



SAN FRANCISCO PLANNING DEPARTMENT

Letter of Determination

1650 Mission St.
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San Francisco,
CA 94103-2479

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July 20, 2010

Steve Atkinson
Luce, Forward, Hamilton & Scripps LLP
121 Spear Street, Suite 200
San Francisco, CA 94105

RE: 608 Folsom Street
State of Eligibility for Transferrable Development Rights under Possible Future Zoning
Block: 3735 Lot: 009

Dear Mr. Atkinson:

This letter is in response to your request for a Letter of Determination regarding a potential amended Statement of Eligibility ("SOE") for Transferrable Development Rights ("TDR") at 608 Folsom Street (the "Site"). I understand that the current Owner of Record may pursue and execute an SOE Application to establish the amount of TDR at the Site under the current zoning of C-3-S, which allows a base Floor Area Ratio ("FAR") of 5.0 to 1. As you outlined in your request, the proposed Transit Center District Plan ("Plan") could potentially increase the FAR at the Site, which is currently proposed for a FAR of 9.0 to 1 under the Plan.

Provided that the Site is still eligible to transfer development rights as a Preservation Lot if and/or when the Planning Code ("Code") is amended to allow the TDR calculation for the Site to be based on a larger FAR, I have determined, pursuant to the procedures of Code Section 128, that the Owner of Record may be authorized to submit, without prejudice, an application for an amended SOE to pursue any additional TDR beyond an approved SOE that was obtained under current zoning. Additionally, should the Owner of Record sell all or a portion of the TDR from the original SOE that was obtained under current zoning, I have further determined that the Owner of Record may apply to obtain the additional TDR based on the amended Code allowing a greater FAR.

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 "Scott F. Sanchez".

Scott F. Sanchez
Acting Zoning Administrator

cc: Aaron Hollister, Planning Department

A:\JHG\Letters\LoD\608 Folsom Street TDR LoD.doc

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~~FICK~~

LUCE FORWARD

ATTORNEYS AT LAW • FOUNDED 1873
LUCE, FORWARD, HAMILTON & SCRIPPS LLP

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ID # 2002 - NE MARK ...
1-5419 \$ 549.50

June 10, 2010

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RECEIVED

Scott Sanchez
Acting Zoning Administrator
San Francisco Planning Department
1650 Mission, 4th Floor
San Francisco, CA 94103

JUN 10 2010

CITY & COUNTY OF S.F.
PLANNING DEPARTMENT

Re: Request for Determination
608 Folsom
How Possible Future Zoning Amendment Would Affect Ability to Obtain Revised
Statement of Eligibility (SOE) for TDR

Dear Mr. Sanchez:

We represent 608 Folsom TIC, the owner of the property at 608 Folsom Street (Block 3735, Lot 009). In May, 2009, the Board of Supervisors unanimously adopted legislation designating the two story building located at 608 Folsom as a Category III building under the Planning Code, making the site eligible for Transferable Development Rights (TDR), and this legislation subsequently was signed by the Mayor and became law. (See Exhibit A). KBS currently is taking steps to submit a Statement of Eligibility ("SOE") Application pursuant to Section 128 of the Code that will establish the amount of TDR for 608 Folsom.

Under the zoning now in effect, 608 Folsom is in a C-3-S district and a 320-I Height and Bulk district. The C-3-S district has a Base FAR of 5 to 1. Thus, if the SOE Application is submitted and acted upon under the current C-3-S zoning, the amount of TDR for the property will be the difference between the gross floor area ("GSF") of the building on the Property and the current 5.0 FAR.

However, the 608 Folsom property is within the boundaries of the proposed Transit Center District Plan ("Plan"). Under the proposed Plan released in Fall 2009, all the properties in the Plan area would be considered, for the purposes of generating TDR, to have an FAR of 9.0. Thus, if the Plan is enacted in the form proposed in Fall 2009, any rated properties (Category I-IV) should have their TDR determined on the basis of the difference between their existing GSF and a 9.0 FAR. The additional FAR potentially generated for properties in the Plan area, like 608 Folsom, by use of the higher FAR in turn would provide additional TDR to help the Transit Center District develop with the additional height and FAR contemplated by the Plan.

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Scott Sanchez

June 10, 2010

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Although my client has no immediate plans to sell TDR from 608 Folsom, it wishes to complete the SOE process to establish the TDR available for sale from 608 Folsom, under the current zoning and FAR. However, because of the pending Plan which would allow additional TDR to be created for sites within the Plan area, my client wishes a confirmation that approval of an SOE, under the existing C-3-S zoning, would not negatively impact my client's ability to obtain an amended SOE for additional TDR, if the Code is amended to allow TDR to be calculated on the basis of a greater FAR. We have consulted informally with several members of the Northeast Team and they have advised us that they believe that if the base FAR, for purposes of TDR calculation, is increased, as proposed in the Plan, an owner should be able to submit a new SOE application to have the additional TDR certified. However, we recognize that such informal opinions are not binding and therefore seek a written determination on this question.

To summarize, we seek a determination that, if an SOE has been issued with respect to 608 Folsom, based on the (current, as of June 2010) C-3-S use district and 5.0 FAR, and if subsequently the Code is amended so as to allow the TDR calculation for the Property to be based on a larger FAR, then at the time the larger FAR becomes effective, an owner would be authorized to submit an application for an (amended) SOE based on the new Code provision, and that an amended SOE certifying TDR, based in the new zoning, would be approved without any prejudice from the approval of an SOE under the prior zoning. Furthermore, we seek a related determination that, even if for some reason some or all of the TDR recognized by the initial SOE have been sold prior to the approval of a second SOE under amended zoning, this would not negatively affect the owner's rights to obtain an amended or updated SOE based on the Code amendments.

