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**RE: Consolidated Comments on Proposed Amendments to Articles 10 & 11  
(Supervisor Scott Wiener)**

Dear President Chase and Members of the Commission:

On behalf of San Francisco Architectural Heritage (Heritage), thank you for the opportunity to further comment on proposed amendments to Articles 10 and 11 put forward by Supervisor Scott Wiener. This letter seeks to consolidate and focus our comments to address all known remaining amendments being proposed by Supervisor Wiener.

Since September 7, 2011, Supervisor Wiener has submitted five memos proposing various amendments to Articles 10 and 11.<sup>1</sup> Many of his original policy proposals have evolved, some remain unchanged, and others have been abandoned. There is no comprehensive list of proposed amendments—or actual legislative language—for the Historic Preservation Commission (HPC) to consider. The following comments reflect our understanding of all remaining amendments proposed by Supervisor Wiener, starting with an analysis of the seven “most significant” changes listed in his October 27, 2011 memo to the HPC.

- ECONOMIC HARDSHIP OPT-OUT IN HISTORIC DISTRICTS:** Supervisor Wiener is proposing an “economic hardship opt-out” provision aimed at protecting low income property owners in historic districts. According to his October 3, 2011 memo, the proposed opt-out provision would target “property owners who want to make changes to their buildings but who do not have the economic means to do so in compliance with historic preservation standards or to pay for a Certificate of Appropriateness.”<sup>2</sup> On October 13, 2011, Supervisor Wiener clarified that his “intention is to include Affordable Housing projects, regardless of income level, and mixed-use and commercial

<sup>1</sup> Dated September 7, 2011, October 3, 2011, October 13, 2011, October 17, 2011, and October 27, 2011.

<sup>2</sup> Memo from Supervisor Scott Wiener to HPC, October 3, 2011.

properties as part of this Exemption/Opt-Out.”<sup>3</sup>

**HERITAGE POSITION:** Heritage supports Supervisor Wiener’s proposal for a “narrow” economic hardship exemption aimed at protecting low income property owners to avoid gentrification of historic districts. Given different approaches to addressing hardship claims, Heritage recommends that the proposed economic hardship provision be developed in an independent process with input from all affected parties. In conjunction with crafting economic hardship language, we also believe that it will be essential for the City to implement policy changes to broaden access to existing financial incentives, starting with Mills Act property tax abatement.

2. **ENSURING STRONG OUTREACH TO AND SUPPORT FROM PROPERTY OWNERS BEFORE A HISTORIC DISTRICT IS CREATED.** Supervisor Wiener is proposing that an “informational vote from a majority of property owners prior to a simple majority vote of the Board of Supervisors.” The Department would also be required to obtain the vote of at least a majority of property owners before designation can be brought to the Board for a vote.

**HERITAGE POSITION:** Heritage opposes the proposed amendment because it would impose a unique and costly burden on historic district designation. Indeed, no other zoning changes in San Francisco are subject to this requirement. As noted by the Planning Department, the proposed amendment raises other policy and procedural issues regarding how the vote would be conducted, where the funding would come from, the disenfranchisement of the resident renter community, how the Department would treat non-responses, and the legitimacy of community-sponsored petitions. Heritage agrees with the Department’s recommendation that this topic warrants further discussion by a broad range of interest groups, including the preservation and development communities, and neighborhood groups representing owners and renters alike.<sup>4</sup> Policies and procedures for measuring community support (or opposition) should be developed separate from the current set of proposed amendments to Articles 10 and 11, as part of a comprehensive package defining the nomination, initiation and designation process for historic districts.

3. **REQUIREMENT THAT A CERTAIN PERCENTAGE OF PROPERTY OWNERS IN THE PROPOSED DISTRICT SIGN A VERIFIED APPLICATION FOR INITIATION.** Supervisor Wiener is proposing to maintain the Planning Code’s existing requirement in Section 1004.1 that when property owners or members of the public nominate a historic district for initiation, they do so with an application that has been subscribed by at least 66% of the property owners in the proposed district.

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<sup>3</sup> Memo from Supervisor Scott Wiener to HPC, October 13, 2011. It should be emphasized that nearly all of San Francisco’s affordable housing projects receive federal funding and are therefore subject to review by the California Office of Historic Preservation to ensure full compliance with the *Secretary’s Standards*.

<sup>4</sup> Memo from Planning Department to HPC, October 19, 2011 hearing, at p.4.

