SAN FRANCISCO
PLANNING + URBAN RESEARCH
ASSOCIATION

654 Mission Street
San Francisco, California
94105

415.781.8726 t
415.781.7291 f

www.spur.org

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November 1st, 2011

Hon. Charles Chase, President
San Francisco Historic Preservation Commission
1650 Mission Street, Suite 400
San Francisco, CA 94103

Dear President Chase and Commissioners,

Thank you for the opportunity to offer our perspective on Articles 10 and 11 of the Planning Code. SPUR has been following with interest the evolution of the amendments to Articles 10 and 11 for several years. We wish to offer our comments on those amendments that may be introduced by Supervisor Wiener (as set forth in the memos dated 10/3/11, 10/5/11, 10/13/11, and 10/17/11).

As you may know, SPUR is currently working with San Francisco Architectural Heritage to develop a joint policy report on substantive issues related to survey work, the process for adoption of and the definition of rules within historic districts and the role of CEQA relative to historic preservation. We look forward to presenting our ideas to you once they have been developed further.

The SPUR/Heritage Task Force has not jointly reviewed Supervisor Wiener's proposed amendments to Articles 10 and 11 as part of our Task Force work plan. The comments contained in this letter reflect SPUR's position, not the position of the Task Force.

We understand that the Article 10 and 11 legislation before you is largely "clean up" legislation and that there may be opportunities to revisit some of the more substantive issues in the future. We have grouped our comments as follows: 1. Those amendments that we strongly support and feel are critical for the Planning Commission to address, 2. Those "clean-up" amendments that we also support and 3. Those amendments about which we have no formal position.

Strongly support

1. Sections 1006.7 (re-numbered 1006.6 in Articles 10 and 11 draft 9/28/11 included in the 10/27/11 Planning Commission packet) and 1111.6 - Standards for Review of Applications

Section 1006.7 (b) states that proposed work on a landmark or within a historic district must meet the Secretary of the Interior's Standards. This language was added by the HPC to Article 10. Mandatory compliance with the Secretary of the Interior's Standards is not a requirement of Proposition J.

The Secretary of the Interior's Standards are quite strict – these are the standards that must be met for federal tax credits to be awarded for a particular project. While these standards are appropriate for landmark buildings, it may in many cases be too strict for non-landmark projects that may nevertheless be beneficial and worthy of approval. We are particularly considered about this requirement being applied to non-contributory buildings and vacant parcels within historic districts. This is especially true in light of the fact that the HPC has recommended amending Section 1006.1 (e) to state that in order to modify a decision of the HPC on conditional use or 309 review for contributory buildings or vacant parcels by a 2/3rds vote, the Planning Commission "shall apply all applicable historic resource provisions of the code." In other words, the Planning Commission would also be bound by these stringent standards even it has the opportunity to reconsider an HPC decision.

For these reasons, we strongly support Supervisor Wiener's suggestion that the Standards be "considered" but that "compliance" with every one of the standards not be made mandatory for every Certificate of Appropriateness or Permit to Alter for properties within a Historic District that are not individually landmarked.

Additionally, we feel that the development and adoption of a local interpretation of the Secretary of Interior Standards could help to clarify the standard of review and create more consistency in review.

2. Economic Hardship Opt Out Provision

We support Supervisor Wiener's request that an economic hardship opt out provision be included in Articles 10 and 11. This is a sensible way to encourage economic diversity within our city. The Planning Department has offered a suggestion as to how this economic hardship provision could be implemented. We agree with the Department's proposed approach to this issue. We recommend that the Department confer with the Mayor's Office of Housing to see if they have input into this matter, particularly as related to permanently affordable subsidized housing.

We echo San Francisco Architectural Heritage's request (in their letter dated 10/18/11) that Supervisor Wiener, the HPC and the Planning Department to take meaningful steps to broaden access to the Mills Act among low income property owners. To date, the Mills Act has been woefully underutilized in San Francisco.

3. **Section 1002 – Powers and duties of the Planning Department and Historic Preservation Commission**

San Francisco is a city that honors the role of public participation. As with any neighborhood planning work, we believe that historic preservation survey work will benefit from input and public vetting. The Planning Department proposed an interim policy regarding comprehensive public outreach for historic resource surveys. We urge the Planning Commission to adopt this interim policy. At the same time, we agree with Supervisor Wiener's suggestion that an Administrative Bulletin or other document be developed to help clarify outreach procedures that apply to all neighborhood planning work. We agree that notices regarding survey work should clearly state the expected implications and potential costs to affected property owners so that they understand the importance of participating in survey efforts.

4. Sections 1111(b), 1111.6, 1111.7(a) and (b) – Applications for and Standards for Permits to Demolish
The HPC is proposing that the absolute prohibition on demolishing Significant buildings downtown be extended to all Category III Contributory Buildings, even those have elected not to sell their TDRs, unless the building has no remaining market value. Under the current Article 11, all Significant Buildings but only Contributory Buildings from which TDR have been transferred are subject to stringent demolition controls. This was the "grand compromise" arrived at after much debate and consideration in the 1980's when the Downtown Plan was enacted. For Category IV Contributory Buildings that have not sold TDRs the HPC would give itself broad discretion to deny demolition permits unless the owner jumps through significant hoops (the draft ordinance contains 21 pieces of information required to be contained in every application) and proves the "rehabilitation and reuse of the building will not meet most of the goals and objectives of the proposed replacement project." There are 134[1] such Contributory Buildings, none of which has been determined to be a significant architectural or historic structure.

