) and 7.3 (d) below, annual Rent increases will be limited to the lesser of: (A) the amount which would result in a rent equal to the maximum rent permitted for the unit under Section 7.3(a) or (B) the amount which corresponds to the percentage of the annual increase in Median Income published by HUD; and,

(iii) for Units occupied by over-income Tenants, rent charged may not exceed thirty percent (30%) of the over-income Tenant’s adjusted family income.

(d) With the City's prior written approval and in accordance with maximum rent limitations set forth in Section 7.3(a) and all applicable restrictions, Rent increases for Units exceeding the amounts permitted under **Section 7.3(c)** (ii) will be permitted in order to recover increases in Project Expenses, or decreases in the Local Operating Subsidy (if applicable) but in no event may single or aggregate increases exceed ten percent (10%) per year, unless such an increase is contemplated in a City-approved temporary relocation plan or is necessary due to the expiration of Section 8, Local Operating Subsidy (if applicable) or other rental subsidies, or when the increase is caused by an increase in certified income. City approval for such rent increases that are necessary to meet all approved project expenses and financial obligations shall not be unreasonably withheld.

7.4 Certification.

(a) As a condition to initial occupancy, each person who desires to be a Qualified Tenant in the Project must be required to sign and deliver to Borrower a certification in the form shown in **Exhibit C,** Tenant Income Certification Form, in which the prospective Qualified Tenant certifies that he/she or his/her household qualifies as a Qualified Tenant. In addition, each person must be required to provide any other information, documents or certifications deemed necessary by the City to substantiate the prospective Tenant's income. Certifications provided to and accepted by the SFHA will satisfy this requirement.

(b) Each Qualified Tenant in the Project must recertify to Borrower on an annual basis his/her household income.

(c) Income certifications with respect to each Qualified Tenant who resides in a Unit or resided therein during the immediately preceding calendar year must be maintained on file at Borrower's principal office, and Borrower must file or cause to be filed copies thereof with the City promptly upon request by the City.

7.5 Form of Lease. The form of lease for Tenants must provide for termination of the lease and consent to immediate eviction for failure to qualify as a Qualified Tenant if the Tenant has made any material misrepresentation in the initial income certification.

7.6 Nondiscrimination. Borrower agrees not to discriminate against or permit discrimination against any person or group of persons because of race, color, creed, national origin, ancestry, age, sex, sexual orientation, disability, gender identity, height, weight, source of income or acquired immune deficiency syndrome (AIDS) or AIDS related condition (ARC) in the operation and use of the Project except to the extent permitted by law or required by any other funding source for the Project. Borrower agrees not to discriminate against or permit discrimination against Tenants using Section 8 certificates or vouchers or assistance through other rental subsidy programs.

7.7 Security Deposits. Security deposits may be required of Tenants only in accordance with applicable state law and this Agreement. Any security deposits collected must be segregated from all other funds of the Project in an Account held in trust for the benefit of the Tenants and disbursed in accordance with California law. The balance in the trust Account must at all times equal or exceed the aggregate of all security deposits collected plus accrued interest thereon, less any security deposits returned to Tenants.

ARTICLE 8 MAINTENANCE AND MANAGEMENT OF THE PROJECT.

8.1 Borrower's Responsibilities.

(a) After completion of the Project and subject to the rights set forth in **Section 8.2**, Borrower will be specifically and solely responsible for causing all maintenance, repair and management functions performed in connection with the Project, including selection of tenants, recertification of income and household size, evictions, collection of rents, routine and extraordinary repairs and replacement of capital items. Borrower must maintain or cause to be maintained the Project, including the Units and common areas, in a safe and sanitary manner in accordance with local health, building and housing codes, California Health and Safety Code 17920.10 and the applicable provisions of 24 CFR Part 35

8.2 Contracting With Management Agent.

(a) Borrower may contract or permit contracting with a management agent for the performance of the services or duties required in **Section 8.1(a)**, subject to the City's prior written approval of both the management agent and, at the City's discretion, the management contract between Borrower and the management agent, which approval shall not be unreasonably withheld, conditioned or delayed, *provided, however*, that the arrangement will not relieve Borrower of responsibility for performance of those duties. Any management contract must contain a provision allowing Borrower to terminate the contract without penalty upon no more than thirty (30) days' notice. As of the Agreement Date, the City has approved the John Stewart Company as Borrower's management agent, subject to approval of the management contract.

(b) The City will provide written notice to Borrower of any determination that the management agent has failed to operate and manage the Project in accordance with this Agreement. If the management agent has not cured the failure within a reasonable time period, as determined by the City, Borrower must exercise its right of termination immediately and make immediate arrangements for continuous and continuing performance of the functions required in **Section 8.1(a)**, subject to the City's approval.

8.3 Borrower Management. Borrower may manage the Project itself only with the City's prior written approval which approval shall not be unreasonably withheld,

conditioned or delayed. The City will provide written notice to Borrower of any determination that Borrower has failed to operate and manage the Project in accordance with this Agreement, in which case, the City may require Borrower to contract or cause contracting with a management agent to operate the Project, or to make other arrangements the City deems necessary to ensure performance of the functions required in **Section 8.1(a**).

ARTICLE 9 GOVERNMENTAL REQUIREMENTS.

9.1 Borrower Compliance. Borrower must comply, and where applicable, require its contractors to comply, with all applicable Laws governing the use of the Funding Amount for the Predevelopment Activities of this Project. Borrower acknowledges that its failure to comply with any of these requirements will constitute an Event of Default under this Agreement. Subject to **Section 23.1**, this Section does not prohibit Borrower from contesting any interpretation or application of Laws in good faith and by appropriate proceedings. Construction-related requirements will not apply until Borrower has obtained possession of the Site; *provided that*, construction-related requirements will apply to the Project whether or not the City approves and provides additional financing for the Project.

ARTICLE 10 PROJECT MONITORING, REPORTS, BOOKS AND RECORDS.

10.1 Generally.

(a) Borrower understands and agrees that it will be monitored by the City from time to time to assure compliance with all terms and conditions in this Agreement and all Laws. Borrower acknowledges that the City may also conduct periodic on-site inspections of the Project when it is under construction and after its completion. Borrower must cooperate with the monitoring by the City and ensure full access to the Project and all information related to the Project as reasonably required by the City.

(b) Borrower must keep and maintain books, records and other documents relating to the receipt and use of all of the Funding Amount, including all documents evidencing any Project Income and Project Expenses. Borrower must maintain records of all income, expenditures, assets, liabilities, contracts, operations, tenant eligibility and condition of the Project. All financial reports must be prepared and maintained in accordance with GAAP as in effect at the time of performance.

(c) Borrower must provide written notice of the replacement of its executive director, director of housing development, director of property management and/or any equivalent position within thirty (30) days after the effective date of such replacement.

10.2 Monthly Reporting. Borrower must submit monthly reports (the "MOH Monthly Project Update") describing progress toward developing the Project with respect to obtaining necessary approvals from other City departments, procuring architects and consultants, changes in the scope of the Project, cost or schedule and significant milestones achieved in the past month and expected to be achieved in the coming month. The MOH Monthly Project Update must be submitted by email in substantially the form to be found in the Contracting Manual until such time as the Project Completion Report is submitted to the City pursuant to **Section 10.5** below. **[Discuss]**

10.3 Intentionally Deleted.

10.4 Intentionally Deleted.

10.5 Project Completion Report. Within the specific time periods set forth below after the completion of rehabilitation or construction, the lease-up and/or permanent financing of the Project, as applicable, Borrower must provide to the City the reports listed below certified by Borrower to be complete and accurate. Subsequent to the required submission of the reports listed below, Borrower shall provide to the City information or documents reasonably requested by the City to assist in the City's review and analysis of the submitted reports:

(a) within ninety (90) days after completion of rehabilitation or construction, a report demonstrating compliance with all requirements regarding relocation, including the names of all individuals or businesses occupying the Site on the date of the submission of the application for Funds, those moving in after that date, and those occupying the Site upon completion of the Project.

(b) within ninety (90) days after completion of rehabilitation or construction, a report demonstrating compliance with all requirements regarding HUD Section 3 hiring goals, including documentation of total labor hours worked on the Project, total Section 3 hours worked, total wages paid, total Section 3 wages paid, and the names of all individuals employed to comply with the Section 3 goals, including the total hours worked for each individual and total wages paid to each individual.

10.6 Response to Inquiries. At the request of the City, its agents, employees or attorneys, Borrower must respond promptly and specifically to questions relating to the income, expenditures, assets, liabilities, contracts, operations and condition of the Project, the status of any mortgage encumbering the Project and any other requested information with respect to Borrower or the Project.

10.7 Delivery of Records. At the request of the City, made through its agents, employees, officers or attorneys, Borrower must provide the City with copies of each of the following documents, certified in writing by Borrower to be complete and accurate:

(a) all tax returns filed with the United States Internal Revenue Service, the California Franchise Tax Board and/or the California State Board of Equalization on behalf of Borrower and any general partner or manager of Borrower;

(b) all certified financial statements of Borrower and, if applicable, its general partner or manager, the accuracy of which must be certified by an auditor satisfactory to the City; and

(c) any other records related to Borrower's ownership structure and the use and occupancy of the Site.

10.8 Access to the Project and Other Project Books and Records. In addition to Borrower's obligations under **Sections 2.4, Article 10** and any other obligations to provide reports or maintain records in any City Document, Borrower agrees that duly authorized representatives of the City will have: (a) access to the Project throughout the Compliance Term to monitor the compliance by Borrower with the terms of this Agreement; and (b) access to and the right to inspect, copy, audit and examine all books, records and other documents Borrower is required to keep at all reasonable times, following reasonable notice, for the retention period required under **Section 10.9**

10.9 Records Retention. Borrower must retain all records required for the periods required under applicable Laws.

10.10 Quarterly Progress Reports. Borrower shall deliver to City for its review and approval quarterly Capital Campaign Plan progress reports.

ARTICLE 11 INTENTIONALLY DELETED.

ARTICLE 12 INTENTIONALLY DELETED.

ARTICLE 13 DISTRIBUTIONS.

13.1 Definition. "Distributions" refers to cash or other benefits received as Project Income from the operation of the Project and available to be distributed to Borrower or any party having a beneficial interest in the Project, but does not include reasonable payments for property management, asset management and approved deferred developer fees or other services performed in connection with the Project.

13.2 Conditions to Distributions. Distributions for a particular fiscal year may be made only following: (a) the City's determination that Borrower is not in default under this Agreement or any other agreement entered into with the City and County of San Francisco or the City for the Project; and (b) the City's determination that the amount of the proposed Distribution satisfies the conditions of this Agreement. The City will be deemed to have approved Borrower's written request for approval of a proposed Distribution unless the City delivers its disapproval or request for more information to

Borrower within thirty (30) business days after the City's receipt of the request for approval.

13.3 Prohibited Distributions. No Distribution may be made in the following circumstances:

(a) when a written notice of default has been issued by any entity with an equitable or beneficial interest in the Project and the default is not cured within the applicable cure periods; or

(b) when the City determines that Borrower or Borrower's management agent has failed to comply with this Agreement; or

(c) if required debt service on all loans secured by the Project and all operating expenses have not been paid current; or

(d) if the Loan is to be repaid from Residual Receipts, Borrower failed to make a payment when due on a Payment Date and the sum remains unpaid; or

(e) during the pendency of an uncured Event of Default under any City Document.

13.4 Borrower's Use of Residual Receipts for Development. To the extent that making a Distribution is not inconsistent with any other financing agreement for the Project, and subject to the limitations in this Article, Borrower may retain a portion of Residual Receipts in an amount equal to the lesser of thirty-three percent (33%) of Residual Receipts or $500 per Unit per year in lieu of using them to repay the Loan with the City's prior written approval. Borrower may use Distributions paid from Residual Receipts at its discretion for activities associated with the development or preservation of affordable housing in San Francisco, *provided that* the costs and activities would be eligible uses of Project Income under program regulations for the federal Community Development Block Grant Program, except to the extent the regulations prohibit the use of funds for new construction. Borrower acknowledges that the City may withhold its consent to a Distribution in any year in which Residual Receipts are insufficient to meet Borrower's payment obligations under the Note.

ARTICLE 14 INTENTIONALLY DELETED.

ARTICLE 15 DEVELOPER FEES.

15.1 Amount. Borrower is entitled to receive fees from the Loan in an amount not to exceed Three Hundred Twenty-Five Thousand and No/100 Dollars ($325,000.00) for developing the Project ("Developer Fees") during the predevelopment phase. The terms and conditions for the Developer Fee are set forth in full in the Developer Fee Agreement.

ARTICLE 16 TRANSFERS.

16.1 Permitted Transfers/Consent. Borrower may not cause or permit any voluntary transfer, assignment or encumbrance of its interest in the Site or Project or of any ownership interests in Borrower, or lease or permit a sublease on all or any part of the Project, other than: (a) leases, subleases or occupancy agreements to occupants of Units and/or Commercial Space in the Project; or (b) security interests for the benefit of lenders securing loans for the Project as approved by the City on terms and in amounts as approved by City in its reasonable discretion (c) transfers from Borrower to a limited partnership or limited liability company formed for the tax credit syndication of the Project, where Borrower or an affiliated nonprofit public benefit corporation is the sole general partner or manager of that entity; (d) transfers of the general partnership or manager's interest in Borrower to a nonprofit public benefit corporation approved in advance by the City; (e) transfers of any limited partnership or membership interest in Borrower to an investor pursuant to the tax credit syndication of the Project; or (f) the grant or exercise of an option agreement between Borrower and Borrower's general partner or manager or any of its affiliates in connection with the tax credit syndication of the Project. Any other transfer, assignment, encumbrance or lease without the City's prior written consent will be voidable and, at the City's election, constitute an Event of Default under this Agreement. The City's consent to any specific assignment, encumbrance, lease or other transfer will not constitute its consent to any subsequent transfer or a waiver of any of the City's rights under this Agreement.

ARTICLE 17 INSURANCE AND BONDS.

17.1 Borrower's Insurance. Subject to approval by the City's Risk Manager of the insurers and policy forms, Borrower must obtain and maintain, or cause to be obtained and maintained, insurance and bonds as set forth in **Exhibit F** throughout the Compliance Term of this Agreement at no expense to the City.

ARTICLE 18 GOVERNMENTAL APPROVALS.

18.1 Compliance. Borrower covenants that it has obtained or is in the process of obtaining in a timely manner all federal, state and local governmental approvals required by Law to be obtained for the Project. Subject to **Section 23.1**, this Section does not prohibit Borrower from contesting any interpretation or application of Laws in good faith and by appropriate proceedings.

ARTICLE 19 DEFAULT.