**HERITAGE POSITION:** The intent of Proposition J was to update Articles 10 and 11 to reflect best practices nationwide. The 66% owner support threshold to initiate a historic district imposes an extraordinarily high bar on resident-sponsored nominations. Over the past 45 years, this requirement has been circumvented by Supervisor-initiated historic districts (which do not require subscription by a super-majority of owners).<sup>5</sup> The existing 66% threshold is clearly out of step with recognized preservation practice today. As noted by the State Office of Historic Preservation, “The vast majority of preservation ordinances nationwide wisely avoid any type of owner consent provisions.”<sup>6</sup>

4. **BETTER OUTREACH FOR HISTORIC SURVEYS:** Supervisor Wiener is proposing that community engagement policies and procedures be set forth in administrative bulletins.

**HERITAGE POSITION:** Heritage supports the development of Department-wide policies and procedures to ensure community participation in the historic survey process as well as other community planning efforts. We understand that the proposed administrative bulletins are intended to list the full menu of outreach tools all in one place, for broad application to historic resource surveys and other neighborhood planning initiatives.

5. **SAN FRANCISCO-SPECIFIC PRESERVATION STANDARDS:** Supervisor Wiener is proposing to develop an alternative to the *Secretary of the Interior’s Standards* “for specific application in San Francisco.” The so-called “San Francisco Standards” would be prepared by the Planning Department following a public planning process, determination of conformance with the General Plan and Planning Code by the Planning Commission, and consideration by the HPC...”

**HERITAGE POSITION:** Heritage believes that the proposal to develop “San Francisco Standards” is a costly, time-consuming, and unnecessary exercise. The *Secretary’s Standards* already provide detailed guidance on urban design issues and the HPC has traditionally applied these standards quite flexibly.<sup>7</sup> We acknowledge that other cities have

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<sup>5</sup> Only eleven local historic districts have been designated in San Francisco, the most recent being the Dogpatch neighborhood in 2003. Another pending district for Duboce Park enjoys broad community support.

<sup>6</sup> Technical Assistance Bulletin #14, “Drafting Effective Historic Preservation Ordinances: A Manual for California’s Local Governments” (California State Office of Historic Preservation, 2005).

<sup>7</sup> The HPC and its predecessor, the Landmarks Preservation Advisory Board, have frequently applied the *Secretary’s Standards* to approve major additions to historic buildings and infill projects, such as 72 Townsend, 690 Market Street, and 178 Townsend (currently under construction). Located in the South End Historic District, the 178 Townsend project is adding four stories and 94 rental housing units behind the edifice of the former Arc Light Company Station B building, constructed in 1888. Although not without controversy, these projects demonstrate the compatibility of the *Secretary’s Standards* with San Francisco planning and development goals.

successfully developed design guidelines that interpret—**and are equivalent to**—the *Secretary's Standards*. Given the diversity of development patterns, density, architectural styles, and neighborhood character across San Francisco, Heritage favors district-by-district design guidelines over uniform citywide standards. Under the City's Certified Local Government agreement, any proposed "San Francisco Standards" or design guidelines would require approval by the State Office of Historic Preservation to ensure consistency with the *Secretary's Standards*. Finally, we strongly oppose Supervisor Wiener's proposal in his October 13, 2011 memo to exempt contributors to historic districts from compliance with the *Secretary's Standards* pending development of "San Francisco Standards."

6. **LIMITING THE HIGHEST PRESERVATION STANDARDS TO PORTIONS OF THE BUILDING VISIBLE FROM THE PUBLIC RIGHT-OF-WAY.** "For districts and private landmarks subject to Article 10," Supervisor Wiener is proposing "a uniform standard establishing that only exterior character-defining features, or interior character defining architectural features that are or historically have been visible or accessible from the public right of way or public space can be protected by a designating ordinance."<sup>8</sup>

**HERITAGE POSITION:** Heritage strongly opposes the proposed blanket exclusion of all private or non-visible spaces from designation. The proposed rule is out of conformance with standard preservation practice, would sanction facadism, and would jeopardize the City's Certified Local Government status. If a property owner wishes to protect a significant private space—whether it be a mural, rear courtyard, theatre interior, executive board room, or façade obscured by a wall or landscaping—they should be able to do so. As an alternative, Heritage suggests that language be added to Article 10 requiring any future designating ordinance to explicitly call out any private or non-visible features to be protected. Those features that are not listed in the designating ordinance would be presumed to not be character-defining.

Although perhaps not Supervisor Wiener's intent, the proposed amendment (as currently worded) would exclude locally designated interiors such as the Garden Court at the Palace Hotel, the Diego Rivera mural inside the San Francisco Art Institute, and interior portions of the Castro Theatre from protection. Examples of potential historic resources that would be excluded from protection include scores of pre-1900 residences recently identified the Mission survey. The survey identified approximately 240 buildings located at the rear of individual parcels and concealed from public view, including 67 built before 1900. Additionally, the proposed language does not clarify whether historic resources located in public spaces, but not visible from the street, would also be exempt. For example, the wooden walkways and steps of the Telegraph Hill Historic District are currently protected as unique contributors to the setting of the District, but they are not visible from the street. See photos in Exhibit A.