We do not believe the case has been made to abandon this distinction between Significant and Contributory Buildings, with no notice to owners of Contributory Buildings and no indication that the compromise is not working as intended, and impose the same stringent demolition controls (along with detailed application information) that apply to Significant Buildings on all Contributory Buildings (regardless of whether TDR have been sold). We support Supervisor Wiener's amendments to these sections.

Support

1. Section 1004.2 (c) and Section 1006.1: consistency with the General Plan
We support Supervisor Wiener's proposed language to ensure consistency of comments and findings with the General Plan, so that all relevant planning policies are considered during the decision making process.

2. Section 1006.3 – Scheduling and notice of hearing
The HPC has recommended that all occupants within 300 feet of a property seeking a non-administrative Certificate of Appropriateness be noticed 20 days prior to the hearing. This recommendation is potentially very expensive for sponsors because there is no readily available inventory of occupants (like there is of property owners) and it requires sponsors to go door to door to identify occupants. A 300-foot radius area is 4 times larger than a 150-foot radius area, the area where occupants now receive all 311, 312 and Environmental Evaluation notices. We appreciate the addition of language by the HPC to state that "all efforts shall be made to the extent practical, to notify occupants of properties within the notification area." We would like the Planning Department to clarify its understanding of what "to the extent practical" means.

3. Section 1014(a)(2) – Applicability
Under the current Articles 10 and 11, the interim control period is 180 days and cannot be extended. Supervisor Wiener's amendments represent an appropriate compromise.

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[1] Per Planning Department's correction on October 27th, 2011

4. Sections 1111.7(c) Timeline for the Reclassification of Category V Buildings
The HPC would require the same 21-part demolition application for all Unrated Category V buildings, and would give itself the ability to deny a demolition permit for an Unrated building if it determines the building might be "eligible" for redesignation. However, the current draft does not require that the redesignation actually occur. We agree that if a demolition permit for an Unrated Category V Building is delayed so that the HPC can consider whether to initiate redesignation of that building, there needs to be a tight timeline for consideration of that reclassification. Otherwise, there could be an indefinite delay of any decision on an Unrated Building at the request of the HPC. The HPC should be required to initiate redesignation within a short period of time (perhaps 60 days) if it wishes to deny a demolition permit on the basis of a potential for redesignation. They should then have a standard time (perhaps 180 days) to complete the designation.

5. Sections 1111.7(d) Standard for Denial of Demolition Based on Cumulative Impact to Conservation District
We agree that there needs to be some standard for what constitutes a cumulative impact on the integrity of a Conservation District. The CEQA definition of a significant adverse effect to a historic resource appears a well-understood standard that would work well here. If it is problematic for that definition to be included in the planning code, then an administrative bulletin or other form of guidance should be developed.

No Position

Section 1004.3 - Appeals to the Board of Supervisors and Section 1107 – Procedures for Designation of Additional Historic Districts or Boundary Change of Historic Districts
These amendments would require that an informational vote of property owners be taken prior to the establishment of a Historic District. This is a much less stringent requirement than the one originally proposed by Supervisor Wiener which would have required that a majority vote of property owners be taken prior to the establishment of a Historic District.

There are pros and cons to this approach. Requiring an informational vote prior to the establishment of a Historic District would ensure that a majority of owners are both aware of the creation of the district and support the designation. This step would also help to ensure that the most important historic districts would be adopted while potentially helping to combat the use of historic district designation as a tool simply to stop growth unwanted by some group.

The procedure proposed by Supervisor Wiener seems like a reasonable check to ensure that the majority of property owners within a district are aware that the designation process is taking place. It does not require that a majority of those property owners support the district designation, but rather that a majority has expressed their awareness enough to vote one way or the other.

On the other hand, property owners don't usually vote on land use changes in San Francisco, and we want to make sure that professional planning staff judgment is adequately represented in the decision-making process.

SPUR believes that there should be a high bar for demonstrating resident awareness of and support for Historic District designations. We also believe that Historic District designations should be reserved for the most important districts (those collection of buildings that, because of their architectural merit or cultural significance, are worthy of preservation) and not used as a tool to stop unwanted growth or change (i.e. buildings that, because of their height or bulk, some group doesn't like or alterations that some might find aesthetically unpleasing).

It would be helpful to have the Planning Department provide information about the procedures for district designations for comparable localities.

SPUR believes that a robust public process should be developed to ensure that the majority of stakeholders are both aware of the district and support its designation. We will continue to review the procedures for designating districts as part of our task force work.

The creation of a uniform standard establishing that only character-defining features visible or accessible from the public right of way or public space can be protected by a designating ordinance.
We feel that it is important to craft designating ordinances that protect what is most valuable about the potential historic district while allowing for growth and change. We remain concerned about the potential for the creation of designating ordinances that are overly prescriptive - making it difficult for owners to make reasonable alterations to their properties while meeting the goals of the designating ordinance. Aspects of potential designating ordinances that could be problematic include the regulation of rear yards, trash enclosures, foundations, solar panels and work that increases the seismic safety of buildings.

We recommend that the Department develop policy guidance on these matters to help guide future discussions around historic district designation and that this guidance be reviewed by both the Planning Commission and the Historic Preservation Commission.

Thank you for your consideration of our position. Should you have any questions, please do not hesitate to contact me at 415-644-4292.

Sincerely,

Sarah Karlinsky
Deputy Director

Cc: SPUR Board of Directors
Supervisor Scott Wiener
John Rahaim, Director, San Francisco Planning Department
Tim Frye, Preservation Coordinator, San Francisco Planning Department
Mike Buhler, Executive Director, Architectural Heritage