



SAN FRANCISCO PLANNING DEPARTMENT

Letter of Determination

August 8, 2017

Ms. Nicole C. Evans
Ballard Spahr LLP
2029 Century Park East, Suite 800
Los Angeles, CA 90067-2909

Site Address:	851 Beach Street
Assessor's Block/Lot:	0452/001
Zoning District:	C-2 (Community Business)
Staff Contact:	Nicholas Foster, (415) 575-6167 or nicholas.foster@sfgov.org
Record No.:	2017-008523ZAD

Dear Ms. Evans:

This letter is in response to your request for a Letter of Determination regarding the property ("Property") at 851 Beach Street. This parcel is located in the C-2 (Community Business) Zoning District, 40-X Height and Bulk District, and Northeast Waterfront Plan Area. Your letter requested a determination as to whether use of the condominium units as timeshare units (or "fractional units") at the Property would be consistent with Hotel Use, as defined by the Planning Code ("Code").

The Department of Building Inspection (DBI) Report of Residential Building Record ("3-R Report") identifies "1 family dwelling & 53 guest room with cooking & commercial" at the Property. Per your June 26, 2017 letter, you stated that the existing 53 condominium units (timeshare units) have been submitted to an existing fractional interest plan ("fractional units") as regulated by the Vacation Ownership and Time-Share Act of 2004 (California Business and Professions Code Section 11210 et seq.). Your letter also stated that these fractional units—consisting of 1-bedroom, 2-bedroom, and 3-bedroom units—all contain full kitchens.

Per Planning Code Section 102, a Residential Use is defined as "a room or suite of two or more rooms that is designed for, or is occupied by, one family doing its own cooking therein and having only one kitchen." Meanwhile, Code Section 102 defines a Hotel Use as "a Retail Sales and Services Use that provides tourist accommodations, including guest rooms or suites, which are intended or designed to be used, rented, or hired out to guests (transient visitors) intending to occupy the room for less than 32 consecutive days."

A previous Zoning Administrator Interpretation (January, 1992) stated that "a unit with a kitchen rented for a duration longer than one week but less than one month is a hotel [use]." A subsequent Letter of Determination (June 6, 2002) stated that the very presence of cooking facilities does not, in and of itself, convert a hotel use into a dwelling unit given that the underlying function of the hotel unit is a commercial use and not a residential use. Further, two additional Letters of Determination (July 26, 2004

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Suite 400
San Francisco,
CA 94103-2479

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415.558.6378

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Planning
Information:
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Ms. Evans
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August 8, 2017
Letter of Determination
851 Beach Street

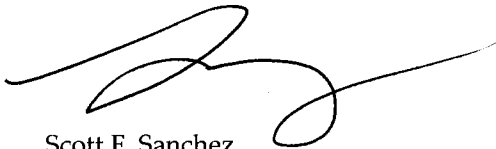
and December 13, 2012) both support the assessment that timeshare units allowing occupancy for periods not exceeding 30 consecutive days would be considered a commercial use, consistent with the definition of Hotel Use, as defined by the Code.

Based on available information, it is my determination that the use of timeshare units at the Property, with occupancy not exceeding 30 consecutive days, would be consistent with the definition of Hotel Use under the Code, regardless of the presence of cooking facilities in each of the units.

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 F. Sanchez
Zoning Administrator

cc: Nicholas Foster, Planner
Property Owner
Neighborhood Groups
BBN Requestor (if any)

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June 26, 2017

R # 2017-008523 ZAD
CK + 015208 \$ 664.-
M. LUELLEN (NE)

By Federal Express

Scott Sanchez
Office of the Zoning Administrator
1650 Mission Street, Suite 400
San Francisco, CA 94103

Re: Request for Letter of Determination of Hotel Use Status

Dear Mr. Sanchez:

We are interested in confirming certain matters with respect to the GS Heritage Place, a Condominium, also known as "Fairmont Heritage Place, Ghirardelli Square," located at 851 Beach Street (a.k.a. 900 North Point Street/Ghirardelli Square), Lot 001 in Assessor's Block 0452 (the "Project").

Pursuant to San Francisco Planning Code ("Planning Code") Section 307(a), we respectfully request a letter of determination stating that the potential operation of a non-deeded timeshare program within the Project for periods of occupancy not to exceed 30 consecutive days, together with related timeshare sales, marketing, rental and resort operation activities (collectively, for purposes of this letter, the "Timeshare Use"), would remain consistent with a "hotel" use under the Planning Code and the special restrictions applicable to the Project.

A. Existing and Proposed Timeshare Use

The Project is part of a mixed-use development commonly known as Ghirardelli Square. The Project is located within the C-2 (Community Business) district and the Waterfront-2 Special Use District.

By way of background with respect to the Project, we understand that on July 24, 1986, the San Francisco City Planning Commission (the "Planning Commission") adopted Motion No. 10758, which approved Conditional Use Application No. 86.242C to convert office space to 23 hotel rooms (the "1986 Permit"). Subsequently, on September 5, 2005, the Planning Commission adopted Motion No. 17099, which approved Conditional Use Application No. 2004.0392C for the conversion of 62,000 square feet of existing office use and 39,000 square feet of existing retail space to tourist hotel use with up to 99 guest rooms (the "2005 Permit" and, collectively with the 1986 Permit, the

DMWEST #16534026 v4

Exhibit A

Zoning Verification Letter with Permits

(attached hereto and incorporated by reference)



SAN FRANCISCO PLANNING DEPARTMENT

Zoning Verification Letter

May 30, 2017

Susie Andruss
Zoning Info, Inc.
3555 NW 58th Street, Suite 505
Oklahoma City, OK 73112

Site Address: 900 North Point Street
Assessor's Block/Lot: 0452 / 051
Zoning District: C-2, Community Business
Staff Contact: David Brosky - (415) 575-8727 / david.brosky@sfgov.org
Record No.: 2017-006580ZAV

Susie Andruss:

The Zoning Designation of the Subject Property is:
C-2, Community Business

The Adjacent Properties Zoning Designations are:
North: P, Public
South: NC-1, Neighborhood Commercial, Cluster and
P, Public and
RH-3, Residential-House, Three Family
East: C-2, Community Business and
West: C-2, Community Business and
RM-4, Residential-Mixed, High Density

Planned Unit Development:
The Subject Property is not part of a Planned Unit Development.

