

October 28, 2008

HAND DELIVERED

Mr. Bill Wycko
Planning Department
City & County of San Francisco
1650 Mission Street
Suite 400
San Francisco, California 94103

Re: **Appeal re Mitigated Negative Declaration and Initial Study
The Harding Theater
616 Divisadero Street
Case No. 2005.0911E**

Dear Mr. Wycko:

The Friends of 1800 submit this letter to appeal the Planning Department's recommendation of a Mitigated Negative Declaration for this project, its Initial Study, and its proposed finding that the project could not have a significant effect on the environment. The Friends request that the Planning Commission direct that an Environmental Impact Report be prepared for the project. A check in the amount of \$500.00 to file this appeal is enclosed. The Friends request that this fee be waived and the check refunded in light of the Friends' neighborhood organizational status.

The Friends again request immediate and special notice of all further environmental determinations for this project and all public hearings on this project.

SUMMARY

- The Reid Brothers' 1926 Harding Theater is indisputably an historic building. The Planning Department itself concluded in 2006 that the Harding is an historical resource of unusual integrity entitled to protection under CEQA.
- In the five intervening years since the project proponent's initial plan in 2003 to demolish the entire Harding Theater,¹ the Planning Department has not proposed a valid CEQA compliance document for the project, despite two previous attempts at negative declarations in 2004 and 2008. The delay in presenting of the proposed project to the Planning Commission results from a failure of CEQA compliance documentation thus far.
- The insistence of the Friends and allied community organizations in 2005 that the Planning Department conduct a meaningful historical resource review and comply

¹ See Planning Department Case No. 2003.0807CEK.

with CEQA led directly to the preservation of the Harding Theater. Without that loyal opposition, the Harding would have been demolished.

- As long as there is any substantial evidence supporting a fair argument that the proposed project would adversely alter features contributing to the Harding's historical significance — “character-defining features” — CEQA requires that the Commission reject the proposed mitigated negative declaration and require an EIR. The Commission cannot legally exercise discretion or make policy in adopting a mitigated negative declaration.
- There is a plethora of evidence before the Commission that the proposed project would adversely alter character-defining features of the Harding Theater, including:

Demolishing the original 1920s performance stage and stage house, which was the site of vaudeville performances during the late 1920s and Lamplighters' Gilbert & Sullivan stage productions during most of the 1960s, including loss of the original decorative fire curtain that provides original character-defining decoration for the auditorium.

Transforming the original design and architectural volume of the auditorium and balcony by demolishing the original auditorium floor, eliminating the vintage 1920s seating and aisles, and installing a flat floor with extensive partitions for commercial spaces.

Revamping the Reids' original circulation plan for the Harding, including blocking off and/or demolishing the original stairways to the mezzanine and balcony and the original entrances to the auditorium.

Entirely reconfiguring the Reids' 1926 entrance to the theater, including removing the original theater doors and significantly contracting the volume of the vestibule to make more room for commercial space.

Installing windows throughout the historically darkened theater, including replacement of most of the 20 foot wide x 30 foot high gothic tracery arch on the façade of the theater with glass, and penetration of the decorative auditorium ceiling with a large skylight.

Disrupting the original auditorium geometry, obstructing the original secondary access to Hayes Street, and making other changes that practically foreclose any return of the

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building to use as a performing space, movie theater, or community assembly hall.

THE FRIENDS OF 1800

The Friends of 1800 is a grassroots, nonprofit organization dedicated to preserving significant historical buildings, landmarks and the architectural heritage of San Francisco with a special interest in the identification and recognition of issues and sites important to GLBT history and culture. The Friends' advocacy has included preservation support for 70 Douglass Street, the buildings of the U.C. Extension, 557 Ashbury Street, the Harding Theater, Sacred Heart Parish, New Mission Theater, and the Fallon Building.

PROJECT HISTORY AND DELAYS

Although the project proponent first submitted plans to build condominiums at this site over five years ago, the project has not passed CEQA review because the City has not yet adopted a valid CEQA compliance document. The previous attempt at CEQA compliance failed in 2005 before the Board of Supervisors. In the intervening years, the Planning Department has not taken another negative declaration to Planning Commission hearing, until now. The delays in this project have therefore been due to a failure of CEQA compliance to date, most notably the Planning Department's failure in its original initial study to recognize and evaluate the historic significance of the theater.

The same developer, Divisadero Hayes LLC, submitted a plan in 2003 to demolish the entire Harding Theater and build 16 condominium units on a vacant site. (Planning Department Case No. 2003.0807CEK.) The Planning Department proposed a Mitigated Negative Declaration for that 16-unit project.

In December 2004, the Planning Commission adopted the Mitigated Negative Declaration and approved the project. The 2004 negative declaration was appealed to the Board of Supervisors on the ground that the Harding Theater is an historical resource under CEQA, and its wholesale demolition is a significant adverse impact.

On April 19, 2005, the Planning Department declined to defend the negative declaration for the 16-unit project at the hearing before the Board of Supervisors. The Department effectively conceded that the Harding is an historical resource. The Board of Supervisors accordingly declined to adopt the negative declaration, and the project was returned to the Planning Department for further environmental review.

In September 2005, Divisadero Hayes submitted a revised project for the Harding Theater to the Planning Department, proposing nine condominiums to be built at the rear of the lot, and calling for partial demolition of the theater and retention of the remainder for commercial use. (Planning Department Case No. 2005.0911CEK.)

