

RESOLUTION NO. 118-2007

Adopted October 16, 2007

APPROVING A REVISED POLICY ON THE TRANSFER OF DEVELOPMENT RIGHTS FROM A PROPERTY CONTAINING A BUILDING DESIGNATED AS A LANDMARK, SIGNIFICANT BUILDING, OR CONTRIBUTORY BUILDING WITHIN AN UNDERLYING C-3 ZONING DESIGNATION LOCATED IN CERTAIN REDEVELOPMENT PROJECT AREAS

BASIS FOR RESOLUTION

1. In 1980, the City and County of San Francisco ("City") designated the Rincon Annex U.S. Post Office Building ("Rincon Annex") as a landmark building. Landmark No. 107, Appendix A to Article 10 of the Planning Code. The Rincon Annex is located on Mission Street between Steuart and Spear Streets in the Rincon Point - South Beach Redevelopment Project Area ("Project Area").
2. On January 5, 1981, the Board of Supervisors for the City ("Board") approved the Rincon Point - South Beach Redevelopment Plan ("Plan"), which established a land use plan under the jurisdiction of the Redevelopment Agency of the City and County of San Francisco ("Agency"). The Plan requires that "[t]he Rincon Annex Building shall be retained and historically restored for adaptive re-use. . . . Plan at page 8. Since its adoption, the Plan has been amended numerous times.
3. To implement the broad land use standards of the Plan, the Agency and Planning Commissions adopted the Design for Development for the Rincon Point - South Beach Project ("DFD"). Neither the proposed Plan nor the DFD provides a Floor Area Ratio Limit ("FAR") for development in the Project Area. Instead, the DFD relies on height, bulk, and other limitations to determine the size of buildings.
4. The site of the Rincon Annex has an underlying C-3 classification in the Zoning District Use Maps of the Planning Code, which becomes effective when the Plan expires in 2021.
5. On August 25, 1985, the Agency Commission, by Resolution No. 238-1985, authorized an Owner Participation Agreement ("OPA") with Rincon Center Associates for the development of a mixed-used project on Assessor's Block 3716/Parcel 1, which included the Rincon Annex. The OPA called for the rehabilitation and adaptive reuse of the Rincon Annex and the new development of 320 residential units in two towers and additional commercial space and parking on the remainder of the site. Pursuant to the Plan, the OPA allowed the addition of two stories on the Rincon Annex, but limited the final height of that building to 84 feet.

6. On September 17, 1985, the Board adopted Section 128 of the Planning Code ("Section 128") for the purpose of preserving historic buildings in C-3 zoning districts of the Planning Code by allowing the transfer of unused development rights ("TDR") from the site of the historic building. Under Section 128, the owner of a historic building may apply to the Zoning Administrator for a Statement of Eligibility, which determines the amount of TDR, if any, that is available for transfer to other sites in C-3 Zoning Districts. The essential element in determining the amount of development potential that is available for transfer is the FAR, as determined by Section 124 of the Planning Code.
7. On May 22, 2001, the Agency Commission adopted, by Resolution No. 82-2001, a Policy on the Transfer of Development Rights from a Property Containing a Building Designated as a Landmark, Significant Building, or Contributory Building with an Underlying C-3 Zoning Designation Located in Certain Redevelopment Project Areas ("Policy"). Under the Policy, the Agency is authorized to approve or concur in Statements of Eligibility of the Transfer of Development Rights that the Zoning Administrator issues pursuant to Section 128 of the Planning Code. In effect, the Policy allows the Agency to apply the standards of Section 128 to historic building sites in those portions of the Rincon Point - South Beach Redevelopment Project Area and the Yerba Buena Center Redevelopment Project Area that have an underlying C-3 zoning designation. In addition, the Policy requires the Agency Commission to make findings that a particular Statement of Eligibility of TDR "will promote the goals of the applicable Redevelopment Plan and enable the preservation, enhancement or maintenance of a Landmark, Significant Building, or Contributory Building."
8. Currently, Rincon Center Commercial LLC ("Owner"), an affiliate of Beacon Capital Partners, owns the Rincon Annex at 121 Spear Street and the rest of the commercial portions of the Rincon Center development. On or about November 28, 2006, the Owner, through its attorney, transmitted an application to the Planning Department for a Statement of Eligibility for Transferable Development Rights related to the Rincon Annex. The application requested approval of 508,560 square feet of TDR from the Rincon Annex, based on the Floor Area Ratio ("FAR") standard for the underlying Planning Code zoning for the site of C-3-O. The Owner also sent a copy of this application to the Agency with a letter stating that it is submitted "[i]n accordance with the Redevelopment Agency's TDR policy." Letter, D. Silverman to M. Rosen, Re: Historic Rincon Annex U.S. Post Office Building (Nov. 27, 2006).
9. Agency staff reviewed the TDR application for the Rincon Annex and determined that the Policy did not authorize the Agency to concur in the proposed Statement of Eligibility for the Rincon Annex. First, because the Rincon Annex had already been rehabilitated as required by the 1985 OPA, the authorization of TDR would not meet the Agency's TDR Policy requirement of enabling the "preservation, enhancement or maintenance" of an historic structure. Second, the Plan and DFD do not authorize any FAR for this site, but rather establish development capacity through height and bulk limits. Because the Rincon Annex had already been