Overlay Districts:
The Subject Property is located within the Waterfront Special Use District No. 2 [Planning Code Section 240.2] and within the Planning Code Article 10 District, Preservation of Historical Architectural and Aesthetic Landmarks.

Zoning Controls:
The Subject Property is regulated by [Planning Code Section 210.1]; C-2, Community Business.

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May 30, 2017
Zoning Verification Letter
900 North Point Street

Current Use:

The Subject Property's current use is listed as, Shopping Center, in the San Francisco Property Information Map. Shopping Centers are considered Retail Sales and Service Uses; which are principally permitted within the C-2, Community Business Zoning District.

Conformity:

The Subject Property consists of thirteen distinct buildings, the majority of which were constructed between the years 1859 – 1889 with subsequent buildings added in the early 20th century. Major renovations occurred in the 1960's. Consequently, the Subject Property may not conform to more recent zoning controls. In the event of a conflict between existing conditions at the Subject Property and zoning controls, Sections of Article 1.7 of the Planning Code may be applicable.

Other Information:

- The Subject Property is a Designated Historic Landmark.
- The Subject Property was granted a Variance (VZ70.017) on 04/08/1970, for off-street parking.
- The Subject Property was granted Conditional Use Authorization (1986.242C) on 06/24/1986, for a 23 room hotel in the Northern Waterfront Special Use District No. 2. A copy of the Planning Commission Motion is included with this Letter.
- The Subject Property was granted Conditional Use Authorization (1986.621C) on 02/19/1987, to allow expansion of an existing commercial use. A copy of the Planning Commission Motion is included with this Letter.
- The Subject Property was granted Conditional Use Authorization (2004.0392C) on 09/08/2005, to convert existing office and retail space into a hotel with up to 99 guest rooms.

Rebuild:

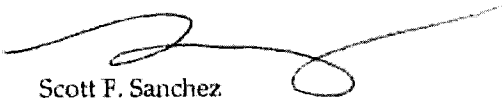
In the event of casualty, in whole or in part, the structure located on the subject property may be rebuilt in the current form, if applicable.

Compliance:

The Subject Property appears to have no active zoning violations or complaints. According to available information, the Subject Property appears to be in 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

Subject to:(Select with check mark only if applicable)

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

Case No. 2004.0392ACE
851 Beach Street (a.k.a. 900 North Point / Ghirardelli Square)
Block 0452 Assessor's Lot 001

SAN FRANCISCO
PLANNING COMMISSION
MOTION NO. 17099

ADOPTING FINDINGS RELATING TO THE APPROVAL OF A CONDITIONAL USE AUTHORIZATION UNDER PLANNING CODE SECTIONS 216, 240.2 and 303, TO ALLOW TOURIST HOTEL USE WITH UP TO 99 GUEST ROOMS IN A C-2 (COMMUNITY BUSINESS) DISTRICT, THE WATERFRONT SPECIAL USE DISTRICT NO. 2 AND A 40-X HEIGHT AND BULK DISTRICT.

Preamble

On July 1, 2004, Reuben and Junius, LLP, authorized agent (hereinafter "Applicant,") of Cocoa Development Associates, LLC (hereinafter "Project Sponsor,") made an application (hereinafter "Application") for Conditional Use authorization on the property at **851 Beach Street (a.k.a. 900 North Point / Ghirardelli Square), Lot 001 in Assessor's Block 0452** (hereinafter "Property") to allow for the conversion of 62,000 square feet of existing office use and 39,000 square feet of existing retail space to tourist hotel use with up to 99 guest rooms within a C-2 (Community Business) District, Waterfront Special Use District No. 2 and a 40-X Height and Bulk District, in general conformity with Plans filed with the Application and labeled "Exhibit B" (hereinafter "Project").

On **September 8, 2005**, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting on **Conditional Use Application No. 2004.0392C**. Conditional Use authorization is required for hotel use within a C-2 (Community Business) District and the Waterfront Special Use District No. 2

The Mitigated Negative Declaration was finalized by the Planning Department on September 1, 2005 and is contained in Planning Department **File No. 2004.0392E**.

**Case No. 2004.0392ACE
851 Beach Street (a.k.a. 900 North
Point /Ghirardelli Square)
Block 0452 Assessor's Lot 001
Motion No. 17099
Page 2 of 13**

The Planning Department and Commission have reviewed and considered the information contained in the Mitigated Negative Declaration, and all information pertaining to the project in the Department's case file.

The Mitigated Negative Declaration and all pertinent documents may be found in the file of the Planning Department, as the custodian of records, at 1660 Mission Street, San Francisco.

The proposed project as approved herein is consistent with the project description contained in the Mitigated Negative Declaration and would not result in significant impacts not identified in the Mitigated Negative Declaration or cause significant effects already identified in the Mitigated Negative Declaration to be substantially more severe.

