



SAN FRANCISCO PLANNING DEPARTMENT

Letter of Determination

September 13, 2017

Steven Vettel
Farella Braun + Martel, LLP
235 Montgomery Street
San Francisco, CA 94104

Site Address:	901 16 th and 1200 17 th Streets
Assessor's Block/Lot:	3949/001, 001A & 002 and 3950/001
Zoning District:	UMU (Urban Mixed Use)
Staff Contact:	Doug Vu, (415) 575-9120 or Doug.Vu@sfgov.org
Record No.:	2017-008521ZAD

Dear Mr. Vettel:

This letter is in response to your request for a Letter of Determination regarding the project at 901 16th Street/1200 17th Street. The subject project is located within the UMU (Urban Mixed Use) Zoning District and 68-X and 48-X Height and Bulk Districts. The request seeks 1) to extend the validity period of the Large Project Authorization (LPA) for the subject project and 2) to confirm the project is subject to the inclusionary housing requirements in effect on January 12, 2016.

Background

On May 12, 2016, the Planning Commission certified the Final Environmental Impact Report ("FEIR") through Motion No. 19644 (Case No. 2011.1300E), and approved the LPA through Motion No. 19645 (Case No. 2011.1300X), that entitles the merger of four lots into two lots, demolition of an existing industrial and warehouse building, and the construction of a six-story, up to 68-foot tall mixed-use development containing 395 dwelling units, approximately 24,968 sq. ft. of commercial retail space, and 388 off-street parking spaces (hereinafter "Project").

On June 10, 2016, the FEIR was appealed to the Board of Supervisors, which on July 26, 2016, denied the appeal and upheld the Planning Commission's certification of the FEIR.

On August 26, 2016, a Petition for Writ of Mandate was filed against the City and Project Sponsor (dba Potrero Partners, LLC) with the San Francisco Superior Court seeking reversal of the FEIR certification and subsequent invalidation of the LPA. Following certification by the City of the Administrative Record and briefing on the merits by all parties, the San Francisco Superior Court held its hearing on the writ petition on May 12, 2017. The Court has not yet issued its decision, but is anticipated to issue a judgment by mid-September 2017. Your letter also states there is the expectation that the non-prevailing party will appeal the Superior Court's judgment to the California Court of Appeal within the applicable 60 day appeal period. Assuming an appeal is filed, you state the litigation would likely not be concluded in the

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Court of Appeal until late 2017. According to your letter, "should any party seek review in the California Supreme Court, another two or three months would be required for the Supreme Court to determine whether it would hear the case. In the event the California Supreme Court chose to hear the case, it would likely take up to three years from the time the California Supreme Court agrees to hear the case until the Supreme Court issues its final decision."

Conditions of Approval included with Motion No. 19645 for the LPA state: "The authorization and right vested by virtue of this action is valid for three (3) years from the effective date of this Motion." Further, the Conditions of Approval state: "All time limits in the preceding paragraphs may be extended at the discretion of the Zoning Administrator where implementation of the project is delayed by a public agency, an appeal or a legal challenge and only by the length of time for which such public agency, appeal or challenge has caused delay."

The Project is subject to the affordable housing requirements of Planning Code Section 415. Section 415.3(b) states: "Any development project that has submitted a complete Environmental Evaluation application prior to January 12, 2016 shall comply with the Affordable Housing Fee requirements, the on-site affordable housing requirements or the off-site affordable housing requirements, and all other provisions of Section 415.1 *et seq.*, as applicable, in effect on January 12, 2016." The Project Sponsor submitted their environmental review application on March 23, 2012, prior to January 1, 2013.

Further, Section 415.3(b)(4) states: "Any development project that constructs on-site or off-site affordable housing units as set forth in subsection (b) of this Section 415.3 shall diligently pursue completion of such units. In the event the project sponsor does not procure a building permit or site permit for construction of the affordable housing units by December 7, 2018, the development project shall comply with the inclusionary affordable housing requirements set forth in Sections 415.5, 415.6, and 415.7, as applicable. Such deadline shall be extended in the event of any litigation seeking to invalidate the City's approval of such project, for the duration of the litigation."

Determinations

It is my determination that the Project at 901 16th Street/1200 17th Street is eligible for an extension of the three-year validity period as authorized in Motion No. 19645 due to the appeal of the FEIR to the Board of Supervisors and the filing of the Petition for Writ of Mandate regarding the FEIR. The maximum length of this extension period shall be equal to the number of days the FEIR appeal was pending before the Board of Supervisors (June 10, 2016 to July 26, 2016) and the number of days the Petition for Writ of Mandate has been pending before the San Francisco Superior Court (since August 26, 2016) until potential appeals to the Court of Appeal and California Supreme Court have been exhausted.

It is also my determination that the Project is subject to the affordable housing requirements in effect on January 12, 2016 in compliance with the requirements of Section 415.3(b). Further, pursuant to Section 415.3(b)(4), the deadline to procure a building or site permit for construction of the affordable units may be extended from the December 7, 2018 by the number of days the Petition for Writ of Mandate has been pending before the San Francisco Superior Court (since August 26, 2016) until any potential appeals to the Court of Appeal and California Supreme Court have been exhausted.

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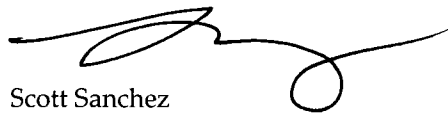
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The Project Sponsor shall promptly notify the Zoning Administrator in writing when the Writ of Mandate has been resolved in the courts to confirm the Project's new validity period and deadline for compliance under Section 415.3(b)(4).

Please note that a Letter of Determination is a determination regarding the classification of uses and interpretation and applicability of the provisions of the Planning Code. This Letter of Determination is not a permit to commence any work or change occupancy. Permits from appropriate Departments must be secured before work is started or occupancy is changed.

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 Sanchez
Zoning Administrator

cc: Property Owner
Neighborhood Groups
Doug Vu, Planner