19.1 Event of Default. Any material breach by Borrower of any covenant, agreement, provision or warranty contained in this Agreement or in any of the City Documents that remains uncured upon the expiration of any applicable notice and cure periods contained in any City Document will constitute an "Event of Default," including the following:

(a) Borrower fails to make any payment required under this Agreement within ten (10) days after the date when due; or

(b) Except as permitted under **Article 16,** a lien is recorded against all or any part of the Site or the Project without the City's prior written consent, whether prior or subordinate to the lien of the Deed of Trust or Declaration of Restrictions, and the lien is not removed from title or otherwise remedied to the City's satisfaction within thirty (30) days after Borrower's receipt of written notice from the City to cure the default, or, if the default cannot be cured within a 30-day period, Borrower will have sixty (60) days to cure the default, or any longer period of time deemed necessary by the City, *provided that* Borrower commences to cure the default within the 30-day period and diligently pursues the cure to completion; or

(c) Borrower fails to perform or observe any other term, covenant or agreement contained in any City Document, and the failure continues for thirty (30) days after Borrower's receipt of written notice from the City to cure the default, or, if the default cannot be cured within a 30-day period, Borrower will have sixty (60) days to cure the default, or any longer period of time deemed necessary by the City, *provided that* Borrower commences to cure the default within the 30-day period and diligently pursues the cure to completion; or

(d) Any representation or warranty made by Borrower in any City Document proves to have been incorrect in any material respect when made; or

(e) All or a substantial or material portion of the improvements on the Site is damaged or destroyed by fire or other casualty, and the City has determined upon restoration or repair that the security of the Deed of Trust has been impaired or that the repair, restoration or replacement of the improvements in accordance with the requirements of the Deed of Trust is not economically practicable or is not completed within two (2) years of the receipt of insurance proceeds; or all or a substantial or material portion of the improvements is condemned, seized or appropriated by any non-City Governmental Agency or subject to any action or other proceeding instituted by any non-City Governmental Agency for any purpose with the result that the improvements cannot be operated for their intended purpose; or

(f) Borrower is dissolved or liquidated or merged with or into any other entity; or, if Borrower is a corporation, partnership, limited liability company or trust, Borrower ceases to exist in its present form and (where applicable) in good standing and duly qualified under the laws of the jurisdiction of formation and California for any period of more than ten (10) days; or, if Borrower is an individual, Borrower dies or becomes incapacitated; or all or substantially all of the assets of Borrower are sold or otherwise transferred except as permitted under **Section 16.1**; or

(g) Without the City's prior written consent, Borrower assigns or attempts to assign any rights or interest under any City Document, whether voluntarily or involuntarily, except as permitted under **Section 16.1**; or

(h) Without the City's prior written consent, Borrower voluntarily or involuntarily assigns or attempts to sell, lease, assign, encumber or otherwise transfer all or any portion of the ownership interests in Borrower or of its right, title or interest in the Project or the Site except as permitted under **Article 16**; or

(i) Without the City's prior written consent, Borrower transfers, or authorizes the transfer of, funds in any Account required or authorized under this Agreement; or

(j) Either the Deed of Trust or the Declaration of Restrictions ceases to constitute a valid and indefeasible perfected lien on the Site and improvements, subject only to Permitted Exceptions; or

(k) Borrower is subject to an order for relief by the bankruptcy court, or is unable or admits in writing its inability to pay its debts as they mature or makes an assignment for the benefit of creditors; or Borrower applies for or consents to the appointment of any receiver, trustee or similar official for Borrower or for all or any part of its property (or an appointment is made without its consent and the appointment continues undischarged and unstayed for sixty (60) days); or Borrower institutes or consents to any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, custodianship, conservatorship, liquidation, rehabilitation or similar proceeding relating to Borrower or to all or any part of its property under the laws of any jurisdiction (or a proceeding is instituted without its consent and continues undismissed and unstayed for more than sixty (60) days); or any judgment, writ, warrant of attachment or execution or similar process is issued or levied against the Site, the improvements or any other property of Borrower and is not released, vacated or fully bonded within sixty (60) days after its issue or levy; or

(l) Any material adverse change occurs in the financial condition or operations of Borrower, such as a loss of services funding or rental subsidies, that has a material adverse impact on the Project; or

(m) Borrower is in default of its obligations with respect to] any funding obligation (other than the Loan) for the Project, and the default remains uncured following the expiration of any applicable cure periods.

(n) Borrower is in default of its obligations under any other agreement entered into with the City and County of San Francisco with respect to the Predevelopment Activities of the Project, and the default remains uncured following the expiration of any applicable cure periods.

19.2 Remedies. During the pendency of an uncured Event of Default, the City may exercise any right or remedy available under this Agreement or any other City

Document or at law or in equity. All of the City's rights and remedies following an Event of Default are cumulative, including:

(a) The City at its option may declare the unpaid principal balance of the Note, together with default interest as provided in the Note and any other charges due under the Note and the other City Documents, immediately due and payable without protest, presentment, notice of dishonor, demand or further notice of any kind, all of which Borrower expressly waives.

(b) The City at its option may terminate all commitments to make Disbursements or to release the Site from the Deed of Trust or Declaration of Restrictions, or, without waiving the Event of Default, the City may determine to make further Disbursements or to release all or any part of the Site from the Deed of Trust or Declaration of Restrictions upon terms and conditions satisfactory to the City in its sole discretion.

(c) The City may perform any of Borrower's obligations in any manner, in the City's reasonable discretion.

(d) The City, either directly or through an agent or court-appointed receiver, may take possession of the Project and enter into contracts and take any other action the City deems appropriate to complete or construct all or any part of the improvements, subject to modifications and changes in the Project the City deems appropriate.

(e) The City may apply to any court of competent jurisdiction for specific performance, or an injunction against any violation, of this Agreement or for any other remedies or actions necessary or desirable to correct Borrower's noncompliance with this Agreement.

(f) Upon the occurrence of an Event of Default described in **Section 19.1(k)**, the unpaid principal balance of the Note, together with default interest as provided in the Note and any other charges due under the Note and the other City Documents, will become due and payable automatically.

(g) All costs, expenses, charges and advances of the City in exercising its remedies or to protect the Project will be deemed to constitute a portion of the principal balance of the Note, even if it causes the principal balance to exceed the face amount of the Note, unless Borrower reimburses the City within ten (10) days of the City's demand for reimbursement.

19.3 Force Majeure. The occurrence of any of the following events will excuse performance of any obligations of the City or Borrower rendered impossible to perform while the event continues: strikes; lockouts; labor disputes; acts of God; inability to obtain labor, materials or reasonable substitutes for either; governmental restrictions, regulations or controls; judicial orders; enemy or hostile governmental actions; civil

commotion; fire or other casualty and other causes beyond the control of the party obligated to perform. The occurrence of a force majeure event will excuse Borrower's performance only in the event that Borrower has provided notice to the City within thirty (30) days after the occurrence or commencement of the event or events, and Borrower's performance will be excused for a period ending thirty (30) days after the termination of the event giving rise to the delay.

ARTICLE 20 REPRESENTATIONS AND WARRANTIES.

20.1 Borrower Representations and Warranties. As a further inducement for the City to enter into this Agreement, Borrower represents and warrants as follows:

(a) The execution, delivery and performance of the City Documents will not contravene or constitute a default under or result in a lien upon assets of Borrower under any applicable Law, any Charter Document of Borrower or any instrument binding upon or affecting Borrower, or any contract, agreement, judgment, order, decree or other instrument binding upon or affecting Borrower.

(b) When duly executed, the City Documents will constitute the legal, valid and binding obligations of Borrower, except as enforcement may be limited by bankruptcy, insolvency, reorganizational, moratorium or similar laws relating to or limiting creditors rights generally or by the application of equitable principals. Borrower hereby waives any defense to the enforcement of the City Documents related to alleged invalidity of the City Documents.

(c) No action, suit or proceeding is pending or Borrower has not received written notice of a threatened that might affect Borrower or the Project adversely in any material respect.

(d) Borrower is not in default under any agreement to which it is a party, including any lease of real property.

(e) None of Borrower, Borrower's principals or Borrower's general contractor has been suspended or debarred by the Department of Industrial Relations or any Governmental Agency, nor has Borrower, any of its principals or its general contractor been suspended, disciplined or prohibited from contracting with any Governmental Agency.

(f) The Funding Amount, together with all other committed sources of financing for the Predevelopment Activities of the Project, are sufficient to complete such predevelopment activities of the Project in accordance with this Agreement.

(g) All statements and representations made by Borrower in connection with the Loan remain true and correct as of the date of this Agreement.

ARTICLE 21 NOTICES.

21.1 Written Notice. All notices required by this Agreement must be made in writing and may be communicated by personal delivery, facsimile (if followed within one (1) business day by first class mail) or by United States certified mail, postage prepaid, return receipt requested. Delivery will be deemed complete as of the earlier of actual receipt (or refusal to accept proper delivery) or five (5) days after mailing, *provided that* any notice that is received after 5 p.m. on any day or on any weekend or holiday will be deemed to have been received on the next succeeding business day. Notices must be addressed as follows:

To the City:	Mayor's Office of Housing 1 South Van Ness Avenue, 5th Floor San Francisco, CA 94103 Attn: Director
To Borrower:	Booker T. Washington Community Service Center 800 Presidio Avenue San Francisco, CA 94115 Attn: Executive Director
With a Copy to: (which shall not constitute notice)	Luce, Forward, Hamilton & Scripps LLP 121 Spear Street, Suite 200 San Francisco, CA 94105 Attn: Alice Suet Yee Barkley, Esq.

or any other address a party designates from time to time by written notice sent to the other party in manner set forth in this Section.

21.2 Required Notices. Borrower agrees to provide notice to the City in accordance with **Section 21.1** of the occurrence of any change or circumstance that: (a) will have an adverse effect on the physical condition or intended use of the Project; or (b) will have a material adverse effect on Borrower's operation of the Property or ability to repay the Loan.

ARTICLE 22 HAZARDOUS SUBSTANCES.

22.1 Borrower's Representations. Borrower represents and warrants to the City that, to the best of Borrower's actual knowledge, without independent investigation or inquiry as of the Agreement Date, the following statements are true and correct except as disclosed in the Phase I report completed January 2007, by All West or otherwise in writing: (a) the Site is not in violation of any Environmental Laws; (b) the Site is not now, nor has it been, used for the manufacture, use, storage, discharge, deposit, transportation or disposal of any Hazardous Substances, except in limited quantities customarily used in residences and offices and in compliance with Environmental Laws; (c) the Site does not consist of any landfill or contain any underground storage tanks; (d) the improvements on the Site do not consist of any asbestos-containing materials or building materials that contain any other Hazardous Substances; (e) no release of any Hazardous Substances in the improvements on the Site has occurred or in, on, under or about the Site; and (f) the Site is not subject to any claim by any Governmental Agency or third party related to any Environmental Activity or any inquiry by any Governmental Agency (including the California Department of Toxic Substances Control and the Regional Water Quality Control Board) with respect to the presence of Hazardous Substances in the improvements on the Site or in, on, under or about the Site, or the migration of Hazardous Substances from or to other real property.

22.2 Covenant. Unless the City otherwise consents in writing, at all times from and after the date of this Agreement, at its sole expense, Borrower must: (a) comply with all applicable Environmental Laws relating to the Site and the Project, and not engage in or otherwise permit the occurrence of any Environmental Activity in violation of any applicable Environmental Laws or that is not customary and incidental to the intended use of the Site, *provided that* nothing contained in this Section will prevent Borrower from contesting, in good faith and by appropriate proceedings, any interpretation or application of Environmental Laws; and (b) deliver to the City notice of the discovery by Borrower of any event rendering any representation contained in this Section incorrect in any respect promptly following Borrower's discovery.

ARTICLE 23 INDEMNITY.

23.1 Borrower's Obligations. Borrower must Indemnify the City and its respective officers, agents and employees (individually or collectively, an "Indemnitee") against any and all Losses arising out of: (a) any default by Borrower in the observance or performance of any of Borrower's obligations under the City Documents (including those covenants set forth in **Article 22** above); (b) any failure of any representation by Borrower to be correct in all respects when made; (c) injury or death to persons or damage to property or other loss occurring on or in connection with the Site or the Project, whether caused by the negligence or any other act or omission of Borrower or any other person or by negligent, faulty, inadequate or defective design, building, construction, rehabilitation or maintenance or any other condition or otherwise; (d) any claim of any surety in connection with any bond relating to the construction or

rehabilitation of any improvements or offsite improvements; (e) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnitee that relates to or arises out of the City Documents, the Loan, the Site or the Project or any transaction contemplated by, or the relationship between Borrower and the City or any action or inaction by the City under, the City Documents; (f) the occurrence, before the expiration of the Compliance Term, of any Environmental Activity or any failure of Borrower or any other person to comply with all applicable Environmental Laws relating to the Project or the Site; (g) the occurrence, after the Compliance Term, of any Environmental Activity resulting directly or indirectly from any Environmental Activity occurring before the Compliance Term; (h) any liability of any nature arising from Borrower's contest of or relating to the application of any Law, including any contest permitted under **Sections 9.1, 18.1** and **22.2**; or (i) any claim, demand or cause of action, or any investigation, inquiry, order, hearing, action or other proceeding by or before any Governmental Agency, whether meritorious or not, that directly or indirectly relates to, arises from or is based on the occurrence or allegation of any of the matters described in clauses (a) through (h) above, *provided that* no Indemnitee will be entitled to indemnification under this Section for matters caused solely by its own active negligence or willful misconduct. In the event any action or proceeding is brought against an Indemnitee by reason of a claim arising out of any Loss for which Borrower has indemnified the Indemnitees, upon written notice, Borrower must answer and otherwise defend the action or proceeding using counsel approved in writing by the Indemnitee at Borrower's sole expense. Each Indemnitee will have the right, exercised in its sole discretion, but without being required to do so, to defend, adjust, settle or compromise any claim, obligation, debt, demand, suit or judgment against the Indemnitee in connection with the matters covered by this Agreement. The provisions of this Section will survive the repayment of the Loan and/or termination of this Agreement.

23.2 No Limitation. Borrower's obligations under **Section 23.1** are not limited by the insurance requirements under this Agreement.

ARTICLE 24 GENERAL PROVISIONS.

24.1 Subordination. The Deed of Trust may be subordinated to other financing secured by and used for development of the Project (in each case, a "Senior Lien"), but only on condition that *all* of the following conditions are satisfied:

(a) All of the proceeds of the proposed Senior Lien, less any transaction costs, must be used to provide acquisition, construction and/or permanent financing for the Project.

(b) The terms of the proposed Senior Lien and any subordination agreement must be reviewed and approved by MOH and approved as to form by the City Attorney's Office.

(c) The proposed lender (each, a "Senior Lender") must be a state or federally chartered financial institution, a nonprofit corporation or a public entity that is not affiliated with Borrower or any of Borrower's affiliates, other than as a depositor or a lender.

(d) Borrower must demonstrate to MOH's reasonable satisfaction that subordination of the Deed of Trust is necessary to secure adequate acquisition, construction, rehabilitation and/or permanent financing to ensure the viability of the Project, including the operation of the Project as affordable housing, as required by the City Documents. To satisfy this requirement, Borrower must provide to MOH, in addition to any other information reasonably required by MOH, evidence demonstrating that the proposed amount of the Senior Loan is necessary to provide adequate acquisition, construction, rehabilitation and/or permanent financing to ensure the viability of the Project, and adequate financing for the Project would not be available without the proposed subordination.

(e) The subordination agreement(s) must be structured to minimize the risk that the Deed of Trust would be extinguished as a result of a foreclosure by the Senior Lender or other holder of the Senior Lien. To satisfy this requirement, the subordination agreement must provide the City with adequate rights to cure any defaults by Borrower, including: (i) providing MOH or its successor with copies of any notices of default at the same time and in the same manner as provided to Borrower; and (ii) providing the City with a cure period at least equal to that provided to Borrower to cure any default.

(f) The subordination(s) described in this Section may be effective only during the original term of the Senior Loan and any extension of its term approved in writing by MOH.

(g) No subordination may limit the effect of the Deed of Trust before a foreclosure.

(h) Following review and approval by MOH and approval as to form by the City Attorney's Office, the Director of MOH or his/her successor or designee will be authorized to execute the approved subordination agreement without the necessity of any further action or approval.

24.2 No Third Party Beneficiaries. Nothing contained in this Agreement, nor any act of the City, may be interpreted or construed as creating the relationship of third party beneficiary, limited or general partnership, joint venture, employer and employee, or principal and agent between the City and Borrower or Borrower's agents, employees or contractors.

24.3 No Claims by Third Parties. Nothing contained in this Agreement creates or justifies any claim against the City by any person or entity with respect to the purchase

of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the Predevelopment Activities of the Project. Borrower must include this requirement as a provision in any contracts for the Predevelopment Activities of the Project.

24.4 Entire Agreement. This Agreement and its Exhibits incorporate the terms of all agreements made by the City and Borrower with regard to the subject matter of this Agreement. No alteration or variation of the terms of this Agreement will be valid unless made in writing and signed by the parties hereto. No oral understandings or agreements not incorporated herein will be binding on the City or Borrower.