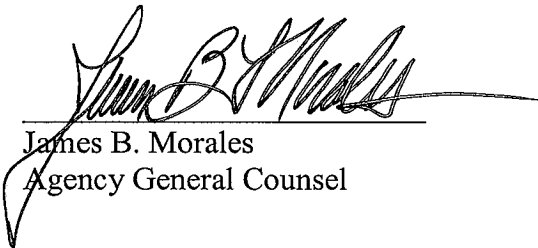
developed to its full height and bulk capacity, staff determined that there were no excess development rights that could be transferred as TDR.

10. After further discussion with the Owner's representatives, the Planning Department, the Mayor's Office and the Office of the President of the Board, staff proposes amending the Agency's TDR Policy to provide for the authorization of TDR from sites with previously preserved historic buildings and no additional development potential under the redevelopment plan, but with unused FAR pursuant to the underlying Planning Code standards. Under the revised policy, if a historic building has already been preserved, the Agency Commission may still authorize the Executive Director to concur with the Zoning Administrator's TDR Statement of Eligibility, subject to a finding that the approval would "promote the preservation, enhancement or maintenance of other landmark, significant, or contributory buildings, as defined in Articles 10 and 11 of the Planning Code, owned by the Redevelopment Agency or in or near any project area under the jurisdiction of the Redevelopment Agency." The revised policy would also authorize Agency concurrence with the Zoning Administrator's Statement of Eligibility for TDR based on the underlying zoning map, even if the standards of the redevelopment plan in which the Preservation Lot is located do not establish unused development capacity.
11. The proposed Revised Policy is a minor alteration of the existing Agency policy on the Transfer of Development Rights. On May 22, 2001, the Agency Commission adopted the existing Policy and determined, in Resolution No. 82-2001, that the Policy was categorically exempt pursuant to Section 15305 of the California Environmental Quality Act ("CEQA") Guidelines. Adoption of the proposed Revised Policy is a similarly minor alteration in land use limitations that does not result in any changes in land use or density and is thus categorically exempt pursuant to CEQA Guidelines Section 15305. The Agency recognizes that the use of TDR in the development of another property ("Development Lot") is subject to separate environmental review under CEQA.

RESOLUTION

ACCORDINGLY, IT IS RESOLVED by the Redevelopment Agency of the City and County of San Francisco that it hereby approves amendments, as shown in Attachment A to this Resolution, to the Policy on the Transfer of Development Rights from a Property Containing a Building Designated as a Landmark, Significant Building, or Contributory Building with an Underlying C-3 Zoning Designation Located in Certain Redevelopment Project Areas, originally adopted on May 22, 2001 by Resolution No. 82-2001.

APPROVED AS TO FORM:


James B. Morales
Agency General Counsel

REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO

POLICY ON THE TRANSFER OF DEVELOPMENT RIGHTS FROM A PROPERTY CONTAINING A BUILDING DESIGNATED AS A LANDMARK, SIGNIFICANT BUILDING, OR CONTRIBUTORY BUILDING WITH AN UNDERLYING C-3 ZONING DESIGNATION LOCATED IN CERTAIN REDEVELOPMENT PROJECT AREAS

(As amended October 16, 2007, by Redevelopment Agency
Resolution No. 118-2007 with the amendments highlighted.)