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On October 23, 2006, Mr. Corrette issued his Historic Resource Evaluation Report on the Harding Theater, finding that the Harding is eligible for listing on the California Register of Historic Resources and qualifies as an historical resource under CEQA. His evaluation confirmed that a negative declaration for the original project — calling for the wholesale demolition of the Harding — was legally insupportable.

Accordingly, the opposition by the Friends and allied community groups to the 2004 Mitigated Negative Declaration countenancing total demolition of the Harding saved the City of San Francisco from the loss of an historical asset worthy of recognition as a state landmark.

It was not until December 4, 2007 that the Planning Department completed its environmental review of the revised project. (Case No. 2005.0911E). At that time, the Planning Department exposed a draft Mitigated Negative Declaration. However, in the intervening period, the Department did not propose the document to the Planning Commission. This added an additional year of delay onto 2-1/2 years of delays following the failure of the prior negative declaration before the Board of Supervisors.

On June 14, 2008, the Planning Department finally noticed an intent to adopt its December 2007 Mitigated Negative Declaration and Initial Study. The Friends of 1800 timely appealed the adoption of the negative declaration.

Instead of taking that negative declaration before the Planning Commission, the Planning Department instead revised and reissued the negative declaration for this project on October 8, 2008.

This letter is submitted in response to the October 8 document as an appeal of the proposed Mitigated Negative Declaration, an objection to the Initial Study, and a request that an Environmental Impact Report be prepared.

THE HISTORIC HARDING THEATER (1926)

The Harding Theater was designed by the renowned movie theater architects of the 1920s, James and Merritt Reid. The Reids designed 14 movie theaters in San Francisco alone and, with the exception of Timothy Pflueger, are San Francisco's most famous movie theater architects. Two of their theaters, San Francisco's New Mission Theater and the Redwood City Fox Theater, are listed on the National Register of Historic Places. The Reids' other notable buildings include the Fairmont Hotel, the Call Building at Third and Market Streets, the Hale Building at Fifth and Market, Mission High School, the Temple of Music bandstand in the Music Concourse in Golden Gate Park, and the Cliff House, as well as the Hotel Del Coronado in San Diego.



Harding under-balcony seating
Photo: Gary Parks (2002)

The Harding was built as a combination silent movie and vaudeville theater. It opened ceremoniously in May 1926 with a dedication by Mayor James Rolph, Jr. The Harding was the newest addition to the Samuel G. Levin chain of neighborhood theaters. Levin's theaters included the Alexandria, the Balboa, the Coliseum, and the Metro (all also designed by the Reids), as well as the West Portal (Empire) Theater.

The Harding was unique among the Reids' other San Francisco theaters, and even among its sister Levin theaters, because it included full stage facilities. These included a performance stage, scenery fly tower, stage wings, and dressing rooms. The Harding prominently featured full orchestra and vaudeville shows in 1926 and the later 1920s until the advent of talking pictures and the Depression.

The Harding continued in use as a movie theater until about 1960. The San Francisco's Lamplighters light opera company then made the Harding home between 1961 through 1968, staging 33 different productions on the Harding stage during eight seasons there. Founded in 1952 and performing to this day,² the Lamplighters are well recognized as the City's premier resident light opera company, and have been internationally acclaimed for their Gilbert & Sullivan performances. Former Chronicle critic Robert Commanday remarked that "The Lamplighters is a San Francisco tradition ranking somewhere between sourdough bread and cable cars."³

² "The Lamplighters: Our 56th Season 2008-2009," available at <http://www.lamplighters.org/season.html> [as of 10/27/08].

³ "The Lamplighters Music Theater 1952-2008," available at <http://www.lamplighters.org/index.html>

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From 1972 until 2003, the Harding was home to the Berean Christian Church. The church sold the theater to Divisadero Hayes in 2003.

Today, reflecting its nearly 80 years of use as a theater and assembly hall, the Harding Theater represents San Francisco's most intact example of a 1920s neighborhood movie theater. Mr. Corrette agrees with the Friends' architectural historians, Christopher VerPlanck and Gary Lee Parks, that the Harding's integrity is exceptional. The Harding's interior retains the essence of the Reids' 1926 design and features, including the stage, stage fly, fire curtain, proscenium arch, orchestra pit, stage wings, organ grilles, auditorium floor, seats, aisles, walls, ceiling, projection room, and balcony. Mr. Parks opines that the Harding is the most intact remaining example of the 14 Reid Brothers theaters in San Francisco, and the most intact example of a 1920s Samuel Levin theater.

THE CURRENT PROJECT

Divisadero Hayes no longer proposes wholesale demolition of the Harding. It now proposes to retain most of the auditorium, limiting demolition to the stage house, the entrance, the balcony stairs, and penetration of the building with numerous windows and a skylight. Nevertheless, the proposed demolitions and other significant changes to the building would virtually eliminate the Harding's historic character as a theater, cause irreversible losses of its character-defining features, and render the building unusable for live performance and movies, and most likely as a community assembly space of any kind.