24.5 City Obligations. The City's sole obligation under this Agreement is limited to providing the funds as described in this Agreement, up to the Funding Amount. Under no circumstances, including breach of this Agreement, will the City be liable to Borrower for any special or consequential damages arising out of actions or failure to act by the City in connection with any of the City Documents.

24.6 Borrower Solely Responsible. Borrower has the right to exercise full control of employment, direction, compensation and discharge of all persons assisting in the performance contemplated under this Agreement. Borrower is solely responsible for: (a) its own acts and those of its agents, employees and contractors and all matters relating to their performance, including compliance with Social Security, withholding and all other Laws governing these matters and requiring that contractors include in each contract that they will be solely responsible for similar matters relating to their employees; (b) any losses or damages incurred by Borrower, any of its contractors or subcontractors and the City and its officers, representatives, agents and employees on account of any act, error or omission of Borrower in the performance of this Agreement or any other City Document and the Predevelopment Activities of the Project; and (c) all costs and expenses relating to Borrower's performance of obligations under the City Documents, the delivery to the City of documents, information or items under or in connection with any of the City Documents and taxes, fees, costs or other charges payable in connection with the execution, delivery, filing and/or recording of any City Document or document required under any City Document.

24.7 No Inconsistent Agreements. Borrower warrants that it has not executed and will not execute any other agreement(s) with provisions materially contradictory or in opposition to the provisions of this Agreement.

24.8 Inconsistencies in City Documents. In the event of any conflict between the terms of this Agreement and any other City Document, the terms of this Agreement control unless otherwise stated; *provided, however,* that any provision in this Agreement in conflict with any Law will be interpreted subject to that Law.

24.9 Governing Law. This Agreement is governed by California law without regard to its choice of law rules.

24.10 Joint and Several Liability. If Borrower consists of more than one person or entity, each is jointly and severally liable to the City for the faithful performance of this Agreement.

24.11 Successors. Except as otherwise limited herein, the provisions of this Agreement bind and inure to the benefit of the undersigned parties and their heirs, executors, administrators, legal representatives, successors and assigns. This provision does not relieve Borrower of its obligation under the City Documents to obtain the City's prior written consent to any assignment or other transfer of Borrower's interests in the Loan, the Site or the ownership interests in Borrower.

24.12 Attorneys' Fees. If any legal action is commenced to enforce any of the terms of this Agreement or rights arising from any party's actions in connection with this Agreement, the prevailing party will have the right to recover its reasonable attorneys' fees (including allocated fees of the City Attorney's Office) and costs of suit from the other party, whether incurred in a judicial, arbitration, mediation or bankruptcy proceeding or on appeal. For the purposes of this Agreement, reasonable fees of attorneys in the City Attorney's office will be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter of law for which the City Attorney's services were rendered, who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the City Attorney's Office. An award of attorneys' fees and costs will bear interest at the default rate under the Note from the date of the award until paid.

24.13 Severability. The invalidity or unenforceability of any one or more provisions of this Agreement will in no way affect any other provision.

24.14 Time. Time is of the essence in this Agreement. Whenever the date on which an action must be performed falls on a Saturday, Sunday or federal holiday, the date for performance will be deemed to be the next succeeding business day.

24.15 Further Assurances. Borrower agrees to: (a) pursue in an effective and continuous manner; (b) use best efforts to achieve; and (c) take all actions reasonably required by the City from time to time to confirm or otherwise carry out the purpose of this Agreement.

24.16 Binding Covenants. The provisions of the City Documents constitute covenants running with the land and will be binding upon Borrower and Borrower's successors and assigns, and all parties having or acquiring any right, title or interest in whatever form, including leasehold interests (other than Tenants and approved commercial tenants), in or to any part of the Site, except that the same will terminate and become void automatically at the expiration of the Compliance Term of this Agreement. Any attempt to transfer any right, title or interest in the Site in violation of these covenants will be void.

24.17 Consent. Except as expressly provided otherwise, whenever consent or approval of a party is required in any City Document, that party agrees not to withhold or delay its consent or approval unreasonably.

24.18 Counterparts. This Agreement may be executed in any number of counterparts, all of which will constitute but one agreement.

24.19 Borrower's Personnel. The Project shall be implemented only by competent personnel under the direction and supervision of Borrower.

24.20 Borrower's Board of Directors. Borrower shall at all times be governed by a legally constituted and fiscally responsible board of directors. Such board of directors shall meet regularly and maintain appropriate membership, as established in Borrower's bylaws and other governing documents, and shall adhere to applicable provisions of federal, state and local laws governing nonprofit corporations. Borrower's board of directors shall exercise such oversight responsibility with regard to this Agreement as is necessary to ensure full and prompt performance by Borrower of its obligations under this Agreement.

24.21 City's Recourse. The City's recourse against Borrower following an Event of Default is limited as set forth more specifically in the Note.

24.22 Exhibits. The following exhibits are attached to this Agreement and incorporated by reference:

EXHIBITS

A Schedules of Income and Rent Restrictions
B-1 Table of Sources and Uses of Funds B-2 Intentionally Deleted
B-3 Intentionally Deleted
C Tenant Income Certification
D First Source Hiring Requirements and Numerical Goals
E Governmental Requirements
F Insurance Requirements
G Lobbying/Debarment Certification Form
H. Intentionally Deleted

ARTICLE 25 PARTIAL RELEASE.

25.1 Partial Release. City acknowledges that the Borrower will cause a subdivision to the Site to create a housing parcel (the "Housing Parcel"), for the Project and a community center parcel (the "Community Center Parcel"), for the community center, with common areas. Notwithstanding anything contained in the City Documents to the contrary, City agrees to release and reconvey the lien of the Deed of Trust on Borrower's fee interest in Community Center Parcel (the "Partial Release"), upon written

request of the Borrower, and subject to Borrower's satisfaction of all of the following conditions prior to or contemporaneously with recordation of the instrument of Partial Release:

(a) A final subdivision map or parcel map (the "Map") shall have been prepared and approved in writing by the San Francisco Department of Public Works and each governmental or quasi-governmental agency having jurisdiction over the Site, and the Map shall have been duly recorded;

(b) City receives an endorsement to the Title Policy insuring the continued priority of the lien of the Deed of Trust for the full amount of the Loan;

(c) Borrower shall have provided such evidence as City may reasonably require that all conditions to the Partial Release have been satisfied or will be satisfied contemporaneously therewith;

(d) Borrower shall pay all expenses relating to the Partial Release and the issuance of the endorsement to the Title Policy;

(e) the Special Use District Legislation has been approved by the City;

(f) there is no uncured default or potential Event of Default by Borrower under the City Documents; and

(g) the Community Center Parcel is being used for commercial, and not residential, purposes; and

(h) Borrower has provided City with sufficient evidence demonstrating that the Loan has not be used to benefit the Community Center Parcel.

[Signatures follow on next page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement at San Francisco, California as of the date first written above.

THE CITY:

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

By: _____
Gavin Newsom
Mayor

By: _____
Douglas Shoemaker
Director, Mayor's Office of Housing

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

By: _____
Evan Gross
Deputy City Attorney

BORROWER:

BOOKER T. WASHINGTON COMMUNITY SERVICE CENTER,
a California nonprofit public benefit corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT A

Schedules of Income and Rent Restrictions

1. Income and Rent Restrictions. Maximum rent is 30% of maximum income level. As used in this Agreement, the term "Qualified Tenant" includes each category of Tenant included below:

Unit Size	**No. of Units**	**Maximum Income Level**
TAY Studio	24	50% of Median Income
Affordable Studio	13	50% of Median Income
Affordable Studio	11	60% of Median Income

EXHIBIT B-1

Table of Sources and Uses of Funds

EXHIBIT B-2

Intentionally Deleted

EXHIBIT B-3

Intentionally Deleted

EXHIBIT C

Tenant Income Certification Form

(To be attached.)

EXHIBIT D

Intentionally Deleted

EXHIBIT E

Intentionally Deleted

EXHIBIT F

Insurance Requirements

Subject to approval by the City's Risk Manager of the insurers and policy forms, Borrower must obtain and maintain, or caused to be maintained, the insurance and bonds as set forth below throughout the Compliance Term of this Agreement at no expense to the City:

1. Borrower, Contractors.

(a) to the extent Borrower or its contractors and subcontractors have "employees" as defined in the California Labor Code, workers' compensation insurance with employer's liability limits not less than One Million Dollars ($1,000,000) each accident [Risk Manager willing to reduce to $500,000 only if necessary, depending on risk];

(b) commercial general liability insurance, with limits set forth below, combined single limit for bodily injury and property damage, including coverage for contractual liability; personal injury; fire damage legal liability; advertisers' liability; owners' and contractors' protective liability; broad form property damage; explosion, collapse and underground (XCU); products and completed operations, as follows:

(i) not less than One Million Dollars ($1,000,000) each occurrence before the start of demolition/construction/rehabilitation if the Site is unoccupied;

(ii) not less than Two Million Dollars ($2,000,000) each occurrence at all times during demolition/construction/rehabilitation and occupancy of the Site/ongoing operations of the Project;

(c) business automobile liability insurance, with limits not less than One Million Dollars ($1,000,000) each occurrence, combined single limit for bodily injury and property damage, including owned, hired and non-owned auto coverage, as applicable;

(d) professional liability insurance for all architects employed in connection with the Project, with limits not less than One Million Dollars ($1,000,000) (or, in the case of any other professionals, $1,000,000) each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided in connection with the Project. Any deductible over Fifty Thousand Dollars ($50,000) each claim must be reviewed by Risk Management; and

(e) a blanket fidelity bond covering Borrower's officers and employees against dishonesty with respect to the Funds, in the amount of Seventy Five Thousand Dollars ($75,000) each loss, with any deductible not to exceed Five Thousand Dollars ($5,000) each loss, including the City as additional obligee or loss payee.

4. General Requirements.

(a) General and automobile liability policies of Borrower, contractors, commercial tenants and property managers must include the City, including its Boards, commissions, officers, agents and employees, as an additional insured by endorsement acceptable to the City.

(b) All policies required by this Agreement must be endorsed to provide no less than thirty (30) days' written notice to the City before cancellation or intended non-renewal is effective.

(c) With respect to any property insurance, Borrower hereby waives all rights of subrogation against the City to the extent of any loss covered by Borrower's insurance, except to the extent subrogation would affect the scope or validity of insurance.

(d) Approval of Borrower's insurance by the City will not relieve or decrease the liability of Borrower under this Agreement.

(e) Any and all insurance policies called for herein must contain a clause providing that the City and its officers, agents and employees will not be liable for any required premium.

(f) The City reserves the right to require an increase in insurance coverage in the event the City determines that conditions show cause for an increase, unless Borrower demonstrates to the City’s satisfaction that the increased coverage is commercially unreasonable and unavailable to Borrower.

(g) All liability policies must provide that the insurance is primary to any other insurance available to the additional insureds with respect to claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought and that an act of omission of one of the named insureds that would void or otherwise reduce coverage will not void or reduce coverage as to any other insured, but the inclusion of more than one insured will not operate to increase the insurer's limit of liability.

(h) Any policy in a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs are included in the general annual aggregate limit must be in amounts that are double the occurrence or claims limits specified above.

(i) All claims based on acts, omissions, injury or damage occurring or arising in whole or in part during the policy period must be covered. If any required insurance is provided under a claims-made policy, coverage must be maintained continuously for a period ending no less than three (3) years after recordation of a notice of completion for builder's risk or the Compliance Term for general liability and property insurance.

(j) Borrower must provide the City with copies of endorsements for each required insurance policy and make each policy available for inspection and copying promptly upon request.

EXHIBIT G

Lobbying/Debarment Certification Form

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.

2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress or an employee of a member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

This lobbying certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed under Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for such failure.

3. Neither the undersigned nor its principals is listed by the General Services Administration as debarred, suspended, ineligible or voluntarily excluded from receiving the Funds on the Agreement Date. The undersigned will review the list to ensure that any contractor or subcontractor who bids for a contract in excess of $100,000 is not debarred, suspended, ineligible or voluntarily excluded from participating in federal programs and activities and will obtain the certification of each contractor or subcontractor whose bid is accepted that such contractor or subcontractor is not debarred, suspended, ineligible or voluntarily excluded from participating in federal programs and activities.

Borrower:

Booker T. Washington Community Service Center

By: _____

Name: _____

Title: _____

Date:_____

EXHIBIT H

Intentionally Deleted

ATTACHMENT E: MOTION NO. 18340 (EIR CERTIFICATION)

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

Planning Commission Motion No. 18340

HEARING DATE: April 28, 2011

Hearing Date:	April 28, 2011
Case No.:	**2006.0868E**
Project Address:	**800 Presidio Avenue**
Zoning:	RM-1
Height/Bulk:	40-X
Block/Lot:	1073/13
Project Sponsor:	Equity Community Builders, LLC 38 Keyes Avenue, Suite 201 San Francisco, CA 94129
Sponsor Contact:	Alice Barkley, Esq. – (415) 356-0970
Staff Contact:	Michael Jacinto – (415) 575-9033 michaeljacinto@sfgov.org

ADOPTING FINDINGS RELATED TO THE CERTIFICATION OF A FINAL ENVIRONMENTAL IMPACT REPORT FOR THE PROPOSED BOOKER T. WASHINGTON COMMUNITY CENTER MIXED-USE PROJECT AT 800 PRESIDIO AVENUE. THE PROJECT ENTAILS DEMOLITION OF AN EXISTING 12,600-SQUARE-FOOT COMMUNITY CENTER AND CONSTRUCTION OF A 55-FOOT-TALL, 68,200-SQUARE-FOOT BUILDING CONTAINING 20,725-SQUARE FEET OF COMMUNITY CENTER AND GYMNASIUM SPACE AND 32,021-SQUARE FEET OF RESIDENTIAL SPACE ON ITS UPPER FLOORS. THE HOUSING COMPONENT OF THE PROJECT WOULD CONTAIN 50 AFFORDABLE HOUSING UNITS FOR EMANCIPATED FOSTER YOUTH AND HOUSEHOLDS ON ITS UPPER LEVELS AND 21 OFF-STREET PARKING SPACES IN A BASEMENT GARAGE. THE PROJECT REQUIRES AMENDMENTS TO THE PLANNING CODE THROUGH THE ESTABLISHMENT OF A "PRESIDIO-SUTTER AFFORDABLE HOUSING SPECIAL USE DISTRICT" TO ADDRESS A RECLASSIFICATION OF THE SITE'S 40-FOOT HEIGHT LIMIT TO 55 FEET AND TO INCREASE THE RESDIENTIAL DENSITY BEYOND PERMITTED LIMITS ESTABLISHED BY THE PLANNING CODE, WHICH WOULD REQUIRE APPROVAL BY THE BOARD OF SUPERVISORS. THE PROJECT WOULD ALSO REQUEST EXPETIONS TO PLANNING CODE PROVISIONS RELATED TO STREET TREES, REAR YARD, USABLE OPEN SPACE AND DWELLING UNIT EXPOSURE THROUGH A PLANNED UNIT DEVELOPMENT (PUD) SUBJECT TO APPROVAL BY THE PLANNING COMMISSION.

MOVED, that the San Francisco Planning Commission (hereinafter "Commission") hereby CERTIFIES the Final Environmental Impact Report identified as Case No. 2006.0868E at 800 Presidio Avenue (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 March 8, 2008.

B. On June 23, 2010, 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 Department staff on June 23, 2010.

D. On June 23, 2010, 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 June 22, 2010.

2. The Commission held a duly advertised public hearing on said DEIR on August 5, 2010 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 August 10, 2010.

3. The Department prepared responses to comments on environmental issues received at the public hearing and in writing during the 48-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 Draft Comments and Responses document, published on April 14, 2011, distributed to the Commission and all parties who commented on the DEIR, and made available to others upon request at the Department.

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 Comments and Responses document.

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 at 1650 Mission Street, and are part of the record before the Commission.

6. On April 28, 2011, 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. Subsequent to publication of the Draft EIR, the project sponsor proposed minor modifications to the project in response to public comment. These changes are described as the "Modified Project", and are included in the Final Environmental Impact Report (see Section C of the Comments and Responses document).

