



# SAN FRANCISCO PLANNING DEPARTMENT

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## Letter of Determination

August 7, 2009

Steven Vettel  
Farella Braun & Martel LLP  
Russ Building, 235 Montgomery Street  
San Francisco CA 94104

**RE: 800 Brotherhood Way  
Case No 2003.0536CR  
Assessor's Block 7331/Lot 003 and Assessor's Block 7332/Lot 002**

Dear Mr. Vettel:

I am writing in response to your letter of June 25, 2009. In that letter, you requested a determination that the above referenced project remains in compliance with the Conditional Use authorization lapse-period referenced in paragraph 5 of Exhibit A of Planning Commission Motion No. 17022. The subject property is within an RM-1 (Residential Mixed, Low Density) and RM-4 (Residential Mixed, High Density) Districts and within the 40-X and 130-D Height and Bulk Districts. The property is vacant and Conditional Use authorization for development of a residential Planned Unit Development with up to 182 dwelling units on the property was granted by the Planning Commission in Motion No. 17022 on May 19, 2005, in case number 2003.0536ECR.

Planning Commission Motion No. 17022 governs the development of the proposed Planned Unit Development on the subject property. Paragraph 5 of Exhibit A, Conditions of Approval, of that Motion states; if there is a lapse of this use for a period of three or more years, this authorization shall become null and void and the use of the Project site shall revert to a use that is principally permitted in an RM-1 (Residential Mixed Low Density), and RM-4 (Residential Mixed, High Density) Districts. This condition is further governed by the terms of the Planning Code wherein Section 303(c)(5)(C) states, "The action of the Planning Commission approving a conditional use does not take effect until the appeal period is over or while the approval is under appeal."

On June 16, 2005 the case was appealed to the Board of Supervisors who rejected the appeal on August 16, 2005. On September 19, 2005 neighbors to the project seeking to overturn the Planning Commission's actions in the case filed a lawsuit and then appealed the results of that lawsuit. The Court of Appeals rejected that appeal and dismissed the case on March 20, 2007. It is the practice of the City to toll the time for expiration while a project is under legal challenge.

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The administrative appeal and the subsequent litigation prevented the property owner from undertaking the project until the issues in dispute were resolved through the administrative appeal process and the actions of the courts.

Since the resolution of that litigation the property owner has taken affirmative steps to advance the project. The owner sought and obtained a Tree Removal and Replacement Permit from the Department of Public Works (DPW). The issuance of the permit was appealed to the Board of Appeals which upheld the issuance on May 2, 2007. The Board's decision was appealed and that decision was upheld in Superior Court on April 27, 2008. The action was not appealed.

A pre-application meeting was held with the Department of Building Inspection (DBI) for grading and related activities was held on May 22, 2008 and DBI issued its final response on October 6, 2008.

The property owner has submitted applications for right of way improvements for the project to DPW and the Planning Department on March 26, 2008 and has submitted the latest revisions to those plans to the Planning Department on May 19, 2009.

The property owner continues to negotiate an agreement pertaining to the de-installation, storage and re-installation of the Bufano sculpture with the San Francisco Arts Commission. The most recent comments on the draft agreement were sent to the Arts Commission on June 25, 2009.

Finally, the property owner has been actively pursuing approval of the Subdivision Map for the project with DPW. The DPW issued its approval of the Vesting Tentative Map on September 18, 2008. This Map has an effective life extending through September 2011.

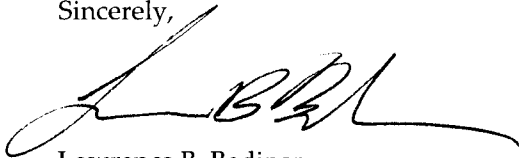
Given the above facts detailing the ongoing active pursuit of the project, and uninterrupted exercise of the conditional use authorization by the property owner, the Zoning Administrator hereby determines that there has been no lapse in the use of the conditional use authorization for any period since its issuance on May 19, 2005 and that the conditional use authorization remains valid.

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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,

A handwritten signature in black ink, appearing to read 'L. Badiner', written over a horizontal line.

Lawrence B. Badiner  
Zoning Administrator

cc: Rick Crawford, Planner  
Members of the Planning Commission  
Judge Quentin Kopp

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