



SAN FRANCISCO PLANNING DEPARTMENT

Letter of Determination

November 29, 2017

Mr. Charles J. Higley
Farella Braun + Martel LLP
Russ Building
235 Montgomery Street, 17th Floor
San Francisco, CA 94104

Site Address: 555 Howard Street
Assessor's Block/Lot: 3736/086
Zoning District: C-3-O(SD) (Downtown—Office (Special Development))
Staff Contact: Andrew Perry, (415) 575-9017 or andrew.perry@sfgov.org

Dear Mr. Higley:

This letter is in response to your August 2, 2017 request to waive or modify the requirements of Planning Code Section 139 (Standards for Bird-Safe Buildings) for the project at 555 Howard Street ("Project"). The property is located in the C-3-O(SD) (Downtown—Office Special Development) Zoning District and 350-S Height and Bulk District. The Project is being undertaken by Pacific Eagle Holding ("Project Sponsor"), as owner and developer.

Planning Code Section 139(c)(3)(C) states that the Zoning Administrator may either waive the requirements contained within Section 139(c)(1) (Location-Related Standards) and Section 139(c)(2) (Feature-Related Standards) or modify such requirements to allow equivalent Bird-Safe Glazing Treatments upon the recommendation of a qualified biologist.

In considering a waiver or modification from Planning Code Section 139, it is necessary to determine which Bird-Safe Standards apply – Location-Related and/or Feature-Related Standards. While the property is not located within 300 feet of an established Urban Bird Refuge, nevertheless, the property is located within 300 feet of the site of the future Transbay Transit Center, which contains an elevated rooftop park known as "City Park" ("Park"). The Park will function as an approximately 5.4 acre rooftop park and will be well vegetated with trees and shrubs, which could provide habitat for birds. Given that the Park's landscaped and vegetated area is greater than 2 acres in size, and the proposed glass façade of the Project is within 300 feet of, and in an unobstructed line to the Park, it has been determined that the Location-Related Standards of Planning Code Section 139(c)(1) apply to the Project, starting at the height level of the Park's vegetated roof and extending upwards for 60 feet from such point.

Additionally, the Project contains two outdoor terraces, the first located at level 21 for use by condominium residents, the other located at the uppermost roof (level 37) and open to the general public. These terrace areas will be landscaped with trees and other plantings, and are bordered by free-standing glass windscreens that replicate the overall fenestration patterns of the building at the levels below. The

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

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

windscreens will rise approximately 10 and 20 feet above the finished surface of the terraces at levels 21 and 37, respectively. Each individual windscreen pane, as found similarly on the rest of the building, will be separated by approximately 4-inch wide vertical mullions and horizontal spandrels between 14- and 17-inches tall; however, each individual pane will contain roughly 27.5 square feet of unbroken glazing. As these panes are larger than 24 square feet and constitute a free-standing glass wall or wind barrier, they are considered a Feature-Related Hazard; therefore, it has been determined that the Feature-Related Standards of Planning Code Section 139(c)(2) apply to the proposed windscreens at terrace levels 21 and 37.

In assessing Bird-Safe Standards for the Project, the Project Sponsor retained the services of H.T. Harvey & Associates, an ecological consulting firm, to prepare an Avian Collision Risk Assessment report dated April 2017 ("Report"). The Report, prepared by Stephen C. Rottenborn, Ph.D., a wildlife ecologist and qualified ornithologist, challenged the overall avian collision risk posed by the Project citing a low, native resident bird population in the existing conditions surrounding the property, and the likelihood still for low bird use in the Park upon completion, given that migratory birds are less likely to habituate to the conditions found in urban parks. Additionally, the Report also noted that the Project site is not located immediately adjacent to the Park, but rather just within the 300-foot radius, fully separated by Howard Street and the highly likely additional tower developments along the northwest side of Howard Street.¹ The Report cited the Project's unique architectural design features which will help the building appear more conspicuous; specifically, 4-inch vertical mullions, which separate the individual glass panes, will project out by 7 inches from the building's exterior on the northern and eastern facades, which are the facades most directly facing the Park, and help to make the building appear more solid from oblique sight angles. With regard to the proposed terrace windscreens at terrace levels 21 and 37, the Report acknowledges that birds flying over the site (e.g. long-distance migrants) may be drawn to the trees and vegetation proposed for the terrace rooftops, and subsequently collide with these free-standing feature-related hazards. The Report then goes on to argue, however, that the potential for such collisions is low due to the overall height of the building, the relative undesirability of the rooftop terrace as a place of habitat in comparison to the larger and more vegetated City Park above the Transbay Terminal, the continuation of the mullion pattern from the rest of the building below, and the incorporation of solar hot water tubes behind the glass windscreens on the southern and western sides of the building.