8. The Planning Commission hereby does find that the Final Environmental Impact Report concerning Case File No. 2006.868E – Booker T. Washington Community Center Project 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:

   A. Will have a project-specific significant effect on the environment related to the demolition of the existing Booker T. Washington Community Center building, considered a potential historical resource for purposes of the CEQA analysis; and

   B. Will have a significant effect on the environment in that it would contribute considerably to an adverse cumulative impact on historic architectural resources identified for purposes of the CEQA analysis within the context of the Western Addition neighborhood.

I hereby certify that the foregoing Motion was ADOPTED by the Planning Commission at its regular meeting of April 28, 2011.

Linda Avery
Commission Secretary

AYES: Antonini, Bordon, Miguel, More, Olague, Sugaya

NOES:

ABSENT:

RECUSED: Fong

ADOPTED: April 28, 2011

ATTACHMENT F: RESOLUTION NO. 18341 (CEQA FINDINGS)

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

Planning Commission Text Amendment/Rezoning Resolution No. 18341

HEARING DATE APRIL 28, 2011

Date:	April 28, 2011
Case No.:	**2006.0868TZ**
Project Address:	**800 PRESIDIO AVENUE**
Current Zoning:	RM-1 (Residential, Mixed, Low-Density) 40-X Height and Bulk District
Proposed Zoning:	Presidio-Sutter Special Use District RM-1 (Residential, Mixed, Low-Density) 40-X/55-X Height and Bulk District
Block/Lot:	1073/013
Project Sponsor:	Booker T. Washington Community Service Center 800 Presidio Avenue San Francisco, CA 94115
Sponsor Contact:	Alice Barkley, Esq. – (415) 356-4635
Staff Contact:	Glenn Cabreros – (415) 558-6169 glenn.cabreros@sfgov.org

ADOPTING ENVIRONMENTAL FINDINGS RELATED TO THE PROPOSED BOOKER T. WASHINGTON COMMUNITY SERVICES CENTER MIXED-USE PROJECT AT 800 PRESIDIO AVENUE. THE PROJECT INCLUDES DEMOLITION OF AN EXISTING 12,600-SQUARE-FOOT COMMUNITY CENTER AND CONSTRUCTION OF A 55-FOOT-TALL, 68,206-SQUARE-FOOT BUILDING CONTAINING 20,726-SQUARE FEET OF COMMUNITY CENTER AND GYMNASIUM SPACE AND 32,684-SQUARE FEET OF RESIDENTIAL SPACE ON ITS UPPER FLOORS. THE HOUSING COMPONENT OF THE PROJECT WOULD CONTAIN UP TO 50 UNITS OF AFFORDABLE HOUSING UNITS AT ITS UPPER LEVELS AND 21 OFF-STREET PARKING SPACES IN A BASEMENT GARAGE; AND RECOMMENDING THAT THE BOARD OF SUPERVISORS APPROVE A PROPOSED ORDINANCE TO AMEND THE PLANNING CODE BY ADDING SECTION 249.53 CREATING THE PRESIDIO-SUTTER SPECIAL USE DISTRICT; TO AMEND SPECIAL USE DISTRICT ZONING MAP SHEET SU03 TO INCLUDE THE PRESIDIO-SUTTER SPECIAL USE DISTRICT; AND TO AMEND THE HEIGHT AND BULK LIMIT FROM 40-X TO 40-X/55-X ON HEIGHT AND BULK LIMIT ZONING MAP SHEET HT03 FOR THE PROPERTY AT 800 PRESIDIO AVENUE, LOT 013 IN ASSESSOR'S BLOCK 1073 WITHIN THE RM-1 (RESIDENTIAL, MIXED, LOW-DENSITY) DISTRICT, AND TO MAKE AND ADOPT ENVIRONMENTAL FINDINGS AND FINDINGS OF CONSISTENCY WITH THE PRIORITY POLICIES OF PLANNING CODE SECTION 101.1 AND THE GENERAL PLAN.

Whereas, the Planning Department, the Lead Agency responsible for the implementation of the California Environmental Quality Act ("CEQA") has undertaken the environmental review process for the proposed Booker T. Washington Community Services Center Mixed-use Project and provided for appropriate public hearings before the Planning Commission; and

Whereas, the Booker T. Washington Community Services Center ("BTWCSC") seeks demolish an existing 31-foot tall, one-story with a partial basement building including a gymnasium at 800 Presidio Avenue and to construct a new mixed use building with a new community center and gymnasium that would serve the Western Addition and surrounding communities and an affordable housing component; and

Whereas, the gymnasium is a facility that is shared with Drew School and other schools and organizations who do not have a gymnasium; and

Whereas, the mixed-use project would include 48 units of affordable housing for low income households and two units for on-site managers; and

Whereas, 24 of the affordable units will be for Transitional Age Youths that require special programmatic support services; and

Whereas, the actions listed in Section I(c) of Attachment A to this Motion and referred to herein as "Approval Actions," are part of a series of City discretionary actions in connection with the approval of the Booker T. Washington Community Center Mixed-use Project; and

Whereas, the Planning Department determined that an Environmental Impact Report ("EIR") was required for the proposed project, and provided public notice of that determination by publication in a newspaper of general circulation on March 8, 2008; and

Whereas, the Planning Department, on June 23, 2010, published the Draft Environmental Impact Report ("DEIR"). The DEIR was circulated for public review in accordance with the California Environmental Quality Act ("CEQA"), the State CEQA Guidelines, California Public Resources Code section 21000 et seq., ("CEQA Guidelines"), and Chapter 31 of the San Francisco Administrative Code ("Chapter 31"). The Planning Commission held a duly advertised public hearing on said DEIR on August 5, 2010, at which opportunity for public comment was given, and public comment was received on the DEIR; and

Whereas, the Planning Department prepared responses to comments on the DEIR and published the Comments and Responses document on April 14, 2011, which together with the DEIR constitute the Final Environmental Impact Report ("FEIR"); and

Whereas, the sponsor has proposed minor modifications to the project as described in the FEIR (see discussion of "Modified Project" in Section C of the Response to Comments document), and the Department finds that these changes would not result in any new significant impacts not disclosed in the DEIR; impacts of greater severity than reported in the DEIR; or require new or substantially altered mitigation measures than those included in the DEIR; and

Whereas, by adopting this Motion, the Planning Commission makes Environmental Findings for the project identified in the Final EIR as the "Modified Project," which is referred to herein as the "Project"; and

Whereas, the Planning Commission, on April 28, 2011, by Motion No. 18340 reviewed and considered the FEIR and found that the contents of said report and the procedures through which the FEIR was prepared, publicized, and reviewed complied with the provisions of CEQA, the CEQA Guidelines and Chapter 31; and

Whereas, the Planning Commission, by Motion No. 18340 also certified the FEIR and found that the EIR was adequate, accurate, and objective, reflected the independent judgment of the Planning Commission, in compliance with CEQA, the CEQA Guidelines, and Chapter 31; and

Whereas, the Planning Department prepared proposed Environmental Findings, as required by CEQA, regarding the alternatives, mitigation measures and significant environmental impacts analyzed in the FEIR and overriding considerations for approving the Project, including all the actions listed in Attachment A and a proposed Mitigation Monitoring and Reporting Program, attached as Attachment B, which material was made available to the public and this Planning Commission for the Commission's review, considerations and actions; and

Whereas, on February 1, 2011, Supervisor Farrell introduced an Ordinance under Board of Supervisors (hereinafter "Board") File Number 110116 for a text change and map amendment to create the Presidio-Sutter Special Use District, which would 1) create a new Planning Code Section 249.53 establishing the Presidio-Sutter Special Use District, 2) amend the Special Use District Zoning Map Sheet SU03 to map this new Special Use District; and, 3) amend the Height and Bulk Limit from 40-X to 40-X/55-X on Height and Bulk Zoning Map HT03 of the City and County of San Francisco to refer to this new Special Use District; and

Whereas, the Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance for Application No. 2006.0868TZ on April 28, 2011; and,

Whereas, the Commission adopted the resolution on April 28, 2011, to approve the text change and zoning map amendments creating the Presidio-Sutter Special Use District and amending the height and bulk limit to 40-X/55-X; and,

Whereas, the Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented by Department staff and other interested parties; and

Whereas, the project site consists of one Assessor's parcel (Lot 013) of approximately 22,360 square feet in area on Assessor's Block 1073. The parcel is at the east side of Presidio Avenue between Sutter and Post Streets; and

Whereas, the Commission has reviewed all the files before it relating to all the discretionary Approval Actions in connection with the approval of the Booker T. Washington Community Services Center Mixed-use Project which includes the proposed Ordinance described above; and

Whereas, affordable housing specifically designed for transitional age youth with support services are woefully lacking and necessary to ensure their successful integration into and be a contributing member of society; and

Whereas, the new Presidio-Sutter Special Use District (SUD) would allow for a project that proposes to construct a five-story-over-basement, 55-foot tall mixed-use building to house a state-of-the-art community facility space to support BTWCSC's programs, a gymnasium, and up to 50 units of housing, for low to very-low income households and transitional age youths; and

Whereas, the proposed map changes and text amendment have been found to be consistent with the following relevant Objectives and Policies of the General Plan:

URBAN DESIGN ELEMENT

OBJECTIVE 1:
EMPHASIS OF THE CHARACTERISTIC PATTERN WHICH GIVES TO THE CITY AND ITS NEIGHBORHOODS AN IMAGE, A SENSE OF PURPOSE, AND A MEANS OF ORIENTATION.

Policy 1: Recognize and reinforce the existing street pattern, especially as it is related to the topography.

The proposed SUD would allow for a height bonus for affordable housing projects. The height change of 15 feet (from 40-X to 55-X) is not found to be a significant deviation from the existing height limit, particularly as the project is at a corner lot and on the uphill portion of the subject block. The height change recognizes and reinforces the existing street pattern.

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

The SUD will allow for an affordable housing project up to 55 feet in height. The proposed height limit at the project site would be harmonious with the street-face along Presidio Avenue. With regard to the City's urban form, the height limit amendment would allow for a slightly taller building at the uphill edge of the subject block and would be in keeping with the overall topography and building forms of the surrounding area. A height increase at the subject site is consistent with the pattern of larger-scaled, multi-unit buildings found on corner lots in the immediate neighborhood. As is typical in most residential neighborhoods throughout the City, large corner buildings often serve as structures that define and anchor city blocks.

OBJECTIVE 3:
MODERATION OF MAJOR NEW DEVELOPMENT TO COMPLEMENT THE CITY PATTERN, THE RESOURCES TO BE CONSERVED, AND THE NEIGHBORHOOD ENVIRONMENT.

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

The proposed controls for the SUD would limit density and height bonuses to projects with an affordable component. The controls for the dwelling unit density would allow for increased unit density for projects in which 60 percent of the proposed units are permanently affordable to very low and low income households. Establishment of the SUD would retain the base zoning for the property within the RM-1 Zoning District and the 40-X Height and Bulk District.

The project proposed within the SUD is of a modern architectural style that relates positively to the nearby residential buildings. The project is grounded in the common rhythms and elements of architectural expression found in the surrounding neighborhood. The massing of the project is broken down to reflect the patterns of each block-face with larger massing elements facing Presidio Avenue, a 60-foot wide avenue, and smaller massing facing Sutter Street, a 38-foot wide city street. The project would complement and be harmonious with the surrounding neighborhood character.

The massing on the Sutter Street facade of the project would be divided into two segments reflecting the width of the neighboring buildings. The segment adjacent to the building immediately to the east will be set back 10 feet at the residential level from the property line demising the two buildings. The street face of the building will be set back 11 feet at the fourth floor providing a three-story expression at Sutter Street. The fifth floor massing will be set back an additional 15 feet from the main rear facade.

The massing along Presidio Avenue will be divided into three components: residential, building entrance and community center/gymnasium. The residential component reflects the massing of the residential building across Sutter Street and is terminated by the vertical entry articulation. The community center will drop approximately 11 feet in height from the entrance element and will provide a transition to the lower neighboring building to the south. This massing strategy will provide a transition between the project and older adjacent buildings.

Policy 6: Relate the bulk of buildings to the prevailing scale of development to avoid an overwhelming or dominating appearance in new construction.

The SUD provides flexibility in building height for affordable housing projects. A Planning Code-complying project within the existing 40-X height limit in combination with the proposed dwelling unit density bonus contemplated as part of the new SUD, could result in buildings that are more massive, squat and bulky in appearance.

Policy 7: Recognize the special urban design problems posed in development of large properties.

The establishment of the SUD is proposed in conjunction with an application for Conditional Use Authorization of a Planned Unit Development, which is allowed for a large property of at least a half-acre in size. Some of the design problems typically occurring in larger urban developments are addressed by the project by responding to the visual character of the neighborhood with regard to the project's site design and the building scale and form. The project building will draw from elements that are common to the block including a base-middle-top configuration, and architectural elements such as vertically-oriented windows, belt courses and strong projecting cornices. Additional problems often occur at the base of larger developments where multiple garage entrances dominate the pedestrian level as seen in many large residential buildings in the neighborhood. The base of the project building will have one garage entrance on Sutter Street. The shared entrance and storefront-style windows that would make up the balance of the sidewalk frontage on Presidio Avenue will create a strong relationship to the street. The massing of the building will reflect the site characteristics of the existing topography and will not obscure any public views. The massing of the proposed building will reflect the pattern of each block-face with a larger massing on Presidio Avenue and massing that is narrower and descending on Sutter Street similar to the buildings directly across from the project site on Sutter Street.

Policy 3: Promote efforts to achieve high quality of design for buildings to be constructed at prominent locations.

The SUD would allow for the creation of much needed affordable housing with the density bonus, and the SUD provides flexibility in achieving a high-quality design for an affordable housing project by providing a height bonus. BTWCSC is an integral part of the neighborhood even though its current institutional design -- when compared to the character of the immediately surrounding residential buildings -- does not positively contribute to the neighborhood character. The project has been divided into segments to reflect the proportion and scale of nearby existing residential buildings, and the project's architectural style complements the older residential buildings as well as the newer mixed-use and commercial buildings in the neighborhood. The project is designed so that the massing, bulk, height, design, color, shape and other features will be contextually more appropriate in the neighborhood than the current one-story building.

OBJECTIVE 4:
IMPROVEMENT OF THE NEIGHBORHOOD ENVIRONMENT TO INCREASE PERSONAL SAFETY, COMFORT, PRIDE AND OPPORTUNITY.

Policy 1: Protect residential areas from the noise, pollution and physical danger of excessive traffic.

The SUD proposes amendments that affect only dwelling unit density and height. The underlying, existing RM-1 Zoning District would remain in place to regulate future uses and to protect other nearby residential areas. The Transportation Study for the Draft Environmental Impact Report concluded that the Project will not generate excessive traffic. The San Francisco Noise Ordinance (Police Code Article 29) and Title 24 of the California Building Code will ensure that nearby residences will not be exposed to excessive noise. As a mixed-use residential and community service center, the project will not cause pollution. Therefore, the project will not expose the nearby residential areas to noise, pollution or the physical danger of excessive traffic.

2004 HOUSING ELEMENT

OBJECTIVE 1:
TO PROVIDE NEW HOUSING, ESPECIALLY PERMANENTLY AFFORDABLE HOUSING, IN APPROPRIATE LOCATIONS WHICH MEETS IDENTIFIED HOUSING NEEDS AND TAKES INTO ACCOUNT THE DEMAND FOR AFFORDABLE HOUSING CREATED BY EMPLOYMENT DEMAND.

Policy 1.4: Locate in-fill housing on appropriate sites in established residential neighborhoods.

The SUD would be consistent with this policy as the existing RM-1 Zoning District is retained, while providing opportunities specific to affordable housing projects. The project site is a large under-developed lot in an established residential neighborhood. The addition of a residential component to the replacement facility for BTWCSC is appropriate and promotes this policy.