As proposed, the project would:

- Demolish the Harding's stage and stage house and build eight condominium units on the resulting lot in a four-story building facing Hayes Street, resulting in the loss of the stage house and decorative fire curtain. The new building would obstruct occupant egress through the historic north exit doors of the Harding to Hayes Street, compromising the use and character of the building as a theater and assembly space.
- Build a new rear wall for theater behind the existing stage proscenium wall.
- Remove approximately 1000 vintage seats from the theater.
- Demolish and level the floor of the theater and the orchestra pit to excavate a 19-car parking garage under the theater, with potential for 37 cars using stacking (garage entrance on Hayes Street).
- Convert the theater and balcony to commercial space, installing numerous partition walls, windows, and a skylight through the ornamental ceiling.

- Effectively block off the mezzanine stairs, mezzanine, and balcony from the rest of the auditorium.
- Demolish the north and south stairs leading from mezzanine to balcony.
- Demolish significant portions of and reconfigure the theater entrance, lobby, and auditorium entrance.
- Remove 2/3 of pressed concrete tracery from gothic “window” on theater façade.
- Replace the 1939 blade sign.

A MITIGATED NEGATIVE DECLARATION CANNOT BE LAWFULLY ADOPTED BECAUSE THERE IS A *FAIR ARGUMENT* THE PROJECT WOULD CAUSE PERMANENT LOSS OF CHARACTER-DEFINING FEATURES

1. Adoption of a Negative Declaration is a Legal Issue, Not a Policy or Discretionary Decision, for the Planning Commission.

The law is well established that the Planning Commission and the Board of Supervisors may not exercise discretion in adopting a mitigated negative declaration if there is any substantial evidence supporting a fair argument that the project may have a significant unmitigated adverse environmental effect. (League for Protection of Oakland’s Architectural and Historic Resources v. City of Oakland (1997) 52 Cal.App. 4th 896, 904.)

A project that may cause a “substantial adverse change in the significance of an historical resource” is a project that may have a significant effect on the environment. (CEQA Guideline § 15064.5(b).)

“Substantial adverse change in the significance of an historical resource means physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of an historical resource would be materially impaired.” (*Id.* § 15064.5(b)(1).)

The significance of an historical resource is materially impaired when a project “materially alters in an adverse manner those physical characteristics of an historical resource that convey its historical significance and that justify its inclusion in, or eligibility for, inclusion in the California Register of Historical Resources.” (*Id.* § 15064.5(b)(2)(A).)

Therefore, the role of the Planning Commission is limited to determining whether there is a fair argument supporting a finding that the project would materially and adversely alter characteristics of the Harding Theater that convey its historic significance and justify its inclusion in the California Register. As long as there is a fair argument of a potential unmitigated material alteration to a character-defining feature of the Harding,

the Commission cannot legally adopt a mitigated negative declaration. This is so, even if the Commission disagrees that there would be such an impact and would so conclude as a matter of fact-finding discretion.

2. The Commission Cannot Legally Adopt the Proposed Mitigated Negative Declaration Because there is Ample Evidence that the Project Would Have a Substantial Unmitigated Adverse Impact on Character-Defining Features of the Harding Theater.

The Harding Theater is historically significant for the following reasons, among potentially others:

- as the 1926 work of master architects, the Reid Brothers; and
- for its association with the development of neighborhood movie theaters, particularly as an authentic example of a 1920s silent movie-cum-vaudeville theater and, further, as a single screen movie theater of the 1930s to 1950s, and for its association with Samuel H. Levin theater chain; and
- as the Lamplighters' Theater during much of the 1960s.

Taken both individually and in their totality, the aspects of the project discussed below would significantly impair the capacity of the Harding to convey this historic significance. The evidence attached to this appeal, and further evidence that will be presented at the hearing, amply support a fair argument that the proposed project would adversely alter character-defining features of the Harding Theater.

The evidence that meets the fair argument standard includes the following exhibits:

Exhibit 1: Historic Resource Evaluation Report of N. Moses Corrette

Exhibit 2: Report of Christopher VerPlanck

Exhibit 3: The Report of Gary Lee Parks

Exhibit 4: Report of Michael Garavaglia, A.I.A., and Sheila McElroy

Exhibit 5: EXAMINER Articles and Movie Advertising from the 1920s

Exhibit 6: CHRONICLE Articles and Movie Advertising from the 1920s

Exhibit 7: Extracts from The Lamplighters: 25 Years of Gilbert and Sullivan in San Francisco, by Alison Lewis, Carolyn McGovern, and Beverly Sykes (1977)

Exhibit 8: Sample Lamplighters Programs (1961-68), from the collection of the San Francisco Museum of Performance and Design

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Exhibit 9: Sample Lamplighters Announcements (1961-68), from the collection of the San Francisco Museum of Performance and Design

Exhibit 10: Sample Lamplighters Press from Major Newspapers (1961-68), from the collection of the San Francisco Museum of Performance and Design

Exhibit 11: Photographs of the Lamplighters at the Harding Theater (1961-68), from the collection of the San Francisco Museum of Performance and Design

Exhibit 12: San Francisco Museum of Performance and Design's Index to its collection of Lamplighters papers and other materials

Exhibit 13: Letter from John Vlahos, dated October 27, 2008

Exhibit 14: August 1925 Plans for the Harding Theater

a. Demolition of the Stage House Would Destroy Original, Character-Defining Features of the 1920s Theater.