The project sponsor has made application for a Certificate of Appropriateness, as exterior alterations are proposed to Ghirardelli Square, City Landmark No. 30. The Director of Planning approved a Certificate of Appropriateness on September 13, 2005.

Findings

Having reviewed all the materials identified in the recitals above, and having heard oral 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 project site is located at 851 Beach Street (a.k.a. 900 North Point Street - Ghirardelli Square) bounded by Polk, Beach, Larkin and North Point Streets, Lot 001 in Assessor's Block 0452 in a C-2 (Community Business) District, the Waterfront Special Use District No. 2 and a 40-X Height and Bulk District. Ghirardelli Square is City Landmark No. 30, which houses retail, restaurant and office uses.
3. The project would alter six connected buildings along the Polk and North Point Street facades of Ghirardelli Square. Across Polk Street from the project site are the Fontana Tower Apartments. Across North Point Street are a two-story commercial parking garage and two- to three-story multi-unit residences with some ground floor commercial spaces.
4. The proposal is to convert 62,000 square feet of existing office use and 39,000 square feet of existing retail space in six connected buildings along the Polk and North Point frontages of Ghirardelli Square to tourist hotel use with up to 99 guest rooms. The project proposes no expansion of the building envelope and minor alterations to the existing facade.
5. An appeal to the Preliminary Mitigated Negative Declaration has been resolved between the project sponsor and the appellant. As a result, the appeal of the Preliminary

Mitigated Negative Declaration has been withdrawn. The Department has received no other communication of neighborhood support for or opposition to the project.

6. Per Planning Code Sections 216 and 240.2, Conditional Use Authorization is required for tourist hotel use in a C-2 (Community Business) District and the Waterfront Special Use District No. 2.
7. The Commission finds that project meets the provisions of the Planning Code in the following manner:
 - a. Planning Code Section 151 requires 317 parking spaces for the proposed hotel use and the remaining existing retail use at Ghirardelli Square

The parking requirement for the existing retail and office uses on the entire site (Ghirardelli Square) is 520 spaces. A 295-space garage is located beneath the project site. While the existing garage is privately owned and operated and is available to users of Ghirardelli Square, none of the 295 spaces are dedicated spaces for the existing uses at Ghirardelli Square. As a result, there is a 520-space parking deficit for the existing uses. As the Planning Code allows for parking deficits to be credited toward proposed new commercial uses, no additional parking is required for the proposed hotel use and remaining retail use as the required number of spaces (317) is well within the existing parking deficit.

- b. Planning Code Section 188 requires allows noncomplying landmark structures to be altered and enlarged as necessary to comply with the Building, Fire and Planning Codes and to accommodate rooftop features.

Ghirardelli Square is City Landmark No. 30. As most of the existing buildings were originally constructed above the height limit, the structures are considered legal, non-complying structures with regard to height. Removal of existing non-contributing roof structures and installation new rooftop mechanical equipment is permitted under the provisions of Planning Code Section 188.

8. Under the provisions of Planning Code Section 303, the Commission may authorize a Conditional Use after finding that the proposed use will provide a development that is necessary or desirable for and compatible with the neighborhood or the community, that such use will not be detrimental to the health, safety, convenience or general welfare or persons residing or working in the vicinity, or injurious to property, improvements or potential development in the vicinity and that such use will not adversely affect the General Plan. The Project is found to be consistent with the criteria of Section 303 of the Code in that:

- a. The proposed new uses and building, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable, and compatible with, the neighborhood or the community.

The project is desirable and compatible with the neighborhood as the proposed hotel is located in one of City's prime tourist areas. Ghirardelli Square, as well as nearby Aquatic Park, The Cannery and Fisherman's Wharf, is frequented by many tourists. The project would not increase the square footage of the existing buildings and would bring a new use to underutilized, vacant office and retail space at Ghirardelli Square. The project should also generate less peak hour traffic than the office and retail uses it would replace.

- b. The proposed project will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity. There are no features of the project that could be detrimental to the health, safety or convenience of those residing or working the area, in that:

- i. Nature of proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;

The project is proposed within the footprint of the existing buildings and does not increase the square footage of the existing buildings.

- ii. The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading;

The required parking for the proposed hotel use is less than the parking required for the existing office and retail uses. A privately operated 295-space underground parking garage is available to users of Ghirardelli Square. The project site is also well served by public transit lines including MUNI lines 10, 19, 30, 30X, 47, 49, 66, 82X and the Hyde Street cable car.

- iii. The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;

The project proposes conversion to a tourist hotel use with minimal exterior alterations. Offensive emissions from noise, glare, dust and odor are generally not associated with hotel uses.

- iv. Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs;

While the project is not required to provide new open space, landscaping or parking, the project has the benefit of existing landscaped plazas and a parking garage at the project site.

- 9. The project meets the required criteria for the development of tourist hotels pursuant to Planning Code Section 303(g)(1):
 - a. The impact of the employees of the hotel or motel on the demand in the City for housing, public transit, childcare, and other social services. To the extent relevant the Commission shall also consider the seasonal and part-time nature of employment in the hotel or motel.

Impact of hotel employees on housing: The occupant load factor for hotel versus retail is lower, according to the Uniform Building Code as stated by the applicant. Considering the existing office and retail uses that the project would replace, the increase in employees for the proposed hotel use should not be significant. The project is anticipated to require the hiring of approximately 50 to 100 full-time and part-time employees. It is anticipated that more than half of the employees will be San Francisco residents and that most of these potential employees have local housing, therefore not affecting the local housing supply.

Impact of hotel employees on public transit: It is anticipated that a high percentage of employees will utilize public transit to get to work. As employees will be distributed between different daily shifts, and since there are numerous transit options within several blocks of the proposed hotel use, the project should have minimal impacts on public transit.