Policy 1.6: Create incentives for the inclusion of housing, particularly permanently affordable housing, in new commercial development projects.

The SUD will increase inclusion of permanently affordable housing. The incentive bonus provided for height and density by the SUD is calibrated by a percentage of affordable housing units provided on site. The City has consistently identified the need for affordable housing units. The project will provide up to 50 new permanently affordable housing units in an area easily accessed by public transit.

OBJECTIVE 4:
SUPPORT AFFORDABLE HOSING PRODUCTION BY INCREASING SITE AVAILABILITY AND CAPACITY.

Policy 4.1: Actively identify and pursue opportunity sites for permanently affordable housing
The BTWSCS site, located in a residential area, is currently underutilized, can accommodate a residential component with permanently affordable housing units, which is consistent with this policy.

The location of the SUD is desirable as it is located where the Western Addition neighborhood transitions into the neighborhoods of Pacific Heights, Presidio Heights and the Inner Richmond, and thus provides an opportunity for a diversity of housing types integrated into the City's existing neighborhoods.

Policy 4.4: Consider granting density bonuses and parking requirement exemptions for the construction of affordable housing or senior housing.

The SUD specifically identifies a density bonus only for projects that include permanently affordable housing units. The Planning Code does not require off-street parking for affordable housing units

OBJECTIVE 5:
INCREASE THE EFFECTIVENESS AND EFFICIENCY OF THE CITY'S AFFORDABLE HOUSING PRODUCTION SYSTEM.

Policy 5.2: Support efforts of for-profit and non-profit organizations and other community based groups and expand their capacity to produce and manage permanently affordable housing.

The SUD is proposed in conjunction with a project that is sponsored by the BTWSCS, a community-based organization that has continuously served San Francisco for more than 90 years. BTWCSC has entered into an agreement with the John Steward Company (JSCO), a firm with demonstrated ability to develop and manage affordable housing projects. The partnership with JSCO will enable BTWSCS to gain experience and the capacity to manage permanently affordable housing projects.

OBJECTIVE 8:
ENSURE EQUAL ACCESS TO HOUSING OPPORTUNITIES.

Policy 8.1: Encourage sufficient and suitable rental housing opportunities and emphasize permanently affordable rental units wherever possible.

The SUD would allow for an increased density for affordable housing projects. The housing units in the project will be rental units that are permanently affordable and will promote this objective and policy.

Policy 8.6: Increase the availability of units suitable for users with supportive housing needs.

Without the creation of the SUD, the subject site would be limited to 28 dwelling units pursuant to the density controls of the RM-1 Zoning District or up to 36 dwelling units with Conditional Use Authorization by the Planning Commission for development of a Planned Unit Development. The SUD would allow BTWCSC to create up to 50 affordable dwelling units, all of which are proposed to be studio units except for two manager units. Of the 48 studio units, 24 units will be transitional housing designated for emancipated foster youth, who will require on-site counseling and other supportive services to transition to independent living and to successfully integrate into society.

OBJECTIVE 10:
REDUCE HOMELESSNESS AND THE RISK OF HOMELESSNESS IN COORDINATION WITH RELEVANT AGENCIES AND SERVICE PROVIDERS.

Policy 10.1: Focus efforts on the provisions of permanent affordable and service-enriched housing to reduce the need for temporary homeless shelters.

The SUD would allow for increased density at the project site, which in combination with services provided by BTWCSC, actively promotes this policy. The housing and services provided by BTWCSC have been designed to provide the tenants a stable residential environment, career counseling, educational and specialized employment skills, tutoring, childcare services, and other supportive services to help them become productive members of society.

TRANSPORTATION ELEMENT

OBJECTIVE 2:
USE THE TRANSPORTATION SYSTEM AS A MEANS FOR GUIDING DEVELOPMENT AND IMPROVING THE ENVIRONMENT

OBJECTIVE 11 (TRANSIT FIRST):
MAINTAIN PUBLIC TRANSIT AS THE PRIMARY MODE OF TRANSPORTATION IN SAN FRANCISCO AND AS A MEANS THROUGH WHICH TO GUIDE FUTURE DEVELOPMENT AND IMPROVE REGIONAL MOBILITY AND AIR QUALITY.

The provisions of the SUD to increase the height limit and provide density bonuses at the subject site is appropriate, as the project site is easily accessible by public transit; two MUNI lines (Nos. 2 and 43) are within one block of the Site. MUNI lines 1, 1BX, 3, 31 and 31L are within three blocks of the project site. The location of the SUD is consistent with the City's Transit First Policy.

COMMUNITY FACILITIES ELEMENT

OBJECTIVE 3:
ASSURE THAT NEIGHBORHOOD RESIDENTS HAVE ACCESS TO NEEDED SERVICES AND A FOCUS FOR NEIGHBORHOOD ACTIVITIES.

Policy 1: Provide neighborhood centers in areas lacking adequate community facilities.

Policy 3: Develop centers to serve an identifiable neighborhood.

The SUD will allow for the continuation of the BTWCSC and provide the opportunity for the BTWCSC to create and operate permanently affordable housing. BTWCSC has been operating at the project site since 1952, serving the youth and the elderly in the Western Addition community. As the demographics of the neighborhood have changed, the population served by BTWCSC has followed, reflecting the ethnic diversity of the City and the neighborhood.

The BTWSCS site has convenient access to public transit, is located near support facilities such as Drew School and is 5-1/2 blocks from a branch public library. The continuing use of this site as a community center in the Western Addition as it has been for the last 58 years will not disrupt nor detract from the adjoining uses in the neighborhood.

Policy 2: Assure that neighborhood centers complement and do not duplicate existing pubic and private facilities.

Policy 8: Provide neighborhood centers with a network of links to other neighborhood and citywide services.

BTWCSC works closely with other educational institutions such as USF and Drew School, whose resources benefit the underprivileged youth served by BTWCSC. The project's gymnasium will be used by Drew School, Lycee Francais, Sports for Good and others, which will eliminate the need for construction of costly duplicative facilities.

Policy 5: Develop neighborhood centers that are multi-purpose in character, attractive in design, secure and comfortable, and inherently flexible to meeting the current and changing needs of the neighborhood served.

The SUD will allow for BTWCSC to add an affordable housing component to their existing community services center. The SUD will provide more affordable units than what the base RM-1 Zoning would allow. Additionally, the SUD provides flexibility in the building design by providing a height bonus for affordable housing projects. The proposed BTWSCS building has been designed with multi-purpose space that can evolve to meet the changing educational and career development needs of the community it serves.

Policy 7: Program the centers to fill gaps in needed services, and provide adequate facilities for ill-housed existing services.

The project proposed concurrent with the legislation for the SUD will replace an aging neighborhood facility that can no longer meet the needs of current and future programs and services sorely needed by the community.

Whereas, the proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code 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 creation of the SUD would not affect neighborhood-serving retail uses, as there is no neighborhood-serving retail use at the Site. The project site is zoned for residential use, and retail uses are not permitted. The increased unit density may provide nearby commercial uses with additional 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 SUD, with the unit density bonuses for affordable housing, would expand the cultural and economic diversity of the neighborhood and the City. The height incentive provided by the SUD allows for additional design flexibility with regard to shaping the project's height, massing and scale as compared to the constraints of the current 40-foot height limit. There are no existing dwelling units on site. The community center use will continue on the site; the cultural diversity of the neighborhood will be enhanced with the new residential component.

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

The creation of the SUD and the associated project would enhance the City's supply of permanently affordable housing. The building to be demolished contains no housing. The addition of up to 50 affordable units permanently affordable to those with incomes not exceeding 60 percent of the area median income will enhance the City's supply of affordable housing.

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

With regard to the project proposed as part of the creation of this new SUD, the Transportation Study for the existing BTWCSC analyzed the transportation effects of a proposed increase of 694 net new daily person trips (282 for the center and 412 for the residential component),[1] of which 116 (44 for Center and 72 for the residential component) would occur during the PM peak hour and determined it would have no significant effect on traffic, public transportation or parking. The project will increase the number of youth served by approximately 50 (from 100 to 150).[2] It is not anticipated that

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[1] The projected net new daily person trips are based on land use and not the actual number of youths served by BTWCSC. It is noted that the daily trips include both in-bound and out-bound trips.

[2] The program spaces can only accommodate an increase of 50 youths attending the various afterschool programs and teen center.

additional staff would be required; however, there will likely be more volunteers from Drew School, USF and other institutions who will act as resources for the afterschool programs. The seating capacity of the gymnasium will be decreased and the number of attendees for special evening events would be the same although the frequency may increase to an average of once a month.[3] *The Transportation Study and the Draft EIR concluded that the project will not have any significant effect on the streets, neighborhood parking and MUNI services.*

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 SUD does not affect industrial or service sector businesses. Such uses are not permitted in a residential area.

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

Affordable housing projects contemplated under the height and density bonuses provided by the SUD would be required to comply with all current Building Code seismic and fire safety standards.

G. That landmarks and historic buildings be preserved.

The proposed SUD would encourage the demolition of an historic resource to make way for a new construction project. The BTWCSC building is an historic resource because BTWCSC is the first community organization to provide services to the African-American community. The building is not located in a potential historic district. The adverse impact of the project on the historic resource has been fully analyzed in the Project EIR. While the project proposes demolition of the existing building, the project would allow BTWCSC to continue and enhance its long-standing community service uses.

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

The SUD would create a height limit over 40 feet. Per the Planning Code, buildings proposed over 40 feet in height are required to provide a shadow study pursuant to Planning Code Section 295. The proposed building would be up to 55 feet tall. A shadow fan study was prepared by the Planning Department and determined that the Project will not affect the sunlight access to any public parks or open space. The building is an infill development and will not impair any public view corridor.

NOW THEREFORE BE IT RESOLVED that the Commission hereby adopts the environmental findings attached hereto as Attachment A and the Mitigation and Monitoring and Reporting Program attached hereto as Attachment B.

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[3] Special events will be held at the gymnasium only after funds to purchase special floor covering become available. The size of the gymnasium would be the same as the current gymnasium on the site because its dimensions are dictated by the size of a regulation basketball court.

BE IT FUTHER RESOLVED that the Commission hereby recommends that the Board APPROVE the proposed Ordinance as described in this Resolution No. 18341 to create the Presidio-Sutter Special Use District.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on April 28, 2011.

Linda D. Avery

Commission Secretary

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

NOES: Commissioner Antonini

RECUSED: Commissioner Fong

ADOPTED: April 28, 2011

Attachment A

PREAMBLE

In determining to approve the project described in Section I, Project Description below, the ("Project"), the San Francisco Planning Commission ("Planning Commission," "Commission" or "City") makes and adopts the following findings of fact and decisions regarding the Project description and objectives, significant impacts, mitigation measures and alternatives, including a statement of overriding considerations, based on substantial evidence in the whole record of this proceeding and pursuant to the California Environmental Quality Act, California Public Resources Code Section 21000 et seq. ("CEQA"), particularly Section 21081 and 21081.5, the Guidelines for Implementation of CEQA, 14 California Code of Regulations Section 15000 et seq. ("CEQA Guidelines"), and Section 15091 through 15093, and Chapter 31 of the San Francisco Administrative Code ("Chapter 31"). The Commission adopts these findings in conjunction with the Approval Actions described in Section I(c), below, as required by CEQA. In approving the Project, the Planning Commission has required the Project Sponsor to commit to implementing all mitigation measures identified in the Final EIR; the Project Sponsor has acknowledged in writing the feasibility of the mitigation measures contained in the MMRP.

This document is organized as follows:

Section I provides a description of the proposed Booker T. Washington Community Center Mixed-Use Project, the environmental review process for the Project, the Planning Commission actions to be taken, and the location and custodian of the record.

Section II lists the Project's less-than-significant impacts and sets forth findings as to the disposition of the mitigation measures proposed in the Final EIR. (The Draft EIR and the Comments and Responses document together comprise the Final EIR.) Attachment B to this Planning Commission Motion contains the Mitigation Monitoring and Reporting Program ("MMRP"), which provides a table setting forth each mitigation measure listed in the Final Environmental Impact Report that is required to reduce or avoid a significant adverse impact. The MMRP is required by CEQA Section 21081.6 and CEQA Guidelines Section 15091. The MMRP specifies the agency responsible for implementation of each measure, establishes monitoring actions and a monitoring schedule.

Section III identifies significant project-specific or cumulative impacts that would not be eliminated or reduced to a less-than-significant level by the mitigation measures presented in the Final EIR.

Section IV identifies the project alternatives that were analyzed in the EIR and discusses the reasons for their rejection.

Section V sets forth the Planning Commission's Statement of Overriding Considerations pursuant to CEQA Guidelines Section 15093.

I. PROJECT DESCRIPTION AND PROCEDURAL BACKGROUND

a. Project Description

These environmental findings refer to the project identified in the Final EIR as the "Modified Project" (see Comments and Responses Document, Section C), referred to herein as the "Project." The Booker T. Washington Community Center ("BTWCSC" or "Project Sponsor") proposes to demolish an existing 31-foot-4-inch tall, one-story with a partial basement building, and to construct a five-story-over-basement,

55-foot-tall mixed-use structure at 800 Presidio Avenue (Assessor's Block 1073, Lot 13). The purpose of the project is to construct state-of-the art space to support BTWCSC's programs, which are targeted at at-risk youth, a gymnasium, and 50 units of housing, of which 24 units are affordable to low income households and 24 units are for low and very low income transitional aged youth. (See Project Objectives in Section IV(b), below.)

The proposed project site is in San Francisco's Western Addition neighborhood and is improved with a 13,745 gross square foot ("gsf") community service building that includes a gymnasium on a 22,360 square-foot (over 0.5 acre) lot at the southeast corner of Presidio Avenue and Sutter Street. The existing building was constructed in 1952 and has been determined to be a historic resource for purposes of environmental review because of its association with BTWCSC, which is the oldest community service agency providing continuous service to the African American community since 1919. The 800 Presidio Avenue lot contains the existing building, a small parking lot for three independent accessible cars (or six in tandem), and rear yard. The site slopes steeply downward to the east on Sutter Street and is fairly flat along Presidio Avenue. The site is within a residential, Mixed, Low Density (RM-1) zoning district and the 40-X height and bulk district.

The approximately 68,206 gsf mixed-use building would contain a 7,506 gsf gymnasium, 11,529 gsf of program space, a 1,691-sf child care center, 50 units of affordable housing with supportive service space, building storage, and a basement garage containing 21-off-street spaces. The housing component and the community service space would have a shared entrance on Presidio Avenue.

The seating capacity of the gymnasium would decrease from the existing 200 seats to 175 seats. BTWCSC would continue to have 10 full time and part-time staff, although some of part-time staff will become full time or be given more hours. The new building would allow BTWCSC to expand its after school and teen program from 100 to 150 attendees and to add a day care center for 24 children. The project requires a Planned Unit Development, Conditional Use authorization, exceptions from the rear yard, unit exposure requirement, usable open space, and street tree requirements, as well as reclassification of the site as an Affordable Housing Special Use District to increase the allowable dwelling density and the maximum allowable height.

b. Environmental Review

On March 8, 2008, 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 June 23, 2010, 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.

Notices of availability of the DEIR and of the date and time of the public hearing were posted near the project site by Department staff on August 25, 2010.

On August 24, 2010, 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.

Notice of Completion was filed with the State Secretary of Resources via the State Clearinghouse on August 24, 2010.

The Commission held a duly advertised public hearing on said DEIR on August 5, 2010 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 August 10, 2010.

The Department prepared responses to comments on environmental issues received at the public hearing and in writing during the 48-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 Draft Comments and Responses document, published on April 14, 2011, distributed to the Commission and all parties who commented on the DEIR, and made available to others upon request to the Department.

A Final Environmental Impact Report ("Final EIR" or "EIR") has been prepared by the Department, consisting of the DEIR, any consultations and comments received during the review process, any additional information that became available, and the Comments and Responses document, all as required by law. Since publication of the DEIR, no new information of significance has become available that would require recirculation of the EIR under CEQA Guidelines Section 15088.5.