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<sup>8</sup> Memo from Supervisor Scott Wiener to HPC, October 17, 2011.

7. **PRESERVING THE COMPROMISE REACHED IN THE DOWNTOWN PLAN:** Supervisor Wiener’s October 17, 2011 memo to the HPC states: “When the Downtown Plan was approved in 1987, stringent demolition prohibitions were imposed on Significant (Cat. I and II) buildings, but not on Contributory (Cat. III and IV) buildings unless the owners of those Contributory buildings sold TDRs. No case has been made that we need to abandon this compromise, which has worked well since the 1980’s.” Supervisor Wiener has proposed a series of changes to the HPC version of Article 11, ostensibly to preserve the “compromise reached in the Downtown Plan.” These proposed amendments are analyzed in sequence below:

a. **SECTION 1111(b):** *“In addition to the contents specified for applications in (1) above, any application for a Permit to Demolish a Significant building or a Contributory building from which TDR have been transferred shall also contain the following information:”*

**HERITAGE POSITION:** Heritage supports the Planning Department’s recommendation to leave this section unchanged. The proposed amendment would significantly narrow the scope of this section by exempting (1) all buildings that have not transferred TDR and (2) all Category V buildings. The proposed amendment would eliminate the ability of the HPC to consider “the amount and value of [available] untransferred TDR” when reviewing permits to demolish. In addition, Category V buildings not rated in Heritage’s original downtown survey may have acquired significance over time and should be re-evaluated in conjunction with applications for demolition.<sup>9</sup>

b. **SECTION 1111(c):** *“The requirements (1)-(6) become (16) to (21) rather than a new subsection (c).”*

**HERITAGE POSITION:** Heritage believes that this section should remain unchanged. Section 1111(c) applies specifically to permits to demolish buildings that have already transferred TDR, whereas Section 1111(b) applies to all permits to demolish.

c. **SECTION 1111.7(a):** *“For Significant Buildings (Category I and II), ~~Contributory Buildings (Category III), and for Contributory Buildings in a Conservation District (Category III and IV) from which TDR have been transferred:~~”*

**HERITAGE POSITION:** Heritage opposes the proposed amendment because it would exempt an entire class of buildings (Category III from which no TDR has been transferred) from review. We propose this section be rewritten as follows: “(a) For Contributory Buildings in a Conservation District (Category IV) from which TDR have been transferred, and for Significant Buildings (Category I and II), Contributory Buildings (Category III):”

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<sup>9</sup> It has been over 25 years since the adoption of the Downtown Plan and nearly 35 years since Heritage’s downtown survey rated individual buildings.

- d. **SECTION 1111.7(b):** *“For Contributory Buildings in a Conservation District (Category IV) from which no TDR has been transferred:”*

**HERITAGE POSITION:** It is unclear if the intent of the proposed amendment is to expand the scope of this section to include both Category III and Category IV buildings. Heritage recommends that Section 1111.7(b) be left unchanged or conformed to Section 1111.7(a).

- e. **SECTION 1111.7(c)(A):** *“Based on new documentation presented, the building has not gained additional historical or architectural significance that may make it eligible for classification as a Category I, II, or IV building. Any determination that a Category V building may be eligible for reclassification shall be void if, within 180 days of such determination, the Board of Supervisors has not re-designated the building to a Category I, II or IV building;”*

**HERITAGE POSITION:** As set forth in Section 1106, the process for reclassification of Category V buildings involves several steps, including notice, referral to the HPC, action by the HPC, designation by the Board of Supervisors, and possible appeal to the Board of Supervisors. The amended language does not indicate when the 180-day clock would start, and Section 1106 does not currently include time limits to ensure speedy disposition.

- f. **SECTION 1111.7(d).** *The cumulative effects on the integrity of the Conservation District associated with demolition of the Contributory Building shall be considered and may be grounds for denial of the Permit to Demolish if the effects would materially impair the significance of the Conservation District.*

**HERITAGE POSITION:** Because Article 11 Conservation Districts do not neatly fit within CEQA’s definition of historical resource, the use of “materially impair” is inappropriate and confusing for the evaluation of cumulative impacts pursuant to Section 1111.7(d).<sup>10</sup>

- g. **SECTION 1111.7(e):** *“If a building located within a Conservation District (Category II, IV, and V) or a Category III Building located outside of a Conservation District is found to have gained significance pursuant (c)(i) above and the building has been re-classified by the Board of Supervisors within 180 days, then the Permit to Demolish will be reviewed under Subsection (a) or (b) above, and not under Subsection (c).*

**HERITAGE POSITION:** Same as proposed amendment to Section 1111.7(c)(A).

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<sup>10</sup> “Unlike traditional historic districts, which recognize historic and cultural significance, Conservation Districts seek to designate and protect buildings based on architectural quality and contribution to the environment.” San Francisco Preservation Bulletin No. 10, Historic and Conservation Districts.