Impact of hotel employees on child care: The employees would have no measurable impact on child care, as the anticipated number of workers that the project would add to the City's overall work force is not significant.

Impact of hotel employees on other social services: The proposed hotel use would have no appreciable impact on other social services. The project may provide employment opportunities for some unemployed workers and possibly increased hours and income for other workers.

- b. The measures that will be taken by the project sponsor to employ residents of San Francisco in order to minimize increased demand for regional transportation.

The project is anticipated to employ approximately 50-100 full-time and part-time workers. Most workers are expected to retain their positions year-round, in contrast

to resort hotel workers where employment fluctuates depending on the season. The project sponsor intends to hire locally for managerial and staff positions.

- c. The market demand for a hotel or motel of the type proposed.

The applicant has stated that according to information available from the San Francisco Convention & Visitors Bureau (compiled by PKF Consulting), the San Francisco hotel market substantially increased between 1994 and 2000, rising from an average annual occupancy rate of 71.5% in 1994 to 81.7% in 2000. During the same time period, the average daily room rate increased from \$104.28 to \$169.74. Due to events of September 11, 2001 and a general economic downturn, the occupancy rate declined in 2001 to 67.0%. The occupancy rate stayed flat in 2002, due to concerns about terrorism and the economy, and rose slightly in 2003 to 68.3%. In the first half of 2004, the monthly occupancy rate has averaged approximately three percent more than the comparable period in 2003, and is expected to increase in the coming months because the year-to-date 2004 numbers do not include the peak tourist season, which has only just commenced. It is expected that improving national and international economic conditions and the relative lack of new hotel construction will reinvigorate the local hotel market and increase the demand for hotel rooms not only in the second half of 2004, but the years to follow.

10. The Project meets the criteria in Section 303(c)(3) by complying with applicable provisions of the Planning Code as established in the Findings and affirmatively promoting the objectives and policies of the General Plan.

COMMERCE AND INDUSTRY ELEMENT

OBJECTIVE 1 MANAGE ECONOMIC GROWTH AND CHANGE TO ENSURE
 ENHANCEMENT OF THE TOTAL CITY LIVING AND
 WORKING ENVIRONMENT.

POLICY 1 Encourage development which provides substantial net benefits
 and minimizes undesirable consequences. Discourage
 development which has substantial undesirable consequences
 that cannot be mitigated.

The conversion of underutilized vacant office and retail space to a tourist hotel use with up to 99 rooms would provide the City with a desirable hotel space in a public transit-rich location. The project is located in an area of the City that is heavily visited by tourists.

POLICY 3 Locate commercial and industrial activities according to a
 generalized commercial and industrial land use plan.

The project proposes to locate a commercial activity that is compatible with the uses envisioned for the C-2 (Community Business) District.

OBJECTIVE 8 ENHANCE SAN FRANCISCO'S POSITION AS A NATIONAL CENTER FOR CONVENTIONS AND VISITOR TRADE.

POLICY 1 Guide the location of additional tourist related activities to minimize their adverse impacts on existing residential commercial and industrial activities.

The project is situated in an area that is a prime tourist destination, therefore the project is ideally located to minimize potential adverse impacts to existing uses/activities in the area.

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

The project is primarily an interior alteration of a group of historic buildings. As minimal exterior alterations are proposed, the visual character of Ghirardelli Square and the surrounding neighborhood would not change.

OBJECTIVE 2 CONSERVATION OF RESOURCES WHICH PROVIDE A SENSE OF NATURE, CONTINUITY WITH THE PAST, AND FREEDOM FROM OVERCROWDING.

POLICY 4 Preserve notable landmarks and areas of historic, architectural or aesthetic value, and promote the preservation of other buildings and features that provide continuity with past development.

The project preserves the existing historic buildings at Ghirardelli Square.

POLICY 5 Use care in remodeling of older buildings, in order to enhance rather than weaken the original character of such buildings

The project is an interior alteration to adapt the existing buildings to hotel use. Minimal exterior alterations are proposed, thus preserving the original character of the existing historic buildings.

- POLICY 7 Recognize and protect outstanding and unique areas that contribute in an extraordinary degree to San Francisco's visual form and character.
The buildings that make up Ghirardelli Square are visibly recognized as a city landmark (City Landmark No. 30). The project proposes to maintain the existing historic character and form of Ghirardelli Square.

NORTHEASTERN WATERFRONT ELEMENT

- OBJECTIVE 5 TO DEVELOP LIMITED ADDITIONAL OFFICE AND COMMERCIAL SPACE IN ORDER TO SERVE THE CITY'S ECONOMIC NEEDS AND TO ENCOURAGE A MIXTURE OF USES AND ACTIVITIES ALONG THE NORTHEASTERN WATERFRONT.

- POLICY 5.4 Except on piers, permit additional hotel space in locations which would enhance the mixture of uses. In areas where hotels are already concentrated, additional such facilities should be limited and should only be provided if they complement adjacent uses.

The project is located at and close to tourist attractions, which have a variety of retail, restaurant, office and commercial uses. The proposed conversion to hotel use would make better use of the existing underutilized, vacant office and retail spaces. The hotel use would complement the existing uses in the area.

11. Planning Code Section 101.1 establishes Eight Priority Planning Policies and requires review of permits for consistency with said policies. The Project complies with said policies in that:
- a. No neighborhood serving retail uses are being displaced or otherwise affected by the proposal.
No neighborhood serving uses are displaced by the project. The project would provide opportunities for resident employment.
 - b. Existing housing and neighborhood character will not be adversely affected by the proposed project.