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 at 1650 Mission Street, and are part of the record before the Commission.

On April 28, 2011, the Commission reviewed and considered the Final Environmental Impact Report and certified 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.

c. Planning Commission Actions

The Planning Commission is currently considering various actions ("Approval Actions") in furtherance of the Project, which include the following:

- Affirmative recommendation by the Planning Commission to the Board of Supervisors regarding the establishment of the "Presidio-Sutter Affordable Housing Special Use District" to allow for reclassification of the subject property's 40-X height limit to 55-X and to permit residential density as proposed;
- Zoning map amendments related to the reclassification of the 40-X height district to 55-X and the overlay Special Use District;
- Conditional Use authorization pursuant to Planning Code 303 for:
    - A building greater than 40 feet in height in a residential district
    - A childcare center caring for 13 or more children
    - A social or philanthropic facility use
- Establishment of a Planned Unit Development, with Planning Code exceptions sought for:
    - Common usable open space (Planning Code Section 135)

- Rear Yard (Planning Code Section 136)
- Dwelling Unit Light and Exposure (Planning Code Section 140); and,
- Street Trees (Planning Code Section 143)

d. Location of Records

The records upon which all findings and determinations related to the adoption of the proposed project are based include the following:

- The EIR, and all documents referenced in or relied upon by the EIR;
- All information (including written evidence and testimony) provided by City staff to the Planning Commission relating to the EIR, the proposed approvals and entitlements, the Project, and the alternatives set forth in the EIR;
- All information (including written evidence and testimony) presented to the Planning Commission by the environmental consultant and subconsultants who prepared the EIR, or incorporated into reports presented to the Planning Commission;
- All information (including written evidence and testimony) presented to the City from other public agencies relating to the project or the EIR;
- All applications, letters, testimony, and presentations presented to the City by the project sponsor and its consultants in connection with the project;
- All information (including written evidence and testimony) presented at any public hearing or workshop related to the project and the EIR;
- The MMRP; and
- All other documents comprising the record pursuant to Public Resources Code Section 21167.6(e).

The public hearing transcript, a copy of all letters regarding the Final EIR received during the public review period, the administrative record, and background documentation for the Final EIR are located at the Planning Department, 1650 Mission Street, 4th Floor, San Francisco. The Planning Department is the custodian of these documents and materials.

These findings are based upon substantial evidence in the entire record before the Planning Commission. The references set forth in these findings to certain pages or sections of the EIR or responses to comments in the Final EIR are for ease of reference and are not intended to provide an exhaustive list of the evidence relied upon for these findings.

II. LESS-THAN-SIGNIFICANT IMPACTS AND FINDINGS REGARDING MITIGATION MEASURES

The Final EIR finds that implementation of the Project would result in less-than-significant impacts in the following environmental topic areas: Land Use and Land Use Planning; Aesthetics; Population and Housing; Cultural (Archeological and Paleontological) Resources; Transportation and Circulation; Noise; Air Quality; Greenhouse Gas Emissions; Wind and Shadow; Utilities and Service Systems; Recreation; Public Services; Biological Resources; Hydrology and Water Quality; Hazards and Hazardous Materials; Mineral Resources; and Agricultural and Forestry Resources.

CEQA requires agencies to adopt mitigation measures that would avoid or substantially lessen a project's identified significant impacts or potential significant impacts if such measures are feasible. The findings in this section concern mitigation measures discussed in the Final EIR and presented in a Mitigation

Monitoring and Reporting Program ("MMRP"). A copy of the MMRP is included as Attachment 2 to the Planning Commission Motion adopting these findings, The Final EIR includes a series of mitigation measures that have been identified that would eliminate or reduce to a less-than-significant level potential environmental impacts of the Project listed in this section. All of the mitigation measures set forth in the Final EIR that are needed to reduce or avoid these significant adverse environmental impacts are contained the MMRP.

The Project Sponsor has agreed to implement all mitigation measures and improvement measures identified in the Final EIR (and MMRP).. As authorized by CEQA Section 21081 and CEQA Guidelines Section 15091, 15092, and 15093, based on substantial evidence in the whole record of this proceeding, the Planning Commission finds that, unless otherwise stated, the Project has been required to incorporated mitigation measures identified in the EIR into the project to mitigate or to avoid significant or potentially significant environmental impacts. Except as otherwise noted, these mitigation measures will reduce or avoid the potentially significant impacts described in the Final EIR, and the Commission finds that these mitigation measures are feasible to implement and are within the responsibility and jurisdiction of the City and County of San Francisco to implement or enforce.

Additionally, the required mitigation measures are fully enforceable and are included as conditions of approval in the Planning Commission's Planning Code Section 303 proceeding or will be enforced through inclusion as conditions of approval in any building permits issued for the Project by the San Francisco Department of Building Inspection. With the required mitigation measures, all potential project impacts, except for those associated with historical architecture resource impacts, would be avoided or reduced to a less-than-significant level (see Section III, below). The Planning Commission finds that the mitigation measures presented in the MMRP are feasible and shall be adopted as conditions of project approval.

III. SIGNIFICANT IMPACTS THAT CANNOT BE AVOIDED OR REDUCED TO A LESS-THAN-SIGNIFICANT LEVEL

Based on substantial evidence in the whole record of these proceedings, the Planning Commission finds that there are significant project-specific and cumulative impacts that would not be eliminated or reduced to an insignificant level by the mitigation measures listed in the MMRP. The Final EIR identifies a significant and unavoidable adverse effect to cultural (historic architectural) resources related to the demolition of the existing community center building at 800 Presidio Avenue. The Final EIR also indicates that implementation of the project would result in an adverse cumulative impacts related to the loss of an eligible historic resource in the Western Addition neighborhood. The FEIR identifies the following mitigation measure, which has been agreed to by the project sponsor.

a. Cultural Resources (Historic Architectural Resources)

M-C-P-1, Historic American Building Survey and Recordation: A common strategy for the mitigation of historical resources that would be adversely affected as part of the proposed project is through documentation and recordation of the resource prior to demolition using historic narrative, photographs and/or architectural drawings. While not required for state or local resources, such efforts often comply with the federal standards provided by the National Park Service's Historic American Building Survey (HABS). As such, the project sponsor shall document the existing exterior conditions of the Booker T. Washington Community Center according to HABS Level II documentation standards. According to HABS Standards, Level II documentation consists of the following tasks:

- Drawings: Existing drawings, where available, should be photographed with large format negatives or photographically reproduced on mylar.

- Photographs: Black and white photographs with large-format negatives should be shot of exterior of the Booker T. Washington Community Center, including a few shots of this building in its existing context. Historic photos, where available, should be reproduced using large-format photography, and all photographs should be printed on archival (acid-free) fiber paper. Some historic photos of the site are known to exist, as they were cited in the HRER.

- Written data: A report should be prepared that documents the existing conditions of the Booker T. Washington Community Center, as well as the overall history and importance of this African-American institution within San Francisco. Much of the historical and descriptive data used in preparation of the HRER can be reused for this task.

Documentation of the Booker T. Washington Community Center shall be submitted to the following four repositories:

- Documentation report and one set of photographs and negatives shall be submitted to the History Room of the San Francisco Public Library.

- Documentation report and one set of photographs and negatives shall be submitted to Booker T. Washington Community Center.

- Documentation report and xerographic copies of the photographs should be submitted to the Northwest Information Center of the California Historical Resources Information Resources System.

- Documentation report and xerographic copies of the photographs should be submitted to the San Francisco Planning Department for review prior to issuance of any permit that may be required by the City and County of San Francisco for demolition of Booker T. Washington Community Center.

The Commission considers this measure feasible, and although the sponsor has agreed to adopt the measure, though its implementation would not reduce the impacts to historical architectural resources to less-than-significant levels.

IV. EVALUATION OF PROJECT ALTERNATIVES

a. Alternatives Analyzed in the FEIR

This section describes the Project as well as alternatives and the reasons for approving the Project and for rejecting the alternatives. CEQA mandates that an EIR evaluate a reasonable range of alternatives to the Project or the Project location that generally reduce or avoid potentially significant impacts of the Project. CEQA requires that every EIR also evaluate a "No Project" alternative. Alternatives provide a basis of comparison to the Project in terms of their significant impacts and their ability to meet project objectives. This comparative analysis is used to consider reasonable, potentially feasible options for minimizing environmental consequences of the Project.

The Planning Department considered a range of alternatives in Chapter VI of the Final EIR. The Final EIR considered but rejected a Preservation Alternative and an Adaptive Reuse Alternative due to inability to meet most of the Project's objectives and infeasibility. The Final EIR analyzed the No Project (Alternative A) and the Code Compliant alternative (Alternative B) as full Project alternatives. Each alternative is discussed and analyzed in these findings, in addition to being analyzed in Chapter VI of the Final EIR. The Planning Commission certifies that it has independently reviewed and considered the information on the alternatives provided in the Final EIR and in the record. The Final EIR reflects the Planning Commission's and the City's independent judgment as to the alternatives. The Planning Commission finds that the Project provides the best balance between satisfaction of Project objectives and mitigation of environmental impacts to the extent feasible, as described and analyzed in the Final EIR, and adopts a statement of overriding considerations.

b. Project Objectives

As described above, the Project seeks to demolish a building that is a historic resource and to construct a new mixed-use building with a new BTWCSC and an housing component with 48 affordable units and two managers' units. The following are the Project Sponsors' objectives, as identified in Chapter III of the Final EIR:

- To continue, and expand community center uses at the project site.
- To replace the existing dilapidated building at the project site with a new, larger community center facility that could provide and expand on the types of services currently offered at the BTWCSC.
- To create a mixed-use project that contains a diverse mix of affordability levels services and programs that will help meet the needs of underserved, and often overlooked, populations in the City of San Francisco, including emancipated foster youth and low-income residents.
- To construct a building that is modern yet respectful of the architectural character of the neighborhood and provides a substantial amount of at grade rear yard open space.
- To provide moderate-density, affordable housing near existing public transit, thereby implementing mixed-income housing objectives articulated in the General Plan.
- To increase the supply of affordable rental housing in a high land cost area through new construction.
- To create jobs for the local construction workforce.
- To create a building that accommodates the spatial needs of BTWCSC while being consistent with the overall scale and character of the surrounding neighborhood.

c. Alternatives Rejected and Reasons for Rejection

CEQA provides that alternatives analyzed in an EIR may be rejected if "specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible . . . the project alternatives identified in the EIR." (CEQA Guidelines § 15091(a)(3).) The Commission has reviewed each of the alternatives to the Project as described in the Final EIR that would reduce or avoid the impacts of the Project and finds that there is substantial

evidence of specific economic, legal, social, technological and other considerations that make these Alternatives infeasible, for the reasons set forth below.

In making these determinations, the Planning Commission is aware that CEQA defines "feasibility" to mean "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, legal, and technological factors." The Commission is also aware that under CEQA case law the concept of "feasibility" encompasses (i) the question of whether a particular alternative promotes the underlying goals and objectives of a project, and (ii) the question of whether an alternative is "desirable" from a policy standpoint to the extent that desirability is based on a reasonable balancing of the relevant economic, environmental, social, legal, and technological factors.

FEIR Alternative A: No Project Alternative

The No Project Alternative would entail no physical land use changes at the project site (see analysis in Final EIR, Chapter VI.A). The No Project Alternative would prevent the Project's significant and unavoidable historical resources impact by avoiding demolition of the Center. It would, however, not meet the BTWCSC Project objectives. These include the objectives that pertain to the development of an enlarged community center, the creation of affordable housing, and the Center's ability to meet the needs of underserved populations by providing residential units intended to exclusively serve them. The Planning Commission rejects the No Project alternative as infeasible because would fail to meet Project Sponsor Objectives for reasons including, but not limited to, the following:

1. The 13,745 sf existing facility contains a 7,450 sf gymnasium, leaving only 6,295 gsf program, office, bath rooms, circulation, storage and building service. It does not have adequate program spaces for current programs to support contemporary educational and job skill training programs planned for the Center and lacks adequate space and infrastructure to meet the future programmatic needs of the Center, including quality programs for development of vocational and basic academic skills. The Project Sponsor's objective is the development of a larger state-of-the art community facility that can accommodate additional programs, including but not limited to an early childhood development program and an affordable housing component that includes 24 affordable transitional aged youth units with integrated supportive program designed specifically for them. The proposed project before the Commission has large common space planned for the ground floor of the housing component provides opportunities for social intercourse among residents. It also allows space for case management services for the transition-aged youth. Transition-aged youth living in the apartments would have the opportunity to integrate into the community and to develop and practice self-sufficiency skills in a real world setting with the assistance and support of case managers. It is intended that the residents in the other 24 affordable housing units will act as informal role models. Housing and community center uses together provide a venue whereby community activities can occur and natural bonds and supportive relationships can develop naturally and over time. Such opportunities would not occur under the No Project alternative. It is infeasible to achieve Project Sponsor's objectives to accommodate its future programs that would require 20,726 gsf through rehabilitation of the internal elements of the existing structure, not to mention the affordable housing component.

2. The No Project alternative would not result in a structurally sound facility to continue the work of BTWSCS with expanded programs, including a child care center, Youth Radio Studios,

vocational training, and other programs, nor use of this underutilized site to include an affordable housing component.

For the foregoing reasons, the Planning Commission rejects the No Project Alternative.

FEIR Alternative B: Code Compliant Alternative

The Code Compliant Alternative was selected because it would meet some of the Project Sponsor's objectives and would reduce overall environmental impacts relative to the Project (see analysis in Final EIR, Chapter VI.B). The Code Compliant Alternative would replace the existing community center structure on the project site with a mixed-use development that would consist of residential and community serving uses (consisting of a community center, a gymnasium, and a child-care facility). Under this alternative, the structure would be developed at a smaller scale and density than what is currently proposed. In addition, 59 parking spaces would be provided within a two-level, belowground parking garage, meeting the Planning Code requirement that would require 30 parking spaces for residential uses, 26 parking spaces for the gymnasium uses, and 3 parking spaces for childcare-related uses. The Code Compliant Alternative would orient the proposed gymnasium in a north-south orientation (parallel to Presidio Avenue), rather than in an east-west orientation as proposed by the project.

The CEQA Guidelines require that if the No-Project Alternative is found to be environmentally superior, "the EIR shall also identify an environmentally superior alternative among the other alternatives" (CEQA Guidelines, Section 15126.6[c]). Therefore, the Code-Compliant Alternative has been identified in Chapter VI of the DEIR as the environmentally superior alternative. This alternative, however, would not avoid, reduce or fully mitigate the project-related direct and cumulative significant unavoidable impacts to historic architectural resources to a less-than-significant level, since the existing structure on the site would be demolished. However, the Code Compliant Alternative would further reduce the magnitude of the project's less-than-significant impacts that pertain to the project's visual effects, land use compatibility and neighborhood character, and parking deficiencies.

The Planning Commission rejects the Code Compliant Alternative because, although a code compliant building would accommodate some of the BTWCSC programs, it would require the Project Sponsor to reduce the number of affordable housing units by 20 (i.e., 30 total units as opposed to 50 for the Project). A 30-unit housing development will not include specialize housing for transitional age youth, a primary objective of BTWCSC.

The Planning Commission was presented with information that a 41 unit building without a housing component for transitional aged youth housing would have a negative operating cash flow after 12 years, and a 41-unit affordable housing component will have a negative operation cash flow residential from the first year. This deficit will increase annually because the City's rent control ordinance limit the amount of annual rent increase, which will be lower than the projected average 3.5% cost of living increase. In addition, the Code Compliant Alternative would not provide an opportunity to design the southwest corner of the proposed building to provide transition to the lower downhill buildings on Sutter Street without further decreasing the number of affordable housing unit on site. In order to maximize the number of units under this alternative, the building would be constructed to the permitted height and bulk with no opportunity to decrease the mass of the building so that it would better relate to the adjacent one story single family home on Sutter Street, such as incorporating set backs on the Sutter Street facade. The Code Compliant alternative would also reduce the height of the gymnasium from 22

feet to 20 feet when the NCAA's minimum requirement and the preferred gymnasium height are 25 feet, thereby inhibiting the functionality of the gymnasium.