The project proposes to demolish the Harding's stage house, including the stage, scenery fly tower, original fire curtain, stage wings, dressing rooms, and orchestra pit. These features, which date to the opening of the theater on May 8, 1926, are character-defining features of the Harding. Both the Corrette Report and the proposed Mitigated Negative Declaration identify the year 1926 as the period of significance for the Harding as the work of master architects.

The Harding opened in 1926 as a combination movie theater and vaudeville house. The EXAMINER article announcing the opening of the Harding in the May 8, 1926 stated: "A fully equipped, standard sized stage is an innovation in the Harding construction. This will make possible the staging of attractions not now presented in most neighborhood houses because of limited space."

Opening night featured Ben Black and his Band in the Harding orchestra pit. Black was a well-known band leader of the day, recorded on the Victor label, and served as music director of the Paramount Theatres in New York, San Francisco, and Los Angeles.⁴ He is best remembered for writing the popular song "Moonlight and Roses." Black's and other bands played at the Harding in the 1920s, providing musical accompaniment to the movies and general musical entertainment.

⁴ Internet Movie Database: Ben Black," available at <http://www.imdb.com/name/nm0085187/bio> [as of 10/27/08].

Vaudeville was a typical supporting entertainment at movie theaters during the mid-1920s. The Orpheum Theater, landmarked by the City of San Francisco and built in 1926 (like the Harding), had a vaudeville stage,⁵ as did the Reid Brothers' National Register 1929 New Sequoia Theater (now known as the Redwood City Fox Theater)⁶. The other theaters in the Levin chain likewise had stages, albeit small, for live performances.

The Harding was distinctive in having a full stage house to fly scenery and mount more ambitious stage productions. Levin's advertising for the Harding in 1926 and later during the 1920s prominently billed the Harding among the Levin theaters as a vaudeville theater. (Ex. 5, 6.) The example appearing at the right is from the July 31, 1926 edition of the CHRONICLE.

The contemporaneous newspaper publicity establishes that the Harding continued to be used as a vaudeville house during the late 1920s. The O'Neill Kiddies, Don Rigo's Serenaders, and Toby's Country Store appeared as vaudeville acts on the Harding stage during the period.

Vaudeville vanished from movie theaters by the early 1930s with the advent of talking pictures and the hard times of the Great Depression. As San Francisco's most intact neighborhood movie-vaudeville theater, the Harding and its stage house are together historically significant in conveying the now-lost live performance aspect of movie entertainment during the 1920s.

b. Demolition of the Stage House Would Destroy Character-Defining Features of the 1960s Lamplighters' Harding Theater.

The Harding stage house is also historically significant as home to the San Francisco-based Lamplighters Theater during the 1960s. Founded in 1952, the Lamplighters have been familiar to most San Franciscans, and beloved to many, for over 50 years. Not only the City's leading resident light opera company, the Lamplighters are world renowned for their Gilbert & Sullivan performances, winning top awards in the international Gilbert & Sullivan competition held in England in 1996. The Lamplighters have given annual free concerts at Stern Grove and performed widely throughout the Bay



⁵ SHNSF Broadway Reframed: Orpheum," available at <http://www.shnsf.com/theatres/index.asp?key=52> [as of 10/27/08] ("Built in 1926 as a showcase for theatre magnate Alexander Pantages, the Orpheum has featured vaudeville, silent films, motion pictures, musical comedy and other theatrical entertainment").

⁶ "Redwood City Fox Theater: History," available at http://www.foxdream.com/Fox/Fox_history.htm [as of 10/27/08] ("Although used from the beginning for motion pictures, the New Sequoia had a stage for Vaudeville and a pipe organ by the Robert Morton Organ Company").

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Area. Today, the company's season includes performances at the Cowell Theater at Fort Mason and Yerba Buena Center.

Like Robert Commanday, Herb Caen characterized the Lamplighters as a San Francisco treasure. The Lamplighters' early history is detailed in a 1977 book entitled The Lamplighters: 25 Years of Gilbert and Sullivan in San Francisco, by Alison Lewis, Carolyn McGovern, and Beverly Sykes. (Ex. 7.) Authors Sykes and Lewis updated the book in 1987.⁷ The San Francisco Museum of Performance and Design maintains 12 lineal feet of historical material devoted to the Lamplighters, including programs, press clippings, flyers, photographs, scrapbooks correspondence, cash books, payroll reports, and interviews.⁸ (Ex. 12.)

According to the Lamplighters book, while searching for a larger performance space in the spring of 1961, Lamplighters founder Ann Pool McNab drove past the Harding with Lamplighters baritone and director Gilbert Russak, and remarked "Well, there's our theater." (Page 29.) The acoustics were superb: "We would happily commit murder for [them]; it was a singer's heaven," one of the Lamplighters said. (Id.)

The Harding's facilities and theater enabled the Lamplighters to stage more elaborate and ambitious productions to larger audiences. The company's Harding years were accordingly a period of unprecedented growth. They made full use of the Harding fire curtain, stage, stage fly, wings, dressing rooms, and orchestra pit. The 1977 book documents that the Lamplighters staged 33 different productions at the Harding, and lists hundreds of performers and supporting personnel on the company roster.