The project will not reduce the amount of existing housing. Neighborhood character will be preserved as minimal exterior alterations are proposed.

- c. The Project would have no adverse impact on the City's existing supply of affordable housing.

The project has no adverse impact on affordable housing.

- d. The Project will not significantly effect automobile traffic congestion or parking problems in the neighborhood.

The conversion to hotel use requires fewer parking spaces than does the existing office use to be removed. The project site contains a 295-space parking garage for users of Ghirardelli Square. The project site is also well served by numerous public transit lines.

- e. No industrial or service industry establishment would be displaced by the Project.

The conversion to hotel uses does not eliminate any industrial or service industry uses.

- f. Earthquake safety requirements would be considered during review of any building permit applications.

The building permit application for the project is subject to structural and seismic review under the San Francisco Building Code.

- g. The subject building is not a landmark, within an historic district, and is not included on any historic or architectural surveys; the proposal will therefore not effect any historic properties.

The project site is San Francisco Landmark No. 30. The project entails primarily interior renovations that do not adversely impact the historic nature of the subject buildings. The applicant has also applied for a Certificate of Appropriateness to ensure full review of all historic preservation issues.

- h. The Project has no impact on open space or parks or their access to sunlight and vistas.

The project proposes a change of use without physical expansion to the existing buildings, thus the project would not cast any new shadows on any park or open space. The project would not impact any vistas.

12. The Project is consistent with and would promote the general and specific purposes of the Code provided under Section 101.1(b) in that, as designed, the Project would contribute to the character and stability of the neighborhood and would constitute a beneficial development.
13. The Commission hereby finds that approval of the Conditional Use authorization would promote the health, safety and welfare of the City.

DECISION

Based upon the whole record, including the oral testimony presented to the Commission at the public hearing, and all other written materials submitted by all parties, the Commission hereby finds that the Mitigated Negative Declaration reflects the independent judgment and analysis of the Commission and there is not substantial evidence that the proposed project, given the implementation of the mitigation measures as stated in the Mitigated Negative Declaration, could have a significant effect on the environment as shown in the analysis of the Mitigated Negative Declaration. The Commission hereby adopts the Mitigated Negative Declaration and the mitigation monitoring and reporting program, attached as Conditions of Approval in Exhibit C.

Furthermore, that based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby APPROVES Conditional Use Application No. **2004.0392C** subject to the following conditions attached hereto as EXHIBIT B which is incorporated herein by reference as though fully set forth.

APPEAL AND EFFECTIVE DATE OF MOTION: Any aggrieved person may appeal this conditional use authorization to the Board of Supervisors within thirty (30) days after the date of this Motion No. 17099. The effective date of this Motion shall be the date of this Motion if not appealed (After the 30-day period has expired) OR the date of the decision of the Board of Supervisors if appealed to the Board of Supervisors. For further information, please contact the Board of Supervisors at (415) 554-5184, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94012.

**Case No. 2004.0392ACE
851 Beach Street (a.k.a. 900 North
Point /Ghirardelli Square)
Block 0452 Assessor's Lot 001
Motion No. 17099
Page 11 of 13**

I hereby certify that the foregoing Motion was ADOPTED by the Planning Commission on September 8, 2005.

Linda Avery
Commission Secretary

AYES: S. Lee, Antonini, Bradford Bell, Hughes, W. Lee, Olague

NOES: (none)

ABSENT: Alexander

ADOPTED: September 8, 2005

EXHIBIT A

CONDITIONS OF APPROVAL

General

1. This Motion is the granting of Conditional Use authorization to allow tourist hotel use up to 99 rooms within a C-2 District and the Waterfront Special Use District No. 2 pursuant to Sections 216, 240.2 and 303 of the Planning Code. The project proposes to convert 62,000 square feet of existing office use and 39,000 square feet of existing retail space in six connected building along the Polk Street and North Point Street frontages of Ghirardelli Square to tourist hotel use with up to 99 guest rooms. The project is located at **851 Beach Street (a.k.a. 900 North Point Street / Ghirardelli Square), Lot 001 in Assessor's Block 0452**, in a C-2 (Community Business) District, the Waterfront Special Use District No. 2 and a 40-X Height and Bulk District.
2. The final plans shall meet the standards of the Planning Code and be in general conformity with the plans reviewed by the Commission on September 8, 2005 and filed with the Planning Department as EXHIBIT B, dated September 1, 2005.

Mitigation Measures

3. The project shall be subject to a Mitigation Monitoring and Reporting Program as part of the Mitigated Negative Declaration that was reviewed and adopted by the Commission on September 8, 2005. The Mitigation Monitoring and Reporting Program is attached to this Motion as Exhibit C, dated September 1, 2005.

Design

4. Any alterations with regard to historic preservation issues shall be in accordance with the Certificate of Appropriateness as approved by the Director of Planning on September 13, 2005 and contained in Planning Department File No. 2004.0392A.
5. Highly reflective spandrel glass, mirror glass, or deeply tinted glass shall not be permitted. Only clear glass shall be used at all levels.
6. All Project lighting shall be directed onto the Project site and immediately surrounding sidewalk area only, and designed and managed so as not to be a nuisance to adjacent residents. Nighttime lighting shall be the minimum necessary to ensure safety, but shall in no case be directed so as to constitute a nuisance to any surrounding property.

