

April 5, 2007.

PLANNING COMMISSION

Case No. 2006.0584KXCV  
1407-1435 Market Street  
Block 3507, Lot 041

Subject to: (check if applicable)

- Inclusionary Housing
- Childcare Requirement
- Downtown Park Fund
- Public Art
- Public Open Space
- Jobs-Housing Linkage
- Transit Impact Development Fee
- First Source Hiring

SAN FRANCISCO

PLANNING COMMISSION

MOTION NO. 17414

**ADOPTING FINDINGS RELATED TO THE APPROVAL OF A SECTION 309 DETERMINATION OF COMPLIANCE AND REQUEST FOR EXCEPTIONS FOR THE CONSTRUCTION OF A RESIDENTIAL PROJECT CONTAINING APPROXIMATELY 719 DWELLING UNITS, APPROXIMATELY 19,000 SQUARE FEET OF RETAIL SPACE, AND A GARAGE WITH A CAPACITY OF UP TO 593 PARKING SPACES THE PROPERTY AT 1407-1435 MARKET STREET AND 16-70 TENTH STREET (ASSESSOR'S BLOCK 3507, LOT 041), LOCATED WITHIN THE C-3-G (DOWNTOWN GENERAL COMMERCIAL) DISTRICT AND 200-S AND 320-S HEIGHT AND BULK DISTRICTS.**

**RECITALS**

1. On March 10, 2003, TCM Mid-Market Venture, Inc. filed an application for environmental review related to a mixed-use development (Myers Project) on the Project Site and the parcel south of the Project Site. The Myers Project consisted of two residential highrises (a 15-story, 150-foot-high, 200-unit senior housing building and a 20-story, 200-foot-high, 250-unit building) plus a 24-story, 320-foot-high office building for occupancy by the City and County of San Francisco. Environmental review of the Myers Project was conducted pursuant to the California Environmental Quality Act (CEQA) and Chapter 31 of the San Francisco Administrative Code.
2. On October 14, 2004, the Planning Commission (Commission) certified the Final Environmental Impact Report (FEIR) for the Myers Project.
3. On October 28, 2004, the residential component of the Myers Project was approved by the Commission. The office component of the Myers Project was never approved by the Commission, because the City and County of San Francisco pursued alternate plans to address its office needs.
4. The Myers Project has been revised, and on October 17, 2005, Tenth and Market, LLC (Project Sponsor) requested that the Planning Department (Department) review the

proposed revisions in accordance with CEQA.

5. On May 3, 2006, the Project Sponsor applied for a Section 309 Determination of Compliance and Request for Exceptions, Application No. 2006.0584X, on the property at 1407-1435 Market Street and 16-70 Tenth Street, Lot 041 in Assessor's Block 3507 (Project Site), in connection with a residential project containing approximately 719 dwelling units, approximately 19,000 square feet of commercial space, and a garage with a capacity of up to 593 parking spaces (Project), in general conformity with plans dated March 8, 2007 and labeled Exhibit B. The Project Site is within the C-3-G District and 200-S and 320-S Height and Bulk Districts.
6. On March 8, 2007, the Department published an Addendum to the FEIR, which determined that the current Project would not cause new significant impacts not identified in the FEIR and no new mitigation measures would be necessary to reduce significant impacts.
7. On April 5, 2007, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting on the Section 309 application.
8. **MOVED**, that the Commission hereby approves the Section 309 Determination of Compliance and Request for Exceptions requested in Application No. 2006.0584X for the Project, subject to conditions contained in Exhibit A attached hereto and incorporated by reference, based on the following findings:

#### **FINDINGS**

Having reviewed the materials identified in the recitals above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The above recitals are accurate and also constitute findings of this Commission.
2. The C-3-G District covers the western portions of downtown San Francisco and is composed of a variety of uses: hotels, offices, places of entertainment, residential buildings, and retail establishments. Many of these uses serve a citywide or regional clientele, but the intensity of development is lower than in the downtown core. Residential uses are principally permitted within the C-3-G District.
3. The Project Site, with a total area of approximately 66,383 square feet, is a roughly rectangular parcel (Block 3507, Lot 041) that is a portion of a larger parcel formerly known as Lot 039. A subdivision of Lot 039 into two lots resulted in the current configuration. The Project Site, which is bounded by Market Street on the north, Tenth Street on the east, Jessie Street on the south, and an adjacent parcel on the west, is located within the C-3-G District and 200-S and 320-S Height and Bulk Districts. The height limits step down from 320 feet along Market Street to 200 feet along Jessie

Street. The Project Site is also within a larger area that is proposed for designation as the Mid-Market Special Use District (SUD).