Reviews of the performances at the Lamplighters' Harding Theater appeared routinely in the leading San Francisco daily newspapers. Critics covering the Lamplighters during that period included Alfred Frankenstein (Chronicle), Robert Commanday (Chronicle), Gerald Nachman (Chronicle), Marilyn Tucker (Chronicle), Jack Russell (Examiner), Charles Boone (Examiner), and Arthur Bloomfield (News-Call-Bulletin). The Chronicle regularly featured the Lamplighters during the Harding years in the Chronicle Sunday "Datebook" section under "Little Theaters."

⁷ The Lamplighters' Story: 1977-1987 (1987).

⁸ "Museum of Performance and Design Catalog: Lamplighters records, 1952-1994," available at <http://sfpalm.library.net/TLCScripts/interpac.dll?LabelDisplay&DataNumber=6680789&DB=1&FormId=792-39059&ItemField=1&Config=9084&Branch=0>, [as of 10/27/08].

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c. Loss of the Historic Fire Curtain Would Result Materially Alter Essential Decoration Original of the Theater

The original 1926 fire curtain remains drawn up in the stage fly of the Harding. The fire curtain is colorful and ornate, depicting a castle and hills overlooking a bay on a background of distant clouds.



Photo (1942): Steve Levin Collection

The fire curtain was intended to be dropped and admired as part of the original decoration of the auditorium. The Lamplighters used the fire curtain as a principal curtain during their performances at the Harding. Loss of the fire curtain would result in a loss of character-defining decoration of the original 1920s theater, the 1930s-1950s theater, and the Lamplighters' Harding Theater of the 1960s.

d. Loss of the Harding's Floor, Vintage Seating, and Aisles Would Materially Diminish the Integrity, Architectural Volume, and Sense of the Auditorium as a Theater.

The project proposal would transform an intact 1920s movie theater into a modern commercial space, leaving only a few vestiges of the original Reid design and of the sense of the building as a movie theater. The historical significance of the Harding rests in some substantial measure on the extraordinary originality of the auditorium. The project would significantly impair the authenticity of the 1920s interior by eliminating important character-defining elements of the auditorium.

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Demolition of the original floor to build a parking garage. Integral to the sense and volume of the auditorium is the relationship of the floor to the stage. The proposed Mitigated Negative Declaration states that the materials that make up the floors are character defining.



Auditorium of Harding Theater (2005)
Photo: SF Neighborhood Theater Association

As this 2005 photograph of the auditorium shows, the floor is decidedly raked. This is to assure clear lines of sight from the seats to the stage. Entering the theater, one literally descends toward the stage.

The project proposes to demolish the floor and replace it with a flat floor. The Garavaglia-McElroy letter establishes that floor removal is inconsistent with Secretary of Interior Standards (the "Standards") because historic fabric and reconstruction can be removed under the Standards only when the element is beyond repair. Here, the floor is being removed to facilitate excavation, and is therefore not warranted under the Standards and is not mitigated.

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Loss of the original seats and aisles. The integrity of the auditorium is also defined by the presence of the 1920s seats and aisles. The seats and their relationship to the rake of the floor and the aisles define the auditorium and the balcony as a 1920s Reid Brothers theater.



Photo: Rebecca McBride (2006)

Some of the aisle standards date to the original theater:



Photo: Gary Parks (2002)

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Others were replaced in the 1930s with a streamlined style.

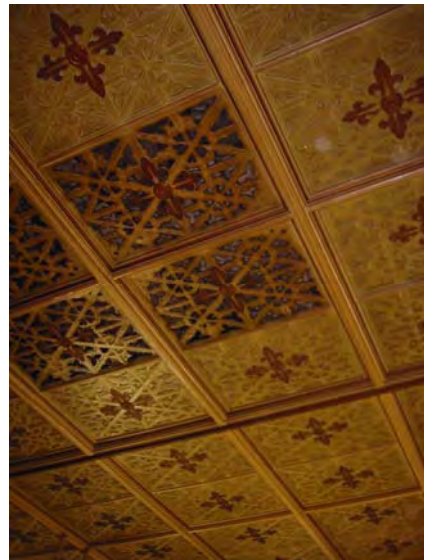


Photo: Gary Parks (2002)

e. The Addition of Partitions and Windows Would Materially Alter the Integrity, Volume, and Sense of the Building as a Theater.

The extensive partitioning of the auditorium and balcony into commercial spaces would break up the clearest character-defining feature of the auditorium — its openness. Reduction of the auditorium and balcony volumes would impair the sense of theater function.

Likewise, the addition of numerous windows allowing natural light into a movie theater that was designed to be dark is a material alteration of the balcony and auditorium that is inconsistent with the Standards. A large skylight is proposed that would require demolition of a significant portion of the historic ceiling:



Ceiling Detail (2005)
Photo: SF Neighborhood Theater Association

f. The Project Would Significantly Change the Reid's Original Plan for the Sequencing of Spaces and Circulation Patterns Within the Theater

The project proposes to alter circulation within the building radically from the Reids' original plan. The Reids' design was to invite movie-goers, after buying their tickets at the outdoor ticket booth, to pass through a set of outer doors into an enclosed vestibule or foyer. Patrons would present their tickets there and then proceed into the theater lobby. From there, patrons would enter the theater through the four doors at the back connecting to the downward-sloping aisles of the auditorium. Alternatively, moviegoers could proceed upstairs from the lobby to the mezzanine via two matching sets of stairs located at either end of the lobby, and then to the balcony via two connecting sets of stairs located at either side of the building.