For the foregoing reasons, the Planning Commission rejects the Code Compliant Alternative as infeasible.

Alternatives Considered But Rejected From Further Consideration in the Draft EIR

In addition to the No Project and Code Compliant Alternatives, the Draft EIR analyzed two preservation alternatives that would have avoided demolition of the existing Center and potentially avoided the Project's historical resources impact. The Planning Department considered two variants of the preservation alternative: (1) an "Addition to the Existing Building" variant and (2) an Adaptive Reuse Variant. The Planning Department did not carry these alternatives forward for full analysis because due to basic lack of feasibility (see DEIR Chapter VI.C, and additional discussion in the Responses to Comments document at page C&R-113 to118, and C&R-136 to 141. The preservation variants are further discussed in detail below.)

1. Addition to the Existing Building

This alternative would require seismic and structural upgrade of the existing Center -- a structurally unsound building with a rotated and cracked foundation and no shear wall. In order to structurally upgrade the building to meet current Building Code requirements, it would need new reinforced concrete foundations with micro-piles at each foundation point, new grade beams, diagonal steel bracing and top cords on all walls to provide shear for the building. The existing truss system also requires substantial reinforcing. Rehabilitation of the existing building would decrease the amount of program space because the building is required to meet the accessibility and other current Building Code requirements and would not allow BTWCSC to expand its existing programs nor add new programs.

Under this alternative, a housing component would be constructed in the parking lot area and the rear yard. The 19,740-gsf residential component would be 40-foot-tall with only 27 units. The residential component would eliminate some of the windows on the eastern end of the buildings facing the rear yard. The community center would not be able to expand to accommodate the new programs. There would be no available space for supportive services for emancipated foster and transitional youth residing in the housing component. The community center program space would not be integrated except through a long tunnel in the basement area rendering supervision difficult. This alternative also would not accommodate a child care center or provide sufficient room to expand the BTWCSC program. Consequently, this alternative would not meet the Project Sponsor's objectives and is not a cost effective alternative.

This housing component design has a very high exterior-wall-to-plan area ratio, which would drive up the cost due to its inefficient plan layout. The pro-forma prepared for a 41 unit affordable component show that such a project would be operating with a cash flow deficit. A 27 units building generate, it

In addition, this preservation alternative is inconsistent with some of the objectives and goals of the Housing Element of the General Plan, including but not limited to:

2004 Housing Element

Objective 1: To provide new housing, especially permanently affordable housing, in appropriate locations which meets identified housing needs and takes into account the demand for affordable housing created by employment demand.

Policy 1.6: Create incentives for the inclusion of housing, particularly permanently affordable housing, in new commercial development projects.

Objective 4: Support affordable hosing production by increasing site availability and capacity.

Policy 4.4: Consider granting density bonuses and parking requirement exemptions for the construction of affordable housing or senior housing.

Objective 8: Ensure equal access to housing opportunities.

Policy 8.6: Increase the availability of units suitable for users with supportive housing needs.

Objective 10 Reduce homelessness and the risk of homelessness in coordination with relevant agencies and service providers.

Policy 10.1: Focus efforts on the provisions of permanent affordable and service-enriched housing to reduce the need for temporary homeless shelters.

Policy 10.2: Aggressively purse other strategies to prevent homelessness and the risk of homelessness by addressing its contributory factors.

Community Facilities Element

Policy 7: Program the centers to fill gaps in needed services, and provide adequate facilities for ill-housed existing services.

Alternative C (1) is infeasible and rejected by the Commission because it will decrease the number of on-site affordable housing units, will not provide expanded space for the programs, is not a cost effective alternative, and will not meet the Project Sponsor's objectives.

(2) Adaptive reuse of the Existing Building for Housing

Adaptive reuse of this building for housing would require a complete demolition of the interior of the existing building and necessitate structural strengthening described in the preservation variant above. This alternative would yield 22 to 25 units of affordable housing. The exterior walls would require modification to add additional windows. BTWSCS would be left with a 2-story residential building with no community program space. The affordable units would not be transitional aged youth units because the building would lack space for supportive services, which ensure that the transitional age youth and emancipated foster youth will be successfully integrated into and become a contributing member of society. This alternative would force BTWCSC to relocate or cease to exist. The historic significance is not credited to the architecture or the architect of the building, but the use of the building. Elimination of BTWCSC at the site would terminate historically significance of the building's association with BTWCSC.

In addition, the Adaptive Reuse Alternative is inconsistent with some of the objectives and goals of the Housing Element of the General Plan, including but not limited to:

2004 Housing Element

Objective 4: Support affordable hosing production by increasing site availability and capacity.

Policy 4.4: Consider granting density bonuses and parking requirement exemptions for the construction of affordable housing or senior housing.

Objective 10 Reduce homelessness and the risk of homelessness in coordination with relevant agencies and service providers.

Policy 10.1: Focus efforts on the provisions of permanent affordable and service-enriched housing to reduce the need for temporary homeless shelters.

Policy 10.2: Aggressively purse other strategies to prevent homelessness and the risk of homelessness by addressing its contributory factors.

Community Facilities Element

Objective 3: Assure that neighborhood Residents have access to needed services and a focus for neighborhood activities.

Policy 1: Provide neighborhood centers in areas lacking adequate community facilities.

Policy 2: Assure that neighborhood centers complement and do not duplicate existing pubic and private facilities.

Policy 3: Develop Centers to serve an identifiable neighborhood.

Policy 5: Develop neighborhood centers that are multi-purpose in character, attractive in design, secure and comfortable, and inherently flexible to meeting the current and changing needs of the neighborhood served.

Policy 7: Program the centers to fill gaps in needed services, and provide adequate facilities for ill-housed existing services.

Policy 8: Provide neighborhood centers with a network of links to other neighborhood and citywide services.

The adaptive reuse alternative is infeasible and rejected by the Commission because it will produce fewer number of affordable housing and eliminate BTWCSC at this Site. The gymnasium currently serves as a shared facility with other schools will be eliminated. Finally, the preservation alternative is infeasible and rejected because it would preserve the façade only and not the overall structure or use itself.

V. STATEMENT OF OVERRIDING CONSIDERATIONS

The Planning Commission finds that, notwithstanding the imposition of all feasible mitigation measures and alternatives, significant impacts related to Historic Resources will remain significant and unavoidable. Pursuant to CEQA section 21081 and CEQA Guideline Section 15093, the Planning Commission hereby finds, after consideration of the Final EIR and the evidence in the record, that each of

the specific overriding economic, legal, social, technological and other benefits of the Project as set forth below independently and collectively outweighs these significant and unavoidable impacts and is an overriding consideration warranting approval of the Project. Any one of the reasons for approval cited below is sufficient to justify approval of the Project. Thus, even if a court were to conclude that not every reason is supported by substantial evidence, the Commission will stand by its determination that each individual reason is sufficient. The substantial evidence supporting the various benefits can be found in the preceding findings, which are incorporated by reference into this Section, and in the documents found in the record, as defined in Section I.

On the basis of the above findings and the substantial evidence in the whole record of this proceeding, the Planning Commission specifically finds that there are significant benefits of the Project to support approval of the Project in spite of the unavoidable significant impacts, and therefore makes this Statement of Overriding Considerations. The Commission further finds that, as part of the process of obtaining Project approval, all significant effects on the environment from implementation of the Project have been eliminated or substantially lessened where feasible. All mitigation measures proposed in the EIR and MMRP are adopted as part of the Approval Actions described in Section I, above.

Furthermore, the Commission has determined that any remaining significant effects on the environment found to be unavoidable are acceptable due to the following specific overriding economic, technical, legal, social and other considerations.

The Project will have the following benefits:

1. The Project would increase the number of individuals served by the BTWCSC program by 50 (from 100 to 150), add a child care center component for 24 children, and otherwise expand the type of programs provided on site.

2. The Project would enable the center to increase the hours of the part time staff.

3. The BTWCSC programs result in increased ethnic and socio-economic diversity.

4. The BTWCSC after-school programs target at-risk youth and provide corresponding support services.

5. The housing component of the Project would add 48 permanently affordable units to the City's Housing stock managed by a non-profit organization. According to the 2010 Larkin Street Youth Services Report, there are an estimated 5,700 homeless and marginally house youth between the ages of 12-24 each year. Their housing need is served by basic center (dropped in shelters) and transitional housing in San Francisco. There are a total of 324 beds serving approximately 1,312 youth per year. 292 of the 324 beds have an average stay of over 365 days, and the 24-unit apartment house at Ellis Street has an average stay of 1,414 days. Due to high demand for transitional aged youth housing, the number of youth able to access transitional aged youth housing has decreased dramatically. Based on the 2010 report by Larkin Street Youth Services, of the youth requiring transitional aged youth housing, 64 percent are male, 31 percent female, 3 percent male transgender, 1 percent female transgender and 1 percent other. These youth are from diverse ethnic background, 30 percent are white/Caucasian, 28 percent African American, 21 percent Latino, 5 percent Asian and Pacific Islanders, 2 percent American Indian, 11percent multiracial, and 3 percent other.

6. Homeless youth need a wide range of services to enable them to transition successfully from the street to more stable, healthy, and gainful conditions.

7. The housing component of the Center has been designed as an integral part of the BTWCSC's service programs. Twenty-four of the transitional aged youth units will be for at risk emancipated foster youth. A housing program integrated with supportive services would enhance the success rate of these youth to become contributing members of society and act as role model for other at-risk youth.

8. Childcare centers are in high demand; affordable childcare is virtually non-existent. The inclusion of a childcare center for 24 children would provide access to on-site childcare to parenting youth while they develop skills that would enable them to enhance their employment, earn a living wage, and achieve positive, long term outcomes for their families.

9. The BTWCSC programs and services would strengthen life skills, motivate high school graduation, support higher education goals and prepare participants for careers in the 21st century.

10. In partnership with the University of San Francisco Environmental Science and Service Learning Department, students and youth served by BTWCSC would incorporate health and wellness activities in their daily lives.

11. The computer training program would bridge the digital divide and bring practical computer use and the internet to low-income homes, including the neighboring public housing residents, and help to prepare youth as well as adults from low-income families' job skills necessary to compete in the 21st century job market.

12. The transitional aged youth housing proposed for this Project is a 24-month housing support program, allows former foster youth ages 18 to 24 the opportunity to develop a sense of permanency for the first time in their lives. The on-site supportive services provide stability, build communities, and pave the way for successful, independent living.

13. The Food Pantry, organized by senior volunteers provides weekly produce, bread, dry foods and can goods to families in need and emergency food, a need that has grown during the current economic downturn.

14. Participants in Youth Radio program undergo creative professional development, media education, technical training, and academic support. They learn professional expectations and appropriate workplace behavior, long-term commitment and how to be viable contributors and leaders in the media/arts, journalism and civic life.

15. The Draft conditional use approval motion before this commission discusses and demonstrates that the Project is consistent with and implements many of the objective and policies of the General Plan.

17. The Conditions of Approval for the Project include all the mitigation and improvement measures that would mitigate the Project's potentially significant impact to insignificant levels, except for its impact on an Architectural Historic Resource.

Having considered the above, the Planning Commission finds that the benefits of the Project outweigh the unavoidable adverse environmental effects identified in the Final EIR, and that those adverse environmental effects are therefore acceptable.

EXHIBIT 1: MITIGATION MONITORING AND REPORTING PROGRAM

EXHIBIT 1
MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measures Agreed to by Project Sponsor	Responsibility for Implementation	Mitigation Schedule	Monitoring and Reporting Actions and Responsibility	Status / Date Completed
MITIGATION MEASURE M-CP-1 HABS-Level Recordation				
A common strategy for the mitigation of historical resources that would be lost as part of the proposed project is through documentation and recordation of the resource(s) prior to their demolition using historic narrative, photographs and/or architectural drawings. While not required for state or local resources, such efforts often comply with the federal standards provided by the National Park Service's Historic American Building Survey (HABS). As such, the project sponsor shall document the existing exterior conditions of the Booker T. Washington Community Center according to HABS Level II documentation standards. According to HABS Standards, Level II documentation consists of the following tasks: • Drawings: Existing drawings, where available, should be photographed with large format negatives or photographically reproduced on mylar. • Photographs: Black and white photographs with large-format negatives should be shot of exterior of the Booker T. Washington Community Center, including a few shots of this building in its existing context. Historic photos, where available, should be reproduced using large-format photography, and all photographs should be printed on archival (acid-free) fiber paper. Some historic photos of the site are known to exist, as they were cited in the HRER. • Written data: A report should be prepared that documents the existing conditions of the Booker T. Washington Community Center, as well as the overall history and importance of this African-	Project sponsor.	Prior to demolition activities.	Project sponsor.	Considered complete upon completion of the drawings, photographs, and written report and distribution of written report to all required parties.

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American institution within San Francisco. Much of the historical and descriptive data used in preparation of the HRER can be reused for this task. Documentation of the Booker T. Washington Community Center shall be submitted to the following four repositories: • Documentation report and one set of photographs and negatives shall be submitted to the History Room of the San Francisco Public Library. • Documentation report and one set of photographs and negatives shall be submitted to Booker T. Washington Community Center. • Documentation report and xerographic copies of the photographs should be submitted to the Northwest Information Center of the California Historical Resources Information Resources System. • Documentation report and xerographic copies of the photographs should be submitted to the San Francisco Planning Department for review prior to issuance of any permit that may be required by the City and County of San Francisco for demolition of Booker T. Washington Community Center.				
MITIGATION MEASURE M-CP-2: Archeological Resources				
Based on a reasonable presumption that archeological resources may be present within the project site, the following measures shall be undertaken to avoid any potentially significant adverse effect from the proposed project on buried or submerged historical resources. The project sponsor shall retain the	Project sponsor/ archeological consultant at the direction of the	Prior to soil-disturbing activities.	Archeological consultant shall report to the ERO.	During excavation, demolition and construction.

Mitigation Measures Agreed to by Project Sponsor	Responsibility for Implementation	Mitigation Schedule	Monitoring and Reporting Actions and Responsibility	Status / Date Completed
services of a qualified archeological consultant having expertise in California prehistoric and urban historical archeology. The archeological consultant shall undertake an archeological testing program as specified herein. In addition, the consultant shall be available to conduct an archeological monitoring and/or data recovery program if required pursuant to this measure. The archeological consultant's work shall be conducted in accordance with this measure at the direction of the Environmental Review Officer (ERO). All plans and reports prepared by the consultant as specified herein shall be submitted first and directly to the ERO for review and comment, and shall be considered draft reports subject to revision until final approval by the ERO. Archeological monitoring and/or data recovery programs required by this measure could suspend construction of the project for up to a maximum of four weeks. At the direction of the ERO, the suspension of construction can be extended beyond four weeks only if such a suspension is the only feasible means to reduce to a less than significant level potential effects on a significant archeological resource as defined in CEQA Guidelines Sections 15064.5 (a) and (c).	Environmental Review Officer (ERO).			Considered complete upon receipt of final monitoring report at completion of construction.
Archeological Testing Program. The archeological consultant shall prepare and submit to the ERO for review and approval an archeological testing plan (ATP). The archeological testing program shall be conducted in accordance with the approved ATP. The ATP shall identify the property types of the expected archeological resource(s) that potentially could be adversely affected by the proposed project, the testing method to be used, and the locations recommended for testing. The purpose of the archeological testing program will be to determine to the extent possible the presence or absence of archeological resources and to identify and to evaluate whether any archeological resource encountered on the site constitutes an historical	Project sponsor/ archeological consultant/ archeological monitor/ contractor(s), at the direction of the ERO.	During all soil-disturbing activities.	Project sponsor/ archeological consultant/ archeological monitor/ Contractor(s), and the ERO.	During excavation, demolition and construction. Considered complete upon submittal of the written report of the findings to the ERO.