The Project Site is currently occupied by several vacant office buildings ranging in height from two to four stories. These buildings have been vacant for approximately seven years. Demolition permits for these buildings were issued between October 2006 and February 2007 after the Department of Building Inspection determined that the buildings were seismic hazards and public health and safety nuisances. The demolition work is currently in progress. A portion of the Project Site is also being used as a surface parking lot for approximately 75 vehicles.

4. The scale of development in the vicinity of the Project Site is very diverse, with the current height limits in the area ranging from 50 feet to 320 feet. Two- and three-story buildings are wedged between much taller buildings on both sides of Market Street. Two buildings in the area, Fox Plaza (1390 Market Street) and the AAA Building (100 Van Ness Avenue), approach heights of 400 feet. Almost all of the buildings in the area are occupied by office and retail uses, but there are some multi-family residential buildings, including Fox Plaza and Trinity Plaza. Other uses in the area include automobile repair/service centers, public storage facilities, and surface parking lots.

The adjacent parcel to the west is occupied by the 22-story, 313-foot-high Bank of America data processing center. On the east side of Tenth Street, the northern half of the block is occupied by the 11-story, 130-foot-high San Francisco Furniture Mart. On the north side of Market Street, a 20-story, 200-foot-high residential building (1 Polk Street) is currently under construction. The Civic Center lies several blocks to the north of the Project Site.

5. Following the demolition of the existing office buildings and surface parking lot, the proposed Project will be the construction of two buildings sharing a common base and containing approximately 719 dwelling units, approximately 19,000 square feet of commercial space, and a garage with a capacity of up to 668 parking spaces (578 residential spaces and 90 commercial spaces). The taller north tower, at the corner of Tenth and Market Streets, will be 35 stories and approximately 352 feet high with a 12-story, 123-foot-high base along Market Street. The shorter south tower, at the corner of Tenth and Jessie Streets, will be 19 stories and approximately 220 feet high. The two towers will be connected by a nine-story, 93-foot-high base running along Tenth Street.
6. The Project requires the authorization of a Section 309 Determination of Compliance and Request for Exceptions, including exceptions for separation of towers, rear yard, comfort-level wind, parking, an architectural vertical extension above the height limit, a ten percent upper tower extension above the height limit, and bulk. Other required entitlements include conditional use authorization and variances from certain requirements of the Planning Code.

7. The Myers Project that was analyzed in the FEIR consisted of two residential highrises (a 15-story, 150-foot-high, 200-unit senior housing building and a 20-story, 200-foot-high, 250-unit building) plus a 24-story, 320-foot-high office building for occupancy by the City and County of San Francisco.
8. On March 8, 2007, the Department published an Addendum to the FEIR. The Addendum analyzed a revised proposal that includes the Project, as generally described herein, and the previously-approved affordable senior housing building at the corner of Tenth and Mission Streets. The Addendum also discussed a variant to the affordable senior housing building that would provide affordable family housing with the same unit count but a different unit mix. In reviewing the proposed Project, the Commission has reviewed and considered the Addendum and the FEIR.
9. As discussed in the Addendum, development of the Project eliminates the significant and unavoidable transportation impact identified in the FEIR. Thus, construction of the revised proposal reviewed and analyzed in the Addendum would not result in any significant and unavoidable environmental impacts. As further discussed in the Addendum, development of the Project will not result in any new or substantially increased environmental impacts other than those impacts identified and discussed in the FEIR. There are no substantial changes in the Project, substantial changes to circumstances under which the Project is being undertaken, or new information of substantial importance from that analyzed and considered in the FEIR that will result in any new or substantially increased environmental impacts. Thus, preparation of the Addendum to the FEIR was appropriate, and no further environmental review is required under Public Resource Code Section 21116 or CEQA Guidelines Section 15162.

The Planning Department is the custodian of the documents and other materials that constitute the record of the proceedings upon which all CEQA findings set forth herein are based. Such documents and other materials are available for review by this Commission and the public at the Department's offices at 1660 Mission Street.