This circulation pattern would be lost under the present project. People entering the theater main entrance

- could not access the mezzanine stairs or the mezzanine, which will be blocked off at the lobby.
- could not access the balcony via the original stairways due to the blocking of the mezzanine stairs and outright demolition of both sets of balcony stairs.
- could not enter the auditorium through the four doors feeding into the historic aisles, instead being funneled into a single central door leading into the proposed downstairs auditorium commercial space.

This loss of the original sequence of spaces and circulation patterns is not consistent with the Standards and is not mitigated.

g. The Project Materially Alters the Reid's Original Entrance into the Theater

The Reids carefully designed the entrance to the Harding, which remains substantially intact. A moviegoer would enter the vestibule or foyer through a set of outer doors, which remain in place today. This room was known as the ticket lobby because the ticket taker would be stationed there. The ticket lobby retains historic plaster detail around the ceiling:



Photo (2002): Gary Parks

The patron would then pass through the vestibule into the lobby of the theater.

The proposed project would significantly change the entrance to the building by eliminating the historic entry doors and contracting the ticket lobby to enlarge the Divisadero Street commercial spaces. This is not consistent with the Standards and is not mitigated.

h. The Project Would Materially Impair Any Reuse of the Harding for Its Original and Historic Purposes as a Movie Theater, Live Performance Venue, or as a Community Assembly Hall.

The proposed project would practically doom reuse of the Harding as a live performance venue, movie theater, or even for community assembly.

The construction of the condominiums in the footprint of the historic stage house would block occupant access to the street through the north exit doors from the auditorium. A third remote exit is required if the occupant load of the auditorium for assembly purposes exceeds 500 persons. The elimination of the third exit would therefore likely prevent any viable future use of the Harding as a theater or assembly hall.

Moreover, for live performances, the loss of the stage would relegate the Harding to the level of a nightclub because of the complete loss of backstage facilities enabling performers to appear from backstage and to change. The loss of the stage would also render the balcony unusable for live performances because balcony sight lines are keyed to the historic stage, not to a projection stage on the floor, which would be the only live performance option under the proposed project. The loss of the stage fly would significantly reduce the utility and flexibility of the theater by eliminating its capacity to fly scenery.

For the Harding to be reused as a movie theater without the historic stage, screen and sound facilities would have to be built in front of the proscenium arch, reducing the

number of seats. It is doubtful that the balcony could safely and legally be used for any theater or assembly use because of the absence of remote exits from the balcony due to the demolition of the north exit stairs under the proposed plan. A new projection booth would therefore need to be built at the front of the balcony. The proposed partitioning of the balcony and auditorium leaves no place for the construction of a new projection booth to serve the lower floor. Further, the partitioning and loss of the balcony leaves the seating capacity downstairs too small to support a movie theater.

i. The Proposed Mitigation Measures Do Not Reduce the Project's Significant Adverse Impacts to Less than Significant.

Michael Garavaglia and Sheila McElroy have reviewed the proposed mitigation measures starting at page 67 of the proposed Mitigated Negative Declaration for consistency with the Secretary of Interior Standards. They have opined that the proposed measures fail to mitigate the adverse impacts of the project to a less than significant level consistent with the Standards.

Measure M-CP-1, requiring documentation of existing features, does not avoid the impacts of demolition and material alteration of character-defining features such as the loss of the stage house, fire curtain, original seating, floor, entryway, entry doors, and historical stair and access ways. There is no mitigation of the loss of the stage house and associated performance features. (Ex. 2 (¶ 5).)

Measure M-CP-2(C)(3) is inconsistent with the Standards because it fails to mitigate the loss of the original floor and seats, and the significantly reduced auditorium and balcony volumes and loss of the sense of theater function. (*Id.* (¶¶ 4, 6).)

Measure M-CP-2(C)(1) is inconsistent with the Standards because historic material at the entry to the vestibule (doors) will be removed and the vestibule space materially contracted so that the original intent of the entrance is no longer present, with potential loss to original plasterwork in the vestibule. (*Id.* (¶ 2).)

Measure M-CP-2(C)(2) is inconsistent with the Standards because the original function and intent of the mezzanine stairs will no longer be present, and the stairs to the balcony will be demolished. (*Id.* (¶ 3).)

Measure M-CP-2(B), requiring installation of the windows in the façade arch behind the concrete tracery is infeasible because the concrete tracery is too dense to admit significant natural light. The proposed plans continue to call for outright demolition of 2/3 of the tracery.

3. The Project Would Have a Significant Cumulative Impact, and the Effects of the Project are Cumulatively Considerable, on the Past and Ongoing Loss of Silent Movie Theaters.

An effect is “cumulatively considerable” when “the incremental effects of an individual project are significant when viewed in connection with the effects of past

projects, the effects of other current projects, and the effects of probable future projects.” (Guideline § 15064(h).) Independent of the impacts of this project on the Harding itself, CEQA requires consideration of the incremental impact of this project in the context of the extensive past, ongoing, and expected future demolitions and material alterations in the diminishing population of silent movie theaters.