Planning Code Compliance

7. The Project Sponsor shall appoint a community liaison to deal with issues and other related matters of concern to nearby residents. The Applicant shall report the name and telephone number of this officer to the Zoning Administrator for reference, and for inclusion in the Case Docket. Should implementation of this Project result in complaints from neighborhood residents, which are not resolved by the Project Sponsor and are subsequently reported to the Zoning Administrator and found to be in violation of the Planning Code an/or the specific Conditions of Approval for the Project as set forth in EXHIBIT A of this motion, the Zoning Administrator shall report such complaints to the Planning Commission which may thereafter hold a public hearing on the matter in accordance with the hearing notification and conduct procedures as set forth in Sections 174, 306.3 and 306.4 of the Code to consider revocation or modification of this Conditional Use authorization.
8. Construction of the herein-authorized Project shall commence within three years of the date of this action and shall be thenceforth pursued diligently to completion or the said authorization shall become null and void. This authorization may be extended by the Zoning Administrator for where the failure to implement the Project is caused by delay by another public agency or by legal challenge.
9. Failure to comply with any of the Conditions of Approval shall constitute a violation of the Planning Code, enforceable by the Zoning Administrator. Should the monitoring of the Conditions of Approval be required, the Applicant or successors shall pay fees as established in Planning Code Section 351(f)(2).

Recordation

10. The Applicant shall record a copy of these conditions with the Office of the Recorder for the City and County of San Francisco as part of the property records. This action shall be taken prior to any approval of a building permit application.

File No. 86.242C
900 North Point

SAN FRANCISCO
CITY PLANNING COMMISSION
MOTION NO. 10758

ADOPTING FINDINGS RELATING TO THE APPROVAL OF A CONDITIONAL USE AUTHORIZING A 23 ROOM HOTEL IN THE NORTHERN WATERFRONT SPECIAL USE DISTRICT NO. 2.

Preamble

On or about July 10, 1986 which meeting was continued to July 24, 1986, the San Francisco City Planning Commission (hereinafter "Commission") conducted duly noticed public hearings at a regularly scheduled meeting on Conditional Use Application No. 86.242C at which time the Commission reviewed and discussed the findings prepared for its review.

The proposed conditional use application was determined by the San Francisco Department of City Planning (hereinafter "Department") to be categorically exempt from the environmental review process pursuant to Title 14 of the California Administrative Code. The Commission has reviewed and concurs with said determination.

The Commission has reviewed and considered reports, plans, studies and other documents pertaining to this proposed project.

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 on behalf of the applicant, Department staff, and other interested parties.

Findings

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

1. On or about April 23, 1986, Ghiradelli Square Associates (hereinafter "Applicant") made application (hereinafter "Application") for Conditional Use on the property at 900 North Point Street, Lot 1 in Assessor's Block 452 (hereinafter "Subject Property") to convert office space to 23 hotel rooms in conformity with plans filed with the Application and labeled "Exhibit B" (hereinafter "Project") in a C-2 (Community Business) district and in the Northern Waterfront Special Use District No. 1, (hereinafter "NWSUD No. 2").
2. Section 215(b) of the City Planning Code (hereinafter "Code") permits hotels as a principal use in C-2 districts.
3. Section 240.2(b) of the Code provides that in the NWSUD No. 2 a hotel if otherwise listed in this Code as a permitted use, shall be permitted only upon approval by the City Planning Commission as a conditional use under Section 303 of the Code.

4. The proposed facility is to be developed entirely within the shell of the existing building. No exterior changes are involved.
5. Guest parking is to be provided within the existing Ghiradelli Square parking facilities using spaces presently available for leased monthly parking.
6. Approximately 15 room changes per day are anticipated by the project sponsors based on experience in operating similar hotels in San Francisco.
7. Guests arriving and departing with luggage are expected to use the "Mustard Building" entrance on North Point Street. A doorman will be provided.
8. Linen service and other services will use the Polk Street loading dock.
9. Section 151 of the Code provides that the existing office space has a parking requirement of 26 spaces while a hotel with 23 or fewer rooms is not required to provide parking under the Code.
10. Under the provisions of Code Section 303, the Commission may authorize a conditional use after finding that the proposed use will provide a development that is necessary or desirable for and compatible with the neighborhood or the community, that such use will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity, or injurious to property, improvements or potential development in the vicinity and that such use will comply with the applicable provisions of the Code, and will not adversely affect the Master Plan. The proposed project complies with the criteria of Section 303 of the Code in that:
 - (a) The proposed conversion to hotel use will convert space within an existing building to a use that is less intensive than the previous office occupancy of the space as 23 hotel rooms is small-scale and will require the addition of no new floor area and will entail no exterior modification to the building, the impact of the anticipated fifteen room charges per day is minimal, the use can be serviced from the existing loading dock and guest parking can be provided within the existing garage.

The Commission, after carefully balancing the competing public and private interests, hereby finds that approval of the conditional use authorization promotes the health, safety and welfare of the City.

DECISION

That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby APPROVES Conditional Use Application No. 86.242C subject to the following conditions attached hereto as EXHIBIT A which is incorporated herein by reference as though fully set forth.

CITY PLANNING COMMISSION

File No. 86.242C
900 North Point
Motion No. 10758
Page Three

I hereby certify that the foregoing Motion was ADOPTED by the City Planning Commission on July 24, 1986.

Lori Yamauchi
Secretary

AYES: Commissioners Allen, Bierman, Hemphill, Wright

NOES: Commissioner Karasick

ABSENT: Commissioner Rosenblatt

ADOPTED: July 24, 1986

VM:pg/0322M

CITY PLANNING COMMISSION

File No. 86.242C
900 North Point
Motion No. 10758

EXHIBIT A

CONDITIONS OF APPROVAL

1. Guest parking shall be provided within the existing garage.
2. Services to the hotel shall be provided from the existing Polk Street loading dock.
3. The Ghiradelli Square Associates shall confer and cooperate with the Transportation Section of the Department of City Planning and the Department of Public Works concerning appropriate changes of curbside passenger loading zones surrounding the Square.
4. The applicants shall seek any necessary approvals from the Landmark Preservation Advisory Board.