10. The FEIR and the Addendum include mitigation measures that would reduce other potential environmental impacts of the Project to a less-than-significant level. The Commission has reviewed and considered the mitigation and improvement measures, collectively identified as Exhibit C, which shall be incorporated as conditions of approval under Exhibit A of this Motion.
11. The Commission is not aware of any opposition to the Project.
12. **Planning Code Compliance.** The Commission finds that the Project meets the provisions of the Planning Code as follows:
  - a. **Floor Area Ratio.** Section 124 establishes basic floor area ratios (FAR) for all zoning districts. FAR is the ratio of the gross floor area of all the buildings on a lot to the total area of the lot. As set forth in Section 124(a), the FAR for the C-3-

G District is 6.0 to 1. Under Sections 123 and 128, the FAR can be increased to a maximum of 9.0 to 1 with the purchase of transferable development rights (TDR). Section 124(f) provides that in C-3-G Districts, additional square footage above the base FAR of 6.0 to 1 may be approved by conditional use for the construction of dwelling units affordable for 20 years to households whose incomes are within 150 percent of the median income, as defined in Section 124(f).

*With a lot area of 66,383 square feet, up to 398,298 gross square feet can be developed on the Project Site without TDR, and up to 597,447 gross square feet can be developed with TDR. The Project Sponsor has stated that the process of purchasing the required TDR to increase the allowable FAR on the Project Site from 6.0 to 1 to 9.0 to 1 is nearly complete. The Project Sponsor may also pursue the transfer of unused gross floor area from the adjacent property to the south of the Project Site. This parcel, along with the Project Site, comprises a single "development lot," and the transfer of unused gross floor area from this parcel to the Project Site would provide financial capital to fund the construction of the previously-approved affordable senior housing building at the corner of Tenth and Mission Streets.*

*In addition to purchasing the required TDR, the Project Sponsor is seeking conditional use authorization to develop additional square footage above the 6.0 to 1 base FAR for dwelling units that will be affordable for a minimum of 20 years to households whose incomes are within 150 percent of the median income as defined in Section 124(f).*

- b. **Setbacks in C-3 Districts.** In order to preserve the predominant street wall, Section 132(b) requires that structures on the southeast side of Market Street between the southerly extension of the easterly line of the Powell Street right-of-way and Tenth Street shall be set back 25 feet from the Market Street property line at a height of 90 feet.

*The provisions of Section 132.1(b) are not applicable, because the Project Site is not located on the southeast side of Market Street between the southerly extension of the Powell Street right-of-way and Tenth Street. The Project Site is just west of Tenth Street.*

- c. **Separation of Towers.** In order to provide light between structures, Section 132.1(c) requires all structures within an S Bulk District to be set back from an interior property line which does not abut a public sidewalk and from the property line abutting the right-of-way of a public street or alley. The setback shall be a minimum of 15 horizontal feet from the interior property line or the center of a public right-of-way, as the case may be, beginning at a height which is 1.25 times the width of the principal street on which the building faces, and increasing to the widths indicated in Chart A of Section 132.1 as the building increases in height.

*The principal street on which the north tower fronts is Market Street, which is 120 feet wide. Beginning at a height of 150 feet and up to a height of 300 feet, the building must be set back 15 feet from the center of Market Street and from all interior property lines. The required setback increases from 15 feet at a building height of 300 feet to 35 feet at a building height of 550 feet as shown in Chart A of Section 132.1. The north tower complies with the separation of towers requirement. Above a height of 150 feet, the north tower will be set back approximately 102 feet from the center line of Market Street, approximately 57 feet from the center line of Tenth Street, and approximately 65 feet from the western interior property line.*

*The principal street on which the south tower fronts is Tenth Street, which is 80 feet wide. Beginning at a height of 100 feet and up to a height of 300 feet, the building must be set back 15 feet from the center of Tenth Street and from all interior property lines. The south tower partially complies with the separation of towers requirement. Above a height of 100 feet, the south tower will be set back approximately 57 feet from the center line of Tenth Street and approximately 25 feet from the center line of Jessie Street. The south tower will not be set back at least 15 feet from the western interior property line, and a separation of towers exception is required.*

Pursuant to Sections 132.1(c)(2) and 309(a)(1), exceptions to the separation of towers requirement may be allowed in accordance with the provisions of Section 309 as provided below:

- (A) Encroachments of building volume on the setback may be approved as follows:
- (i) For the portion of the building over 300 feet from the ground, encroachments may be allowed provided that (1) there are compensating recesses beyond the required setback below and within approximately 100 vertical feet of the encroachment, which recesses are at least equal in volume to the volume of the encroachment and (2) it is found that, overall, access to light and air and the appearance of separation between buildings will not be impaired.