1. **Reference.** This Policy and implementing regulations and guidelines may be identified as the Redevelopment Agency TDR Policy ("Policy").
2. **Scope.** City Planning Code Section 128 (as amended by Ordinance No. 115-90) is hereby confirmed as applicable to any parcel with an underlying C-3 district zoning designation that contains a Landmark, Significant Building or Contributory Building ("Preservation Lot") and is located in the Rincon Point-South Beach Redevelopment Project Area or the Yerba Buena Center Redevelopment Project Area (jointly "Redevelopment Project Areas"); provided however, that no parcel within the Emporium Site Area shall constitute a Preservation Lot or recipient of TDR. Upon the adoption of the findings required by Section 3 of this Policy, the Redevelopment Agency Commission ("Agency Commission") may authorize the Executive Director to approve a Statement of Eligibility prepared in cooperation with the Zoning Administrator concerning the transfer of development rights based on unused gross floor area ("TDR") from any Preservation Lot located in the Redevelopment Project Areas. If the development standards for the Redevelopment Project Areas already restrict the development potential of a Preservation Lot, but the Zoning Administrator determines that TDR is nonetheless available under the Planning Code, the Agency Commission may authorize the Executive Director to approve a Statement of Eligibility after making findings consistent with Section 3 of this Policy.
3. **Basis for TDR Authorization.** The Agency Commission may authorize the Executive Director to approve and concur as to a Statement of Eligibility prepared by the Zoning Administrator if the Agency Commission determines that such authorization will promote the goals of the applicable Redevelopment Plan and enable the preservation, enhancement or maintenance of a Landmark, Significant Building, or Contributory Building. If the Agency has already preserved, enhanced, or maintained the Preservation Lot for which the Zoning Administrator

has approved a Statement of Eligibility, the Agency Commission may authorize the approval or concurrence in the Statement of Eligibility to promote the preservation, enhancement or maintenance of other landmark, significant, or contributory buildings, as defined in Articles 10 and 11 of the Planning Code, that are either: a) owned by the Agency; or b) are in or near any project area under the jurisdiction of the Agency.

4. **Statement of Eligibility Approval Requirements.** Any owner of a Preservation Lot in a Redevelopment Project Area shall provide the Executive Director with a copy of any application for a Statement of Eligibility prior to submittal of such application with the Zoning Administrator. The Executive Director shall review the information contained in the application for a Statement of Eligibility to determine whether such information is consistent with the applicable Redevelopment Plan. The Executive Director may approve the Statement of Eligibility on behalf of the Agency and provide the Zoning Administrator with a copy of such approved Statement of Eligibility on and after the Agency Commission adopts the findings and determination required by this Policy.
5. **Use of TDR in Redevelopment Project Areas.** Except as otherwise provided in this Policy and required by applicable law, the Agency Commission retains the exclusive right: a) to approve a Statement of Eligibility prepared for a Preservation Lot located in a Redevelopment Project Area, b) to review and determine the extent to which TDR may be used on a Development Lot located in a Redevelopment Project Area, and c) to approve any intra-Project Area TDR transfer. Any such approval shall be based on the findings required by this Policy and reflected in the adoption of a resolution authorizing an Owner Participation Agreement (“OPA”), Land Disposition Agreement (“LDA”) or Development and Disposition Agreement (“DDA”) or the amendment of an existing OPA, LDA or DDA pertaining to such Development Lot. The use of TDR on a Development Lot in a Redevelopment Project Area shall be subject to all requirements of the applicable Redevelopment Plan other than the floor area ratio limits, and any conditions reflected in the OPA, LDA or DDA pertaining to the Development Lot. However, nothing in this Policy shall be interpreted to authorize the Agency Commission to approve TDR use on a Development Lot outside of a Redevelopment Project Area.
6. **Regulations.** The Executive Director may develop such additional Agency procedures and requirements for review of TDR applications, consistent with this Policy.
7. **Severability.** If any provision of this Policy or the application thereof to a particular property is held to be unconstitutional or invalid or ineffective by a final judgment rendered by a court of competent jurisdiction, or other competent agency, the effect of such decision shall be limited to the affected provision of this Policy or the affected property.
8. **Effective Date.** This Policy is effective on and after October 16, 2007, the date on which the Agency Commission adopts Resolution No. 118-2007.