We are enclosing a check for \$549.50 which is the current fee for a written determination.

Please contact me if there are any questions about this request.

Very truly yours,



Steve Atkinson
of
LUCE, FORWARD, HAMILTON & SCRIPPS LLP

ESA/mc
Exhibit

Encl: Determination Fee, \$549.50

LUCE FORWARD

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Scott Sanchez

June 10, 2010

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cc: 608 Folsom TIC (c/o Jim Babcock)

Mark Luellen

301174538.1

80-09

FILE NO. 090211

ORDINANCE NO.

1 [Planning Code—Amending Appendix C to Article 11 Regarding 608 Folsom Street.]

2
3 **Ordinance amending the designation of 608 Folsom Street (Assessor's Block 3735, Lot**
4 **009) from Category V (Unrated) to Category III (Contributory) under Planning Code**
5 **Article 11; and adopting General Plan, Planning Code Section 101.1(b) and**
6 **environmental findings.**

7 Note: Additions are *single-underline italics Times New Roman*;
8 deletions are *strikethrough italics Times New Roman*.
9 Board amendment additions are double underlined.
Board amendment deletions are ~~strikethrough normal~~.

10 Be it ordained by the People of the City and County of San Francisco:

11 Section 1. Findings.

12 (a) On November 13, 2008, at a duly noticed public hearing, the Planning
13 Commission in Resolution No. 17743 found that the proposed amendment to the Article 11
14 designation of 608 Folsom Street was consistent with the City's General Plan and with
15 Planning Code Section 101.1(b). In addition, the Planning Commission recommended that
16 the Board of Supervisors adopt the Article 11 designation amendment. A copy of said
17 Resolution is on file with the Clerk of the Board of Supervisors in File No. 090211 and
18 is incorporated herein by reference. The Board finds that the proposed amendment to the
19 Article 11 designation is consistent with the City's General Plan and with Planning Code
20 Section 101.1(b) for the reasons set forth in said Resolution.

21 (b) Pursuant to Planning Code Section 302, the Board finds that the proposed
22 amendment to the Article 11 designation will serve the public necessity, convenience and
23 welfare for the reasons set forth in Planning Commission Resolution No. 17743, which
24 reasons are incorporated herein by reference as though fully set forth. A copy of said
25 Resolution is on file with the Clerk of the Board of Supervisors in File No. 090211.

80-09

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25 Resolution is on file with the Clerk of the Board of Supervisors in File No. 090211.

1 (c) The Planning Department has determined that the actions contemplated in this
2 Ordinance are in compliance with the California Environmental Quality Act (California Public
3 Resources Code section 21000 et seq.). Said determination is on file with the Clerk of the
4 Board of Supervisors in File No. 090211 and is incorporated herein by reference.

5 (d) The Board of Supervisors hereby finds that 608 Folsom Street (Assessor's Block
6 3735, Lot 009), is located outside a designated Conservation District and outside the
7 proposed boundary extension of the New Montgomery – Second Street Conservation District
8 related to the Transit Center District Survey, is over 40 years old, has been judged to be of
9 Individual Importance and has been rated Very Good in Architectural Design and Relationship
10 to the Environment, and that amending its designation from Category V (Unrated) to Category
11 III (Contributory) will further the purposes of and conform to the standards set forth in Article
12 11 of the San Francisco Planning Code.

13 Section 2: Designation.

14 (a) Pursuant to Sections 1102 and 1106 of the Planning Code, the designation of
15 608 Folsom Street (Assessor's Block 3735, Lot 009) is hereby changed from Category V
16 (Unrated) to Category III (Contributory). Appendix C of Article 11 of the San Francisco
17 Planning Code is hereby amended to include this property.

18 (b) This amendments to the Article 11 designation was initiated by application of the
19 owner and recommended by Resolution No. 626 of the Landmarks Preservation Advisory
20 Board on October 15, 2008 and by Resolution No. 17743 of the Planning Commission, which
21 Resolutions are on file with the Clerk of the Board of Supervisors in File No. 090211
22 and which Resolutions are incorporated herein by reference as though fully set forth.

23 Section 3. The properties shall be subject to further controls and procedures pursuant
24 to the San Francisco Planning Code and Article 11.

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APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: 
Marlena G. Byrne
Deputy City Attorney

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City and County of San Francisco

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Tails Ordinance

File Number: 090211

Date Passed:

Ordinance amending the designation of 608 Folsom Street (Assessor's Block 3735, Lot 009) from Category V (Unrated) to Category III (Contributory) under Planning Code Article 11; and adopting General Plan, Planning Code Section 101.1(b) and environmental findings.

April 28, 2009 Board of Supervisors — PASSED ON FIRST READING

Ayes: 11 - Alioto-Pier, Avalos, Campos, Chiu, Chu, Daly, Dufty, Elsbernd, Mar, Maxwell, Mirkarimi

May 5, 2009 Board of Supervisors — FINALLY PASSED

Ayes: 11 - Alioto-Pier, Avalos, Campos, Chiu, Chu, Daly, Dufty, Elsbernd, Mar, Maxwell, Mirkarimi



City and County of San Francisco

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