VM:pg/0322M/4

Exhibit B

Timeshare Letters of Determination

(attached hereto and incorporated by reference)



SAN FRANCISCO PLANNING DEPARTMENT

Letter of Determination

December 13, 2012

Andrew J. Junius
Reuben & Junius, LLP
One Bush Street, Suite 600
San Francisco CA 94104

Site Address:	1800 Sutter Street
Assessor's Block/Lot:	0676/033
Zoning District:	NC-2, Japantown SUD, 50-X Height/Bulk District
Staff Contact:	David Lindsay, 558.6393, david.lindsay@sfgov.org

Dear Mr. Junius:

This letter is in response to your request for a Letter of Determination regarding the Hotel Tomo at 1800 Sutter Street, an 8-story tourist hotel constructed in 1975. This parcel is located in the NC-2 Zoning District, the Japantown Special Use District and the 50-X Height and Bulk District. The property was within the Western Addition A-2 Redevelopment Area at the time of the hotel's construction. The request is whether the proposed operation of the hotel's guest rooms as timeshares, for periods of occupancy not to exceed 30 consecutive days, is consistent with a "tourist hotel" use as defined in Planning Code Section 790.46.

It is understood from the description provided by you that under the proposal, the hotel's 125 guest rooms would be operated as timeshares that would be occupied by guests predominantly by the week but not to exceed stays of greater than 30 days. The rooms would not include cooking facilities and guests would have access to the hotel's operations and services, such as check-in, concierge, laundry/dry cleaning, luggage storage and baggage-handling services. The hotel's existing amenities, such as access to meeting rooms and the on-site fitness center would also continue.

As you state in your letter, the Hotel Tomo is a 125-room tourist hotel and is considered to be a "commercial" use. Since the proposed operation of the hotel's 125 guest rooms as timeshares would continue to be a "commercial" use, and since no residential use would be affected by the timeshare operation, it is my determination that the proposed operation of the Hotel Tomo's 125 guest rooms as timeshares for periods of occupancy not to exceed 30 consecutive days is consistent with a "tourist hotel" use as defined in Planning Code Section 790.46.

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

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Andrew J. Junius
Reuben & Junius, LLP
One Bush Street, Suite 600
San Francisco CA 94104

December 13, 2012
Letter of Determination
1800 Sutter Street

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: Hotel Tomo Investors, LLP, Danesghar Faraz/3D Investments, 1880 Century Park East
Los Angeles, CA 90067 (property owner)
Neighborhood Groups
David Lindsay, Current Planning
Steve Wertheim, Citywide Planning



PLANNING DEPARTMENT

City and County of San Francisco • 1660 Mission Street, Suite 500 • San Francisco, California • 94103-2414

MAIN NUMBER
(415) 558-6378

DIRECTOR'S OFFICE
PHONE: 558-6411

4TH FLOOR
FAX: 558-6426

ZONING ADMINISTRATOR
PHONE: 558-6350

5TH FLOOR
FAX: 558-6409

PLANNING INFORMATION
PHONE: 558-6377

MAJOR ENVIRONMENTAL
FAX: 558-5991

COMMISSION CALENDAR
INFO: 558-6422

INTERNET WEB SITE
WWW.SFGOV.ORG/PLANNING

July 26, 2004

Ms. Margo N. Bradish, Esq.
Cox, Castle & Nicholson, LLP
555 Montgomery Street, Suite 1500
San Francisco, CA 94111

Re: Request for Determination under the Planning Code

Property Address: 590 Bush Street
Block/Lot: 0271/015
Zoning District: RC-4 (Residential Commercial Combined, High Density) District

Dear Ms. Bradish:

I write in response to your letters of June 4, 2004 and July 12, 2004, in which you request a determination under the Planning Code ("Code") as to the potential future use of the "Hotel Juliana" (on the subject property) as a "timeshare" as outlined in your letter. This letter supersedes Acting Zoning Administrator Jim Nixon's letter of June 30, 2004. It is understood, from the explanation furnished by you, that guests in the hotel would stay for periods of time of predominantly less than one week, but for occasional use not to exceed 30 days and that the rooms, although equipped with mini-bars (and, in some cases, microwave ovens) would not have individual cooking facilities.

As you state in your letter, The "Juliana Hotel" is a 107-room tourist hotel. This use of property was authorized as a Conditional Use, pursuant to Section 209.2(e) of the Planning Code ("Code"), by Planning Commission Motion No. 11886 on March 8, 1990 (Case No. 1989.677C). Accordingly, in that the current use of the subject property is "commercial" and no residential use would be affected or converted by your stated plans, I hereby determine that such a pattern of use (a maximum of a week at a time, with occasional use not to exceed 30 days, and without individual cooking facilities of a commercial use of property) would be consistent with the Code.

Please call Planner Jim Miller at 558-6344 with any questions regarding this letter.

Margo N. Bradish, Esq
Letter of Determination
Hotel Julianna – 590 Bush Street
July 26, 2004
Page 2.

Any aggrieved person may appeal this determination to the Board of Appeals within 15 days of the date hereof. For further information, please contact the Board of Appeals in person at 1660 Mission Street, Room 3036, or by telephone at (415) 575-6880.