**ADDITIONAL AMENDMENTS PROPOSED BY SUPERVISOR WIENER IN SEPTEMBER 7, 2011 AND OCTOBER 13, 2011 MEMOS**

- 1. SECTION 1004.2 (September 7, 2011 memo):** Supervisor Wiener would require the HPC to submit comments to the Board of Supervisors for landmark and historic district nominations to, “(i) address the consistency of the proposed designation with the General Plan and the priority policies of Section 101.1 and (ii) identify any amendments to the General Plan and to the priority policies of Section 101.1 necessary to facilitate adoption of the proposed designation”.

**HERITAGE POSITION:** The amended language in the first romanette is unnecessary because the HPC already makes findings on General Plan consistency. To the extent the second romanette could require amendments to Section 101.1 priority policies to designate an historic district, Heritage opposes the amended language because the Board of Supervisors lacks authority to amend the City Charter.

- 2. SECTION 1006.1 (September 7, 2011 memo):** For Planning Commission review of projects that require multiple planning approvals, Supervisor Wiener would require the Planning Commission to “take into account all relevant General Plan and Planning Code policies, in addition to all applicable historic resources provisions.”

**HERITAGE POSITION:** The HPC and Planning Commission already make consistency findings under Section 101 when reviewing applications for Certificates of Appropriateness. The proposed amendment is unnecessary.

- 3. SECTION 1006.3 (September 7, 2011 memo):** Supervisor Wiener proposes to reduce the notice requirements for projects within historic districts from the HPC’s recommended 300 feet to 150 feet.

**HERITAGE POSITION:** The HPC is recommending the following amendments to notice requirements for a Certificate of Appropriateness: within 150 feet to owners and occupants for individual landmarks and within 300 feet to owners and occupants for projects within a historic district. Currently, notice is required to all owners within the historic district. The HPC’s proposed notice requirement for projects located in historic districts is appropriate given the potential for impacts on the district as a whole.

- 4. SECTION 1014 (September 7, 2011 memo):** Supervisor Wiener is proposing to reduce the permit hold time for projects in pending historic districts from the HPC’s recommended 1 year to 180 days, with two possible 90 day extensions.

**HERITAGE POSITION:** If an informational vote is required for historic district designation, the proposed 180-day time limit would be insufficient time for the Department to review the

nomination, document owner consent, and schedule hearings before the HPC, Planning Commission and Board of Supervisors.

5. **SECTIONS 1111(b), 1111.6, 1111.7(a) and (b) (October 13, 2011 memo):** Supervisor Wiener proposes that owners of Contributory Buildings for which TDR has not been transferred should receive notice of the proposed changes regarding demolition controls.

**HERITAGE POSITION:** Heritage does not oppose Supervisor Wiener's proposal to provide notice to owners of properties for which TDR has not been transferred to receive notice of proposed changes in the demolition review process in Article 11.

On behalf of San Francisco Architectural Heritage, thank you for the opportunity to further comment on Supervisor Wiener's proposed amendments to Articles 10 and 11. Please do not hesitate to contact me at [mbuhler@sfheritage.org](mailto:mbuhler@sfheritage.org) or (415) 441-3000x15 should you have any questions or need additional information.

Sincerely,



Mike Buhler  
Executive Director

cc: Historic Preservation Commission  
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John Rahaim, Director, San Francisco Planning Department  
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## EXHIBIT A

### POTENTIAL HISTORIC RESOURCES NOT VISIBLE FROM THE PUBLIC RIGHT OF WAY

#### Example 1: Parcels containing more than one building

The image below is a birds' eye view of a portion of the block bounded by Shotwell, Folsom, 23<sup>rd</sup>, and 24th streets. The red arrows point to five buildings located at the rear of individual parcels, none of which is visible from the public right of way. Sanborn fire insurance maps indicate that four of these rear-lot buildings were in use as single-family dwellings at least as early as 1889.



#### Example 2: Wooden Pathways and Steps of the Telegraph Hill Historic District

The next two photos include views of Telegraph Hill's signature wooden pathways and steps. While most of these pathways are accessible to the public, they are not always visible from the street and a significant portion of the pathways belong to private property owners.