*This criterion is not applicable, because the south tower will not exceed a height of 300 feet.*

- (ii) Between the top of the base and 300 feet above the ground, encroachments may be allowed provided that (1) there are compensating recesses beyond the required setback at the same level or within approximately 50 vertical feet above or below the encroachment, which recesses are at least equal in volume to the

volume of the encroachment, (2) that the encroachment extends no more than five feet horizontally into the area otherwise required for a setback, (3) the encroachment extends for less than 1/3 of the horizontal length of the structure, and (4) it is found that, overall, access to light and air and the appearance of separation between buildings will not be impaired.

*The portion of the south tower that encroaches into the required setback is approximately 62 feet wide which is less than one-third of the horizontal east-west length of the structure. Furthermore, the encroachment area has open space on either side (common open space to the north and Jessie Street to the south), so the encroachment will not impair access to light or the presence of separation between buildings.*

- (B) Exceptions may be allowed to the extent that it is determined that restrictions on adjacent properties make it unlikely that development will occur at a height or bulk which will, overall, impair access to light and air or the presence of separation between buildings, thereby making setbacks unnecessary.

*With respect to the south tower, the relevant adjacent property is the Bank of America data processing center to the west. The data processing center is comprised of a six-story podium that runs the entire length of the lot and a 313-foot-high tower at the north end of the lot. Since the tower of the data processing center is located at the northern end of the lot, there is no adjacent structure higher than six stories to the west of the Project's south tower. There is a service driveway located between the data processing center and the western property line of the Project Site. As a result, the podium of the data processing center and the Project's south tower will be separated by approximately 35 feet. Encroachment into the required setback will not impair access to light or the presence of separation between the two buildings.*

- (C) Exceptions may be allowed on lots with a frontage of less than 75 feet provided that (i) it is found that, overall, access to light and air will not be impaired and (ii) the granting of the exception will not result in a group of buildings the total street frontage of which is greater than 125 feet without a separation between buildings which meets the requirements of Chart A.

*This criterion is not applicable, because the Project Site does not have a street frontage that is less than 75 feet.*

- d. **Rear Yard.** Section 134 establishes minimum required rear yards in all zoning districts. The rear yard is a function of lot depth. Under Section 134(a)(1), the

required rear yard for properties in C-3 Districts is 25 percent of the total depth of the lot on which the building is situated, but in no case less than 15 feet. Section 134(a)(1)(C) states that in C-3 Districts, "rear yards shall be provided at the lowest story containing a dwelling unit and at each succeeding level or story of the building."

Pursuant to Sections 134(d) and 309(a)(1), an exception to the rear yard requirement is allowed in C-3 Districts, provided that the building location and configuration assure adequate light and air to windows within the residential units and to the usable open space provided.

*The purpose of the rear yard requirement is to preserve mid-block open space and provide usable open space for residential uses. From the second through ninth floors, the footprint of the Project takes on a backward "C" shape, with the spine of the "C" running along Tenth Street. The result is an 18,650-square-foot rear yard on the western half of the Project Site that will partially satisfy the Project's usable open space requirement.*

*A rear yard exception is required, because the rear yard does not extend the full width of the lot. Instead of passing through from Jessie Street to Market Street, the rear yard is enclosed at its northern and southern ends.*

*Whether Market Street or Tenth Street is designated as the front of the Project Site, requiring a Code-complying rear yard would result in a Project that interrupts the street wall along Market Street or Tenth Street (the missing tooth effect), which would not be aesthetically pleasing or consistent with basic urban design principles. The area of the rear yard, which is approximately 28 percent of the total area of the Project Site, and the building configuration and location will assure that all of the dwelling units facing the rear yard will receive adequate light. Furthermore, there is no existing pattern of mid-block open space on the subject block. For these reasons, a rear yard exception is appropriate.*

- e. **Usable Open Space.** Usable open space is required for dwelling units in all zoning districts. Under Section 135(d)(2), the minimum amount of usable open space for dwelling units in C-3 Districts is as follows: 36 square feet per unit if private and 48 square feet per unit if common.