With respect to the movie theater works of the master architect Reid Brothers, the Parks Report establishes that there are few remaining Reid Brothers’ theaters in San Francisco sharing the Harding’s level of integrity as a silent movie theater. Only three of the Reid’s 14 theaters here retain a significant resemblance to the Reids’ original 1920s design. All of the others have been demolished or so significantly altered that their character has been lost. Of the three that remain, the Harding is the most intact.

Neither the Initial Study nor the proposed negative declaration addresses or evaluates the cumulative impact of the proposed project on conveying the original sense of the Reids’ silent movie theater designs in light of past demolitions and material alterations of Reid theaters in San Francisco and elsewhere. Parks provides evidence that the impacts of the proposed project would be cumulatively significant in light of the numerous past projects that obliterated or obscured the Reids’ original designs. Nor does the Initial Study assess the ongoing capacity of the New Mission or Brava Theaters, and relatively intact Reid theaters elsewhere, to convey the sense and character that would be lost or compromised by the present project.

Similarly, the only Levin Brothers theaters that continue to operate are the Balboa and the Empire. Assuming, as asserted in the proposed negative declaration, that the Coronet and the Vogue were Levin Brothers theaters, the Vogue can be added to the list of extant Levin houses. Neither the Initial Study nor the proposed negative declaration studies or evaluates the cumulative impact of this project on the harm to the historical legacy of Samuel H. Levin in light of the loss of the Coronet, Coliseum, and Amazon, and ongoing or future projects at the Metro, the Empire, or the Vogue.

Finally, the Initial Study and the proposed negative declaration fail to address the cumulative impact of the loss of the Harding stage house on the disappearance of movie theaters that best convey the sense of combined vaudeville and silent movie houses. Parks explains that full stage houses are now rare in San Francisco, being limited to only four Market Street theaters, the Harding, and the Tower Theater on Mission Street. Even if the stage house were not character defining for the Harding, the loss of the Harding stage house is nevertheless cumulatively significant in light of the dearth of silent movie theaters with full stage houses, and particularly neighborhood theaters. Neither the Initial Study nor the proposed negative declaration considers the loss of the Harding stage house in the context of the conversion of the Parkside stage house, or the conditions and prospects for the Tower or the four downtown theaters.

Parks establishes that these cumulative impacts are substantial. At the bare minimum, the Initial Study fails to include any significant cumulative impact analysis. The negative declaration cannot, therefore, be adopted.

4. The Proposed Project Conflicts With Local Land Use Plans, Policies, and Regulations and Would Have a Significant Adverse Environmental Impact on Land Use and Recreational Resources.

The Initial Study and proposed Mitigated Negative Declaration erroneously conclude that the proposed project is consistent with San Francisco's land use policies and Code requirements and that there is no significant adverse impact from any non-compliance. In fact, the project violates several City land use policies and Planning Code sections and would have a consequent material adverse impact on the environment.

First, the proposed project does not comply with a recently adopted San Francisco ordinance aimed at the preservation of movie theaters. In October 2004, the Board of Supervisors adopted the City's Movie Theater Preservation Ordinance (no. 270-04), imposing additional requirements on the issuance of conditional use authorizations, such as the CU that Divisadero Hayes now seeks for this project. Planning Code section 303(k) requires that with respect to a change in use or demolition of a movie theater use as set forth in section 703.2(b)(1)(B)(ii) [applicable to NC-2 districts], the Commission must also find that:

- Preservation of a movie theater use is no longer economically viable and cannot effect a reasonable economic return to the property owner; and
- The change in use or demolition of the movie theater use will not undermine the economic diversity and vitality of the surrounding Neighborhood Commercial District; and
- The resulting project will preserve the architectural integrity of important historic features of the movie theater use affected.

There is no indication in the Initial Study or in the proposed Mitigated Negative Declaration that the proponent has complied with section 303(k). The proposed CEQA documents instead dismiss the Movie Theater Preservation Ordinance as inapplicable because the Harding has not been used as a theater for many years.

This interpretation of section 303(k) is erroneous. The section applies whenever there is "a change in use or demolition of a movie theater use." Section 102.28 defines "use" as "[t]he purpose for which land or a structure, or both, are designed, constructed, arranged or intended, or for which they are occupied or maintained, let or leased." The

⁹ For these same reasons, the proposed CEQA compliance document is deficient in concluding that the project would not degrade existing recreation facilities. (Topic 9(c).) See also Health and Safety Policy 4.8 of the Urban Design Element of the General Plan (City to "[p]rovide convenient access to a variety of recreation opportunities"; "All possible means of providing recreation facilities should be explored. Some historic buildings and their sites have such a potential.")

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purpose for which the Harding Theater was designed, constructed, arranged or intended was clearly as a movie theater.

The project proposes a change in the Harding's movie theater use to commercial and residential, and the demolition of the movie theater use by eliminating virtually every feature that defines and renders the Harding useable as a movie theater (the floor, the seats, the open space of the theater, and remote exits), as well as adding extensive fenestration that would permanently eliminate movie theater use. The proposed project is therefore "a change in use or demolition of a movie theater use" under Planning Code sections 303(k), 703.2(b)(1)(B)(ii), and 102.28.

