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February 27, 2007

Members, Planning Commission
SF Planning Department
1660 Mission Street – 5th Floor
San Francisco, CA 94103

RE: Market Octavia Neighborhood Commercial Transit District Notice

Commissioners:

You have requested my opinion, in consultation with the City Attorney, on three items:

1. Since the NC-T district could potentially be adopted in other areas, should there have been broader notice than just to the Market-Octavia Plan Area?
2. Since the Market Octavia Plan introduces a new district, the Neighborhood Commercial, Transit (NC-T) District, does this district, per se, apply to any other districts or areas of the City.
3. What form of environmental review is required for the creation of a new zoning classification or district?

The Department has introduced, or is contemplating, new zoning districts in a number of areas. For example, the Rincon Hill Plan introduced a Downtown Residential (DTR) District. The Department is also considering new PDR-1 and PDR-2 Districts. These are in addition to the NC-T Districts. However, at this time, the Planning Commission is formally only considering applying the NC-T District within the Market-Octavia District. There are draft proposals under consideration for NC-T Districts in the Eastern Neighborhoods. These would be noticed as part of the Eastern Neighborhoods process.

The Department noticed the proposed NC-T District as part of the Market-Octavia Plan Area. Since neither the Department nor the Planning Commission are officially proposing the NC-T District for any other portions of the City at this time, no other notice, either Citywide or more focused, is required.

At the time of the Rincon Hill Plan amendments, only the Rincon Hill area was noticed, properly so. While the Department might propose in the future, and the Commission might eventually adopt, a DTR or NC-T District elsewhere in the City, there is no official pending proposal to do so. Accordingly, no notice is required to other areas in the City. The mere creation of a new type of zoning district does not require notice citywide. When, and if a new NC-T district is proposed, proper notice is required to be provided.

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In answer to your second question, the amendments to the Market-Octavia Plan will have no applicability outside of the Market & Octavia Plan Area. Any extension of the NC-T would require notice to that area and hearings before adoption.

The third question raised is whether some form of environmental review is required for the creation of a new zoning classification or district. The mere (theoretical) creation of a new zoning category does not have any physical effect on the environment. The physical effect on the environment will occur when the zoning classification is applied to a particular area of the City. At that time, the zoning ordinance putting that new zoning classification into effect in a specified location would require environmental review and the physical effects of applying the zoning classification in a specified area would be analyzed under the California Environmental Quality Act.

If anyone has substantial reason to believe that there is an error in the interpretation of the Planning Code, or abuse of discretion on the part of the Zoning Administrator, this determination may be appealed to the Board of Appeals within fifteen (15) days from the date of this letter. For further information regarding the appeals process, please contact the Board of Appeals, 1660 Mission Street, Room 3036, San Francisco, or by telephone at (415) 575.6880.

Sincerely,

Lawrence B. Badiner
Zoning Administrator