*The Project will provide a combination of private usable open space (balconies and patios) and common usable open space (a small park at the end of Jessie Street, a common yard at the second floor, a terrace on the roof of the north tower, and terraces and a solarium on the roof of the south tower) in compliance with the requirements of Section 135(d)(2).*

Section 135(g)(2) requires that any area of an inner court that is credited as common usable open space must not be less than 20 feet in every horizontal

dimension and 400 feet in area; and the height of the walls and projections above the court on at least three sides (or 75 percent of the perimeter, whichever is greater) is such that no point on any such wall or projection is higher than one foot for each foot that such point is horizontally distant from the opposite side of the clear space in the court.

*The Project includes an 18,650-square-foot rear yard that is intended to partially satisfy the Project's requirement for common usable open space. This rear yard is surrounded by a 352-foot-high tower to the north, a 93-foot-high building to the east, a 220-foot-high tower to the south, and the 90-foot-high podium of the Bank of America data processing center to the west. Given the heights of these buildings, the Project will not meet the requirements of Section 135(g)(2). The Project Sponsor has elected to seek and justify a variance, which will be considered by the Zoning Administrator.*

- f. **Streetscape Improvements.** Section 138.1(b) requires that when there is a substantial alteration to an existing building in the C-3 District, street trees and sidewalk paving must be provided. Under Section 138.1(c), the Commission may also require the Project Sponsor to install additional sidewalk improvements such as lighting, special paving, seating and landscaping in accordance with the guidelines of the Downtown Streetscape Plan if it finds that these improvements are necessary to meet the goals and objectives of the General Plan.

*Subject to approval by the Department of Public Works, the Project will provide one or more of the following streetscape improvements along Market, Tenth, and Jessie Streets: benches, bicycle racks, landscaping, lighting, sidewalk paving, and street trees. The Project Sponsor will be responsible for making necessary repairs to and maintaining the sidewalks abutting the Project Site.*

- g. **Downtown Park Fund.** Under Section 139, a project in a C-3 District that proposes a net addition of office space is required to pay a fee which will be deposited in the Downtown Park Fund. The fee is jointly established by the Planning Commission and the Recreation and Park Commission. The purpose of the Downtown Park Fund is to provide the City with the financial resources to develop public park and recreation facilities for the enjoyment of employees and visitors in downtown San Francisco.

*The provisions of Section 139 are not applicable, because the Project does not include the net addition of office space.*

- h. **Dwelling Unit Exposure.** Section 140 requires every dwelling unit in every use district to face either a public street, a public alley at least 25 feet in width, a rear yard meeting the requirements of this Code, or an open area at least 25 feet in every horizontal dimension for the floor at which the dwelling unit in question is

located and the floor immediately above it, with an increase in five feet in every horizontal dimension at each subsequent floor.

*All of the proposed dwelling units facing Tenth, Market, or Jessie Streets will comply with the standards for dwelling unit exposure. The remaining units not facing one of the three streets bordering the Project Site will face the 18.650-square-foot rear yard and will have adequate access to light. However, the rear yard between is not Code-complying and requires a rear yard exception. In addition, the dimensions of this open area do not increase five feet in every horizontal dimension at each subsequent residential floor. For these reasons, some of the dwelling units on the lower levels of the Project will not meet the literal requirements for dwelling unit exposure. The Project Sponsor has elected to seek and justify a variance, which will be considered by the Zoning Administrator.*

- i. **Street Trees.** Section 143 requires the installation of street trees in the case of the construction of a new building. One 15-gallon street tree shall be required for every 20 feet of property frontage along each street or alley, with any remaining fraction of ten feet or more of frontage requiring an additional tree. The species and locations of trees installed in the public right-of-way shall be subject to approval by the Department of Public Works.

*Subject to approval by the Department of Public Works, the Project Sponsor shall comply with the requirements set forth in Section 143 by providing street trees along Market, Tenth, and Jessie Streets.*

- j. **Shadows on Public Sidewalks.** In order to maintain direct sunlight on public sidewalks in certain downtown areas during critical use periods, Section 146(a) requires new structures to avoid penetrating a sun access plane defined by an angle sloping away from the street above a stipulated height at the property line as set forth in Table 146. Section 146(c) requires new buildings and additions to existing buildings in C-3 Districts to be shaped, if it can be done without creating an unattractive design and without unduly restricting the development potential of the site in question, to reduce substantial shadow impacts on public sidewalks other than those protected by Section 146(a).