Sincerely,

Lawrence B. Badiner
Zoning Administrator

cc: Wayne Helm, Trendwest Resorts, Inc.
Fax 425 498 3061

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PLANNING DEPARTMENT

City and County of San Francisco • 1660 Mission Street, Suite 500 • San Francisco, California • 94103-2414

MAIN NUMBER
(415) 558-6378

DIRECTOR'S OFFICE
PHONE: 558-6411

ZONING ADMINISTRATOR
PHONE: 558-6350

PLANNING INFORMATION
PHONE: 558-6377

AUTHOR'S PHONE
558-6344

AUTHOR'S FAX
558-6409

MAJOR ENVIRONMENTAL
PHONE: 558-5990

INTERNET WEB SITE
WWW.SFGOV.ORG/PLANNING

May 10, 2006

Ms. Margo N. Bradish, Esq.
Cox, Castle & Nicholson, LLP
555 Montgomery Street, Suite 1500
San Francisco, CA 94111

Re: Request for Determination under the Planning Code

Property Address: 726 – 750 Sutter Street
Block/Lot: 0282/004B and 018
Zoning District: RC-4 (Residential Commercial Combined, High Density) District

Dear Ms. Bradish:

I write in response to your letter of March 23, 2006, in which you request a determination under the Planning Code ("Code") as to the potential future use of the "Canterbury Hotel" and "Whitehall Inn" (on the subject properties) as a "timeshare" as outlined in your letter. It is understood, from the explanation furnished by you, that guests in the hotel would stay for periods of time of not more than one week (with occasional use not to exceed 30 days) and that the rooms, reduced in number to 128 timeshare units, would be equipped with full kitchens. On June 6, 2002, in regard to the 301 Mission Street property, I determined that the presence of a full kitchen would not, in and of itself, convert a hotel room to a "dwelling unit", where the project provided hotel operations and services, such as check-in, concierge, and baggage-handling. Also, on July 26, 2004, I determined that timeshare occupancy of tourist hotel rooms in your "Hotel Juliana" property (590 Bush Street) predominantly by the week (with occasional stays not to exceed 30 days) would be consistent with a hotel land use under the Code.

According to the statements in your letter, the structures on the subject properties (plus two other structures thereon) were used collectively as a 253-room tourist hotel. I understand that the buildings in question ceased operation as a hotel in or around February of 2005. Accordingly, in that the period of cessation of use does not exceed three years, this use is considered to be ongoing. This use of property predates the Code's Conditional Use requirements for "hotels" in RC-4 Districts. Accordingly, in that the current use of the subject property is "commercial" and no residential use would be affected or converted by your stated plans, I hereby determine that such a pattern of use as outlined herein (generally, timeshare occupancy of up to a week at a time, with in-room kitchens in a commercial use of property) would be consistent with the Code and that no additional Conditional Use authorization(s) would be required.

If you have substantial reason to believe that there was an error in the interpretation of the Planning Code or abuse of discretion on the part of the Zoning Administrator, you may file and appeal within fifteen (15) days of the date of this letter. For further information, please contact

Ms. Margo N. Bradish, Esq.
May 10, 2006
Page 2

the Board of Appeals in person at 1660 Mission Street, Room 3036, or by Telephone at (415) 575-6880.

If you have any questions regarding this matter, please contact Jim Miller at 558-6344.

Sincerely,

Lawrence B. Badiner
Zoning Administrator

cc: Wayne Helm, Trendwest Resorts, Inc.
(c/o Margo Bradish, Attorney)

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“Permits”). A copy of a Zoning Verification Letter, dated May 30, 2017, with respect to the Project, together with the applicable Permits, is attached as Exhibit A and incorporated by this reference.

The Project currently includes five (5) connected structures which contain 53 one-bedroom, two-bedroom, and three-bedroom condominium units, each with full kitchens, which have been submitted to an existing fractional interest plan (“Fractional Units”) regulated as a timeshare program under the Vacation Ownership and Time-Share Act of 2004 (California Business and Professions Code § 11210 et seq.) (the “Timeshare Act”), together with a sales gallery and commercial condominium unit. Certain of these Fractional Units will be submitted to a non-deeded timeshare program, with members and guests to occupy the Fractional Units for periods of time not to exceed 30 consecutive days.

B. Consistency with Planning Code and Permits

As described above, the Project is located within the C-2 zoning district, and the Permits expressly authorize hotel use. Planning Code Section 102 defines a “hotel” in C-2 districts as a “Retail Sales and Services Use that provides tourist accommodations, including guest rooms or suites, which are intended or designed to be used, rented, or hired out to guests (transient visitors) intending to occupy a room for less than 32 consecutive days.” It appears that the Timeshare Use at the Project would be consistent with the Planning Code’s definition of “hotel” use and the approvals in the Permits.

C. Prior Zoning Administrator Determinations

Prior Zoning Administrator determinations confirm that timeshare projects are consistent with “hotel” uses—even when the proposed rooms contain full kitchens—as long as stays do not exceed 30 consecutive days. Examples of these determinations from 2004, 2006, and 2012 are attached as Exhibit B and incorporated by this reference. On this basis, we submit that the Timeshare Use at the Project is consistent with the “hotel” use under the Planning Code and as set forth in the Permits.

D. Conclusion

For the reasons explained above, we request a letter of determination confirming that the Timeshare Use at the Project would be consistent with “hotel” use under the Planning Code and as set forth in the Permits.¹ I have enclosed a check in the amount of \$664 for the required fee.

¹ Notwithstanding the designation as “hotel” use under the Planning Code, for occupancy purposes, Timeshare Use constitutes owner occupancy under the Timeshare Act, Section 7280 of the Revenue and Taxation Code, and the timeshare program governing documents.

Office of Zoning Administrator
June 26, 2017
Page 3

Please let us know if you have any questions or require any additional information. Thank you in advance for your assistance.

Sincerely,


Nicole C. Evans