Mitigation Measures Agreed to by Project Sponsor	Responsibility for Implementation	Mitigation Schedule	Monitoring and Reporting Actions and Responsibility	Status / Date Completed
resource under CEQA. At the completion of the archeological testing program, the archeological consultant shall submit a written report of the findings to the ERO. If based on the archeological testing program the archeological consultant finds that significant archeological resources may be present, the ERO in consultation with the archeological consultant shall determine if additional measures are warranted. Additional measures that may be undertaken include additional archeological testing, archeological monitoring, and/or an archeological data recovery program.				
If the ERO determines that a significant archeological resource is present and that the resource could be adversely affected by the proposed project, at the discretion of the project sponsor either: A) The proposed project shall be re-designed so as to avoid any adverse effect on the significant archeological resource; or B) A data recovery program shall be implemented, unless the ERO determines that the archeological resource is of greater interpretive than research significance and that interpretive use of the resource is feasible.	Project sponsor	If a significant archeological resource is present	Project sponsor/ archeological consultant/ archeological monitor/ contractor(s), and the ERO. Monitor throughout all soils-disturbing activities.	During excavation, demolition and construction. Considered complete upon receipt of final monitoring report at completion of construction.
Archeological Monitoring Program. If the ERO in consultation with the archeological consultant determines that an archeological monitoring program shall be implemented the archeological monitoring program shall minimally include the following provisions: • The archeological consultant, project sponsor, and ERO shall meet and consult on the scope of the AMP reasonably prior to any project-	Project sponsor/ archeological consultant/ archeological monitor/ contractor(s), at the	Monitor throughout all soil-disturbing activities.	Project sponsor/ archeological consultant/ archeological monitor/ Contractor(s), and	During excavation, demolition and construction. Considered complete upon

Mitigation Measures Agreed to by Project Sponsor	Responsibility for Implementation	Mitigation Schedule	Monitoring and Reporting Actions and Responsibility	Status / Date Completed
related soils disturbing activities commencing. The ERO in consultation with the archeological consultant shall determine what project activities shall be archeologically monitored. In most cases, any soils- disturbing activities, such as demolition, foundation removal, excavation, grading, utilities installation, foundation work, driving of piles (foundation, shoring, etc.), site remediation, etc., shall require archeological monitoring because of the risk these activities pose to potential archaeological resources and to their depositional context; • The archeological consultant shall advise all project contractors to be on the alert for evidence of the presence of the expected resource(s), of how to identify the evidence of the expected resource(s), and of the appropriate protocol in the event of apparent discovery of an archeological resource; • The archeological monitor(s) shall be present on the project site according to a schedule agreed upon by the archeological consultant and the ERO until the ERO has, in consultation with project archeological consultant, determined that project construction activities could have no effects on significant archeological deposits; • The archeological monitor shall record and be authorized to collect soil samples and artifactual/ecofactual material as warranted for analysis; • If an intact archeological deposit is encountered, all soils-disturbing activities in the vicinity of the deposit shall cease. The archeological monitor shall be empowered to temporarily redirect demolition/excavation/pile driving/construction activities and	direction of the ERO.		the ERO. Monitor throughout all soils-disturbing activities.	receipt of final monitoring report at completion of construction.

Mitigation Measures Agreed to by Project Sponsor	Responsibility for Implementation	Mitigation Schedule	Monitoring and Reporting Actions and Responsibility	Status / Date Completed
equipment until the deposit is evaluated. If in the case of pile driving activity (foundation, shoring, etc.), the archeological monitor has cause to believe that the pile driving activity may affect an archeological resource, the pile driving activity shall be terminated until an appropriate evaluation of the resource has been made in consultation with the ERO. The archeological consultant shall immediately notify the ERO of the encountered archeological deposit. The archeological consultant shall make a reasonable effort to assess the identity, integrity, and significance of the encountered archeological deposit, and present the findings of this assessment to the ERO. • Whether or not significant archeological resources are encountered, the archeological consultant shall submit a written report of the findings of the monitoring program to the ERO.				
If an archeological data recovery program is required by the ERO, the archeological data recovery program shall be conducted in accord with an archeological data recovery plan (ADRP). The archeological consultant, project sponsor, and ERO shall meet and consult on the scope of the ADRP prior to preparation of a draft ADRP. The archeological consultant shall submit a draft ADRP to the ERO. The ADRP shall identify how the proposed data recovery program will preserve the significant information the archeological resource is expected to contain. That is, the ADRP will identify what scientific/historical research questions are applicable to the expected resource, what data classes the resource is expected to possess, and how the expected data classes would address the applicable research questions. Data recovery, in general, should be limited to the portions of the historical property that could be adversely affected by the proposed project. Destructive	Archeological consultant at the direction of the ERO	If there is a determination that an ADRP program is required	Project sponsor/ archeological consultant/ archeological monitor/ contractor(s), and the ERO. Monitor throughout all soils-disturbing activities.	During excavation, demolition and construction. Considered complete upon receipt of final monitoring report at completion of construction.

Mitigation Measures Agreed to by Project Sponsor	Responsibility for Implementation	Mitigation Schedule	Monitoring and Reporting Actions and Responsibility	Status / Date Completed
data recovery methods shall not be applied to portions of the archeological resources if nondestructive methods are practical. The scope of the ADRP shall include the following elements: • *Field Methods and Procedures.* Descriptions of proposed field strategies, procedures, and operations. • *Cataloguing and Laboratory Analysis*. Description of selected cataloguing system and artifact analysis procedures. • *Discard and Deaccession Policy*. Description of and rationale for field and post-field discard and deaccession policies. • *Interpretive Program*. Consideration of an on-site/off-site public interpretive program during the course of the archeological data recovery program. • *Security Measures*. Recommended security measures to protect the archeological resource from vandalism, looting, and non-intentionally damaging activities. • *Final Report*. Description of proposed report format and distribution of results. • Curation. Description of the procedures and recommendations for the curation of any recovered data having potential research value, identification of appropriate curation facilities, and a summary of the accession policies of the curation facilities.				
Human Remains and Associated or Unassociated Funerary Objects. The treatment of human remains and of associated or unassociated funerary objects discovered during any soils disturbing activity shall comply with applicable	Project sponsor / archeological consultant in	In the event human remains and/or funerary	Project sponsor/ archeological consultant/ San	During excavation, demolition and

Mitigation Measures Agreed to by Project Sponsor	Responsibility for Implementation	Mitigation Schedule	Monitoring and Reporting Actions and Responsibility	Status / Date Completed
State and Federal laws. This shall include immediate notification of the Coroner of the City and County of San Francisco and in the event of the Coroner's determination that the human remains are Native American remains, notification of the California State Native American Heritage Commission (NAHC) who shall appoint a Most Likely Descendant (MLD) (Pub. Res. Code Sec. 5097.98). The archeological consultant, project sponsor, and MLD shall make all reasonable efforts to develop an agreement for the treatment of, with appropriate dignity, human remains and associated or unassociated funerary objects (CEQA Guidelines. Sec. 15064.5(d)). The agreement should take into consideration the appropriate excavation, removal, recordation, analysis, custodianship, curation, and final disposition of the human remains and associated or unassociated funerary objects.	consultation with the San Francisco Coroner, NAHC, and MLD.	objects are found.	Francisco Coroner/ NAHC/ MDL. Monitor throughout all soils-disturbing activities	construction. Considered complete upon receipt of final monitoring report at completion of construction.
Final Archeological Resources Report. The archeological consultant shall submit a Draft Final Archeological Resources Report (FARR) to the ERO that evaluates the historical significance of any discovered archeological resource and describes the archeological and historical research methods employed in the archeological testing/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. 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	Project sponsor/ archeological consultant at the direction of the ERO.	After completion of the archeological data recovery, inventorying, analysis and interpretation.	Project sponsor/ archeological consultant/ ERO	Following completion of soil disturbing activities. Considered complete upon Planning Department receipt of final monitoring report at completion of construction.

Mitigation Measures Agreed to by Project Sponsor	Responsibility for Implementation	Mitigation Schedule	Monitoring and Reporting Actions and Responsibility	Status / Date Completed
interest in or the high interpretive value of the resource, the ERO may require a different final report content, format, and distribution than that presented above.				
MITIGATION MEASURE M-BI-1: Breeding Birds				
If active construction work (i.e., demolition, ground clearing and grading, including removal of site vegetation) is scheduled to take place during the non-breeding season (September 1 through January 31), no mitigation is required. If such construction activities are scheduled during the breeding season (February 1 through August 31), the following measures will be implemented to avoid and minimize impacts on nesting raptors and other protected birds: No more than two weeks before construction, a qualified wildlife biologist will conduct preconstruction surveys of all potential nesting habitat within 250 feet of the construction site where access is available. If active nests of protected birds are found during preconstruction surveys, a no-disturbance buffer will be created around active nests during the breeding season, or until it is determined that all young have fledged. Typical buffers include 250 feet for non-raptor nesting birds (e.g., shorebirds, waterfowl, and passerine birds). The size of these buffer zones and types of construction activities restricted in these areas will be based on existing noise and human disturbance levels in the project area. If preconstruction surveys indicate that protected bird nests are inactive or potential habitat is unoccupied during the construction period, no further	Project sponsor and a qualified wildlife biologist.	If construction is scheduled between February 1st and August 31st, within two weeks prior to construction commencement.	Project sponsor and a qualified wildlife biologist.	Considered complete upon preparation of a memorandum summarizing findings by the qualified wildlife biologist.

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mitigation will be required. If construction commences during the non-breeding season and continues into the breeding season, birds that nest adjacent to the project area could acclimate to construction activities. However, surveys of nesting sites will be conducted and no-disturbance buffer zones established around active nests as needed to prevent impacts on nesting birds and their young.				
MITIGATION MEASURE M-HZ-2: Hazardous Building Materials				
The City shall condition future development approvals to require that the subsequent project sponsors ensure that any equipment containing PCBs or mercury, such as fluorescent light ballasts, are removed and properly disposed of according to applicable federal, state, and local laws prior to the start of renovation, and that any fluorescent light tubes, which could contain mercury, are similarly removed and properly disposed of. Any other hazardous materials identified, either before or during work, shall be abated according to applicable federal, state, and local laws.	Project sponsor.	During demolition activities.	San Francisco Planning Department to review building materials surveys and monitor abatement compliance	Considered complete upon receipt by the San Francisco Planning Department of final abatement compliance report.

Improvement Measures Identified by Planning Department Staff	Responsibility for Implementation	Implementation Schedule	Monitoring and Reporting Actions and Responsibility	Status / Date Completed
IMPROVEMENT MEASURE I-TR-1: Leasing of Parking				
The project sponsors should investigate the possibility of long-term leasing of parking spaces at the shopping center lot (at 2575 Geary Boulevard) for use by the community center for evening programs and events.	Project Sponsor.	Prior to reopening of the new community center.	Project sponsor to report to Planning Department Northwest Quadrant	Ongoing.
IMPROVEMENT MEASURE I-TR-2: Garage Safety				
The project sponsor should install a directional mirror in the garage so that drivers would have a view of Sutter Street. The garage would provide a vehicle approach warning signal (buzzer or beeper) to alert pedestrians of cars exiting the garage.	Project Sponsor, building management.	Prior to building occupation..	Project sponsor to report to Planning Department Northwest Quadrant	Considered complete upon submittal of a memo to Planning Department stating that this measure was implemented.

IMPROVEMENT MEASURE I-TR-3: Loading Management Plan				
As part of the project, the project sponsor could establish a loading management plan. The intent of the plan would be to eliminate the potential of double-parked freight trucks on Presidio Avenue in front of the building. Large deliveries and tenant move-ins and move-outs would be scheduled and coordinated through the property manager to ensure that the designated on-street loading spaces would be available as needed. Tenants would be required to provide advance notification to the property manager of date and time of move-ins and move-outs. The freight management plan would be extended to all freight deliveries and service calls to the building. Delivery and service calls at the building to the extent possible shall be scheduled between the hours of 9:00 a.m. and 3:30 p.m. in order to avoid the peak periods of Muni's Presidio Electric Trolley Coach Division pull-out and pull-in activities.	Project Sponsor, building management.	Prior to building occupation..	Project sponsor to report to Planning Department Northwest Quadrant	Considered complete upon submittal of the loading management plan.
IMPROVEMENT MEASURE I-TR-4: Coordination with Waste Hauler				
As part of the project, building management would coordinate with Sunset Scavenger as to specific location of garbage containers on pick-up day, consistent with collection services currently provided for other residential buildings in the area, to ensure minimal disruption of traffic flow on the streets.	Project Sponsor, building management.	Prior to building occupation.	Project sponsor to report to Planning Department Northwest Quadrant	Considered complete upon receipt by the San Francisco Planning Department of a memo summarizing the coordination

				outcomes with Sunset Scavenger.
IMPROVEMENT MEASURE I-TR-5: Community Center Safety Program				
In order to reduce potential circulation conflicts associated with passenger loading, the project sponsor would establish a community center safety program, which would focus on safe (assisted) crossings of Presidio Avenue and Sutter Street during the weekday evening commute period (4:00 p.m. to 6:00 p.m.). The program could rely on employees or volunteers to serve as crossing guards, or contract with a private company for these services. The community center would also provide weekday evening commute period curbside assistance to drivers arriving to pick-up children and other center users. A goal of this effort would be to limit incidents of double parking on Presidio Avenue through coordination with drivers, center staff and passengers. Community center staff would assemble children at the curb prior to a scheduled pick-up, thus reducing the need for drivers to leave their double parked vehicle and enter the center, as currently occurs. While double parking would not be eliminated, the average length of time of double parked vehicles could be substantially reduced. In addition to assisted street crossings and passenger loading assistance, community center management would make a concerted effort to identify and facilitate ridesharing opportunities among drivers who consistently pick-up passengers at the center.	Project Sponsor/ community center management.	Prior to reopening of the new community center and compliance with the program would be ongoing.	Project sponsor to report to Planning Department Northwest Quadrant	Considered complete upon receipt by the San Francisco Planning Department of a memo summarizing the community center safety program.

IMPROVEMENT MEASURE I-TR-6: Passenger Loading Zone				
The project sponsors would meet with the Sustainable Streets Division of the San Francisco Municipal Transportation Agency regarding the possibility of securing curbside frontage on Presidio Avenue for passenger loading. An extended passenger loading zone in front of the community center between the hours of 4:00 p.m. and 6:00 p.m. would reduce the incidents of double parking and improve peak period vehicle, pedestrian and bicycle circulation. It should be noted that a consequence of establishing a curbside loading zone in this area would exacerbate already constrained parking conditions (by displacing two general-use parking spaces) and would require a high level of enforcement activity (including vehicle towing).	Project Sponsor.	Prior to reopening of the new community center, ongoing enforcement.	SFMTA	Prior to completion of construction
IMPROVEMENT MEASURE I-TR-7: Construction Traffic Management				
During the construction period, the project sponsor would limit construction truck movement to the hours between 9:00 a.m. and 3:30 p.m., or other hours if approved by SFMTA, and to prohibit staging or unloading of equipment and materials during the periods of 7:00 a.m. to 9:00 a.m. and 3:30 p.m. to 6:00 p.m., to minimize peak-period traffic conflicts and to accommodate queuing of Muni buses during the peak hours of service. The project sponsor and construction contractor would meet with SFMTA, the Fire Department, Muni, and the Planning Department to determine feasible traffic management and improvement measures to reduce traffic congestion during construction of this project.	Project Sponsor.	During project construction.	SFMTA	Prior to completion of construction

IMPROVEMENT MEASURE I-TR-8: Parking Leasing for Construction Workers				
The project sponsors should investigate the possibility of leasing parking spaces at the shopping center (2575 Geary Boulevard) lot for use by construction workers for the duration (estimated 18 months) of the construction activity.	Project Sponsor.	Prior to commencement of construction activities.	Project sponsor to report to Planning Department Northwest Quadrant	Considered complete upon receipt by the San Francisco Planning Department of a memo summarizing outcome of coordination with 2575 Geary Boulevard property managers.