*The requirements of Section 146(a) are not applicable, because the Project Site is not located on any of the streets designated in Table 146. Although the Project would cast new shadows on nearby sidewalks and streets (Market, Ninth, and Tenth Streets), these new shadows would not be above levels that are common in dense urban environments. These new shadows cannot be reduced or eliminated without unduly restricting the development potential of the Project Site. For these reasons, the Project complies with the requirements of Section 146(c).*

- k. **Shadows on Public Open Spaces.** Section 147 sets forth certain requirements and determinations regarding shadows being cast on public or publicly accessible open space. Section 147 seeks to reduce substantial shadow impacts on public plazas and other publicly accessible spaces other than those protected under Section 295.

*A shadow analysis determined that the Project would not cast net new shadow on United Nations Plaza or the Fulton Street Mall, two public open spaces that are not protected under Section 295.*

- l. **Ground-Level Wind Currents.** In C-3 Districts, buildings and additions to existing buildings shall be shaped, or other wind-baffling measures shall be adopted, so that the developments will not cause ground-level wind currents to exceed more than 10 percent of the time year round, between 7:00 a.m. and 6:00 p.m., the comfort level of 11 miles per hour equivalent wind speed in areas of substantial pedestrian use and seven miles per hour equivalent wind speed in public seating areas.

When preexisting ambient wind speeds exceed the comfort level, or when a proposed building or addition may cause ambient wind speeds to exceed the comfort level, the building shall be designed to reduce the ambient wind speeds to meet the requirements. An exception may be granted, in accordance with the provisions of Section 309, allowing the building or addition to add to the amount of time that the comfort level is exceeded by the least practical amount if (1) it can be shown that a building or addition cannot be shaped and other wind-baffling measures cannot be adopted to meet the foregoing requirements without creating an unattractive and ungainly building form and without unduly restricting the development potential of the building site in question, and (2) it is concluded that, because of the limited amount by which the comfort level is exceeded, the limited location in which the comfort level is exceeded, or the limited time during which the comfort level is exceeded, the addition is insubstantial.

No exception shall be granted and no building or addition shall be permitted that causes equivalent wind speeds to reach or exceed the hazard level of 26 miles per hour for a single hour of the year.

*The Project Sponsor retained the services of independent consultants to analyze ground-level wind currents in the vicinity of the Project Site. A wind tunnel analysis, the results of which are included in the Addendum to the FEIR, was conducted using a scale model of the Project Site and its immediate vicinity. Measurements were taken at 25 test points.*

Comfort Criterion

*Without the Project, 17 test points currently exceed the pedestrian comfort level of 11 mph. With the Project, there would be four new exceedances of the comfort criterion along Mission Street, and an exception is required.*

*The windy conditions in the vicinity of the Project Site are caused primarily by the existence of Fox Plaza. From an urban design standpoint, almost nothing can be done to the Project that would significantly improve the existing wind conditions. The Project cannot be designed or shaped in a way that would meet the provisions of Section 148 without drastically altering the architectural design of the Project or creating unattractive and ungainly building forms along Market and Tenth Streets, and an exception is appropriate. Wind tunnel tests for other projects in the immediate vicinity of the Project Site show that as more development occurs, the cumulative wind conditions will gradually improve. For these reasons, an exception from the comfort criterion is appropriate.*

Hazard Criterion

*Without the Project, six test points currently exceed the wind hazard criterion of 26 mph for a total duration of 253 hours a year. These measurements of existing conditions differ substantially from the measurements of existing conditions for the Myers Project, which indicated seven exceedances with a total duration of 482 hours a year. The differences can be partially explained by the limited repeatability of wind tunnel testing. If the same project is tested multiple times, minute changes in the locations or the orientations of the sensors can result in significantly different results from one test to the next. In addition, measurements of higher wind velocities have higher statistical margins of error than measurements of lower wind velocities.*

*With the Project, the wind tunnel tests showed three new exceedances would be created with a total duration of 609 hours a year. Sections 148 and 309 do not allow the granting of a hazard level exception, but the standards of Section 148 are variable pursuant to Section 305. Additional computer-based analyses showed that the Project would not significantly change existing wind conditions in the vicinity of the Project Site. Given the limited repeatability of wind tunnel testing and the uncertainty related to the statistical margins of error for measurements of higher wind velocities, the Project Sponsor has elected to seek and justify a hazard criterion variance, which will be considered by the Zoning Administrator.*

Usable Open Space

*Six additional test points were used to collect data on projected wind speeds within the Project's proposed open space areas. All six test points showed*