In consideration of the Report, the Planning Department concurs with the findings that the building's design features, specifically the projecting mullions on the northern and eastern facades, could help reduce avian collisions. These mullions will be particularly visible from oblique angles, which characterize any likely approach route a bird traveling from the Park is likely to take. These oblique approaches are primarily due to the anticipated tower developments along the northwestern side of Howard Street. Once completed, these towers will not only eliminate any straight, direct line between the Project and the Park, but they will also generally act as a buffer and flight deterrent between the two sites.

¹ Anticipated developments along the northwest side of Howard Street include: (a) 542-550 Howard Street (Transbay Parcel F) – entitlements submitted and under review, proposed for 61-story, 800-foot tall building; (b) 524 Howard Street – entitlements approved for 48-story, 495-foot tall building; and (c) 540 Howard Street – preliminary project review meeting held only.

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However, the Department does not concur with the Report's conclusion that a waiver should be granted for the feature-related hazards found in the glass windscreens at the rooftop terraces. Migratory birds, and particularly juvenile migrants, have been found to be some of the most at-risk for potential building collisions. The referenced mullions only project outward from the building, and would not help the building appear more conspicuous for birds that do manage to land on the rooftop terraces and are then facing the interior surfaces of the glass windscreens. The proposed solar hot water tubes are effective as an alternative bird-safe treatment given their narrow spacing, however, these are not proposed along the northern and eastern facades. Therefore, treatment of the feature-related hazards along the northern and eastern facades are still required pursuant to Planning Code Section 139(c)(2). It should be noted that any future removal of the solar hot water tubes along the southern and western facades would also necessitate bird-safe treatments in those locations as well.

Lastly, the Project Sponsor has voluntarily introduced an Avian Collision Monitoring Plan ("Monitoring Plan"), prepared by H.T. Harvey & Associates, and aimed at monitoring avian collisions following the construction of the Project. The Monitoring Plan, which is intended to collect data from avian collisions, calls for the evaluation of potential "hotspots" where there are higher frequencies of avian collisions occurring, and the consideration of post-construction measures to reduce avian collisions. The Project Sponsor and their assigned Avian Collision Monitors should pay particular attention to areas with indoor vegetation placed along or near the building's glass facades, and around vegetated areas on the rooftop terraces. As the Project Sponsor periodically reviews avian collision data to determine whether any potential hotspots are present, this data shall also be shared with the Planning Department.

In response to the requirement set forth in Planning Code Section 139 for Location-Related and Feature-Related Standards, the Project Sponsor has demonstrated partial compliance with the requirements. Therefore, based upon the findings listed above, and the evidence outlined in the April 20, 2017 Report, I hereby grant a waiver from the requirements of Planning Code Section 139(c)(1)(A); however, bird-safe treatments are still required for any feature-related hazard where solar hot water tubes are not present and functioning as an alternative means of compliance.

APPEAL: If you believe this determination represents an error in interpretation of the Planning Code or abuse in discretion by the Zoning Administrator, an appeal may be filed with the Board of Appeals within 15 days of the date of this letter. For information regarding the appeals process, please contact the Board of Appeals located at 1650 Mission Street, Room 304, San Francisco, or call (415) 575-6880.

Sincerely,



Scott F. Sanchez
Zoning Administrator

cc: Thomas Mead, Pacific Eagle Holdings Corporation, 353 Sacramento Street, Suite 1788,
San Francisco, CA 94111
Mark Cavagnero Associates Architects, 1045 Sansome Street, Suite 200, San Francisco, CA 94111
Neighborhood Groups