Second, the proposed project is inconsistent with the City's Master Priority Policies set forth in Planning Code section 101.1(b). Consistency of the project with these policies is required as a condition of adopting a negative declaration or allowing conditional use authorization. (Planning Code § 101.1(e).) Priority Policy (7) requires that "landmarks and historic buildings be preserved." This project proposes to demolish significant original features of the Harding Theater and transform its character from an authentic 1920s silent movie theater into modern commercial space. This violates Priority Policy (7) and results in a significant land use impact.¹⁶

Third, the proposed project conflicts with Objective VI-1.5 of the Arts Element of the General Plan, which expressly mandates the preservation of existing performance spaces in San Francisco. The Arts Element directly promotes the preservation of old theaters:

From both the perspectives of preservation of cultural history and the current need for performance facilities in San Francisco, existing performing spaces should be preserved. Many old theaters have been destroyed over the years and have not been replaced. As one of many examples, the Fox Theater was destroyed when the Fox Plaza was developed and no new theater was built to take its place.

See also Objective VI-1 (Support the Continued Development and Preservation Of Artists' And Arts Organizations' Spaces).¹¹

¹⁰ See also Urban Design Element of the San Francisco General Plan Objective 2 ("Conservation Of Resources Which Provide A Sense Of Nature, Continuity With The Past, And Freedom From Overcrowding"). Associated Policy 4 requires that the City "[p]reserve notable landmarks and areas of historic, architectural or aesthetic value, and promote the preservation of other buildings and features that provide continuity with past development."

¹¹ "The ability of arts organizations and artists to thrive in a city requires sufficient, appropriate, and affordable facilities in which to produce, perform, or exhibit their work. The kinds of facilities required are many and varied - studios, rehearsal halls, theaters and concert halls of various sizes and configurations, spaces suitable for the particular needs of dance rehearsal and performance, exhibition spaces and galleries,

5. The Proposed Project Would Result In Significant Adverse Environmental Impacts on Traffic Flows, Traffic Safety, and Parking.

The Initial Study and proposed Mitigated Negative Declaration fail to evaluate the traffic impacts of the most likely scenario, that the entire 10,000 square feet (gsf) of the remaining Harding Theater will be used for retail or office use. Specifically, a foreseeable and likely use of the nearly 6,000 gsf of first floor tenant space is entirely for retail.

A foreseeable tenant for the 4,700 gsf ground floor tenant space within the auditorium is a chain store. Noteworthy retail uses of Reid Brothers theaters include the Apollo on Geneva Avenue near Mission Street and the Coliseum on Clement Street. At the Apollo, new residential construction at the rear of the lot, in a configuration somewhat similar to this project, was combined with a Walgreen's store in the auditorium space. A Walgreen's is combined with residential in the Coliseum in a different configuration.

The Planning Department nevertheless limits its study to the use of 7,000 gsf for "retail or assembly use," and the remaining 3,000 gsf for office use. By assuming that the main 4,700 gsf space will or could be used for assembly instead of retail, the study ignores the foreseeable scenario that the entire 6,000 gsf first floor will be devoted to retail use, a more intensive use from an ongoing peak hour traffic standpoint than use of all or part of the 4,700 gsf auditorium space for assembly.

Even according to the Planning Department, the retail-assembly scenario (the balance between the two is nowhere specified) would alone result in increase trip generation of 450-500 daily person-trips, with 40-50 of these during afternoon peak hours. Of these, the Department estimates that 26-30 would be peak hour automobile trips, in addition to an estimated four peak hour automobile attributable to the condominiums.

Thus, even assuming that these estimates are correct, for the less intensive retail-assembly use the project would generate 30-35 peak hour trips, not the 20-35 assumed by the Planning Department. These 30-35 peak trips do not address the scenario when the entire ground floor is used for retail. Even accepting a peak hour estimate of 30-35 for the assembly-retail scenario, the Planning Department has not studied the retail-only scenario for the ground floor, thus failing to assess the most likely and most intensive traffic scenario.

live/work facilities, multipurpose centers, classroom spaces, administrative spaces, and art archives, among others. Even with the addition of some notable new facilities in the past 15 years the supply does not meet the demand. There remains a persistent and pressing need for the retention and further development of affordable arts facilities."

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Moreover, the discussion of LOS impacts at Divisadero and Hayes is limited to delays at traffic lights and does not address safety. The proposed project contemplates an underground garage with a capacity for 37 spaces with stacking, which the Planning Department concludes is likely. Access to this garage and to the eight additional parking spaces for the new condominiums would be on Hayes Street. Intensive retail use of the ground floor theater would substantially increase traffic flows at and in the blocks surrounding the Divisadero and Hayes intersection.

Specifically, the addition of 45 parking spaces in the new project to serve retail, office, and residential uses would increase hazards and result in substantial safety risks to automobiles, bicyclists and pedestrians by, for example:

- Generating significantly more car traffic turning left off of heavily traveled Divisadero and again across Hayes Street to enter the underground garages or to seek on-street parking;
- Generating significantly more auto U-turns on Divisadero Street and Hayes Street to find parking or access retail or office establishments or residences located in the project;
- Generating significantly more traffic using parallel streets to circle blocks for these same purposes.

* * * * *

For these reasons, among others, the Mitigated Negative Declaration cannot be adopted. The Initial Study is deficient. An Environmental Impact Report for this project must be prepared and duly certified.

The Friends reserve the right to provide further evidence and information and raise other points and issues relating to the environmental review of this project and any land use approvals and other entitlements that may be required for this project.

Respectfully submitted,

Arthur D. Levy

Attachments
ADL:cfp

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