*exceedances of the comfort criterion, and three of the test points showed exceedances of the hazard criterion.*

*The wind tunnel analysis recommends that all open space areas be landscaped or sheltered appropriately to reduce wind speeds and improve their usability. This recommendation has been incorporated into the FEIR and the Addendum as an improvement measure and is included as a condition of approval in Exhibits A and C of this Motion.*

- m. **Public Art.** In the case of construction of a new building or addition of floor area in excess of 25,000 square feet to an existing building in a C-3 District, Section 149 requires a project to include works of art costing an amount equal to one percent of the construction cost of the building and requires the Commission to approve the type and location of the artwork, but not the artistic merits of the specific artwork proposed. The types of permitted artwork include sculptures, bas-reliefs, murals, mosaics, decorative water features, or other work permanently affixed to the building or site.

*With an estimated construction cost of approximately \$125 million, the Project is required to provide artwork equal in value to approximately \$1.25 million or to one percent of the revised applicable construction cost if modified by the Director of the Department of Building Inspection.*

- n. **Parking.** Pursuant to Section 151.1, residential uses in C-3 Districts are not required to provide off-street parking, but up to one space for every four dwelling units can be provided as of right. Pursuant to Section 309, residential parking that exceeds one space for every four dwelling units, up to a maximum of three spaces for every four dwelling units and one space for every dwelling unit with at least two bedrooms and at least 1,000 square feet of occupied floor area, can be provided with the granting of an exception. Section 161 exempts commercial uses in C-3 Districts from providing parking. Pursuant to Section 204.5(c), up to 15 spaces or seven percent of the total floor area of the development or use, whichever is greater, can be devoted to commercial parking as of right. Commercial parking that exceeds the accessory amounts specified in Section 204.5(c) requires conditional use authorization. Pursuant to Sections 102.9(b)(16) and 309, the Commission can require that existing short-term commercial parking spaces be replaced in part or in whole. Such required replacement parking would be considered accessory and would be exempt from the calculation of gross floor area.

*With 719 dwelling units, a maximum of 179 residential spaces can be provided without an exception. With approximately 19,000 square feet of commercial space proposed for the Project Site, a maximum of 15 spaces or 1,330 square feet, whichever results in the greater number of spaces, can be devoted to commercial parking as of right.*

*The Project Sponsor is seeking an exception to provide 578 residential spaces. In addition, the Project Sponsor is requesting that the Commission require the provision of 75 commercial spaces to replace the existing commercial spaces that will be eliminated to make way for the construction of the Project.*

*The Project Sponsor is proposing a total of 668 parking spaces (578 residential and 90 commercial), which requires approval under Section 309. The Commission is hereby approving the 578 residential spaces but not the 75 replacement commercial spaces. The Commission will support accessory commercial parking (15 spaces or seven percent of the total commercial square footage of the Project, whichever is greater) as defined in Section 204.5(c).*

Pursuant to Section 151.1(e), in C-3 Districts, any request for residential parking in excess of what is permitted by right in Table 151.1 shall be reviewed on a case-by-case basis by the Commission subject to the procedures set forth in Section 309. In granting approval for residential parking above that permitted by right in Table 151.1, the Commission shall make the following affirmative findings:

- (1) For projects with 50 or more units, all residential accessory parking in excess of 0.5 spaces for each dwelling unit shall be stored and accessed by mechanical stackers or lifts, valet, or other space-efficient means that allows more space above grade for housing, maximizes space efficiency, and discourages use of vehicles for commuting or daily errands. The Commission may authorize the request for additional parking notwithstanding that the project sponsor cannot fully satisfy this requirement provided that the project sponsor demonstrates hardship or practical infeasibility (such as for retrofit of existing buildings) in the use of space-efficient parking given the configuration of the parking floors within the building and the number of independently accessible spaces above 0.5 spaces per dwelling unit is *de minimis* and subsequent valet operation or other form of parking space management could not significantly increase the capacity of the parking spaces above the maximum limits in Table 151.1.

*With 719 dwelling units, any residential parking spaces in excess of 360 spaces shall be space-efficient. The Project is proposing 578 residential parking spaces, and 218 of those spaces are required to be space-efficient. The Project will provide the required number of space-efficient residential parking spaces.*

- (2) For any project with residential accessory parking in excess of 0.375 spaces per dwelling unit, the project complies with the housing requirements of Sections 315 through 315.9 except as follows: the inclusionary housing requirements that apply to projects seeking

