File No. 120266

Committee Item No. _____
Board Item No. 8

# COMMITTEE/BOARD OF SUPERVISORS

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Committee _____ Date _____

Board of Supervisors Meeting Date May 15, 2012

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- ☐ ☐ Appeal of Final Environmental Impact Report - 8 Washington Street/Seawall Lot 351
- ☐ ☐ Planning Department's Response
- ☐ ☐ Planning Commission's Transcript

Completed by: Joy Lamug Date March 26, 2012
Completed by: _____ Date _____

An asterisked item represents the cover sheet to a document that exceeds 20 pages. The complete document is in the file.

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May 7, 2012

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File # 120266

By Electronic Mail and Hand Delivery

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Board of Supervisors
City and County of San Francisco
1 Dr. Carlton B. Goodlett Place
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San Francisco, CA 94102-4689

Re: Appeal of Planning Commission Certification of the Final Environmental Impact Report for the 8 Washington Street / Seawall Lot 351 Project (Case No. 2007.0030ECKMRZ)

Dear Members of the Board of Supervisors:

Equity Office Properties (EOP)[1] submits this letter in support of its appeal of the Planning Commission's certification of the Final Environmental Impact Report (FEIR) for the 8 Washington Street / Seawall Lot 351 Project (Project). EOP writes this letter as the steward of one of San Francisco's greatest civic treasures, the San Francisco Ferry Building and Marketplace.

EOP urges the Board of Supervisors to overturn the Planning Commission's certification of the FEIR because the FEIR fails to comply with the California Environmental Quality Act ("CEQA") in many significant ways. By omitting key data about significant impacts and relying, at times, on incorrect and outdated information, the FEIR fails to provide a full and

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accurate description of the Project and analysis of its impacts on the environment and the community.

These deficiencies prevent the well-informed decision-making that CEQA is designed to ensure. The Board should require that the City[2] and the Project Proponent remedy these serious flaws in the FEIR before putting the Ferry Building, its community and the economic vitality of the downtown waterfront at risk.

**The Ferry Building: A San Francisco Icon**

As San Franciscans recall, the Ferry Building has not always been the jewel that it is today. For decades, the Ferry Building was physically separated from the rest of the City by the raised Embarcadero Freeway. After the 1989 Loma Prieta Earthquake, the Ferry Building and its environs were left derelict and damaged. The eventual removal of the Embarcadero Freeway presented a unique opportunity for change and to reunite the Ferry Building with the City it serves.

Rather than leave this area to decay, the City entered into an innovative public-private partnership with EOP to revitalize the waterfront. That culminated, in 2001, when EOP invested $125 million to rehabilitate the Ferry Building and restore its public trust uses. To induce EOP to make such a pioneering investment, the City committed, by an agreement approved by this Board, to provide essential parking to EOP for the benefit of the Ferry Building.

More than ten years later, EOP continues to invest substantially to maintain physical structures underlying the Ferry Building. Because of the public-private partnership, and

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EOP's large and continuing investment, the Ferry Building today thrives as one of the most famous examples of a successfully rehabilitated public trust resource.

As the steward of a San Francisco landmark and important public trust resource, EOP has a unique interest in ensuring that new development in this area is planned thoughtfully for the benefit of all stakeholders. EOP would support new development that will contribute to the ongoing revitalization of the northeastern waterfront. However, new development should not be approved at the expense of the vibrant, publicly accessible activities at the Ferry Building.

Without doubt, the Board of Supervisors will want the City to properly and thoroughly analyze proposed projects so that potential impacts are identified, analyzed, and mitigated in accordance with CEQA. The City and the public must be fully informed when considering any new development that could adversely affect public trust resources along the San Francisco waterfront. Otherwise, the City could make a decision with irreversible impacts on the Ferry Building and the surrounding community based on bad information. Certainly the first height increase on the waterfront in 40 years deserves the full benefit of thorough and adequate CEQA review. Because of the potential significant impacts of the Project on the Ferry Building and Marketplace, the Board's decision on the FEIR is of profound importance.

**Ferry Building Vitality Depends on Adequate Parking and Manageable Traffic Flows—Which the FEIR Does Not Acknowledge or Address**

The Project is proposed to be built on land that the City, through the Port, committed to EOP as an integral element of the revitalization of the Ferry Building under a Parking Agreement for dedicated Ferry Building parking, a public trust use. Moreover, this property is the last remaining site for such parking. As currently proposed by the Port and Pacific Waterfront Partners, as co-developers, the Project would eliminate all of that dedicated parking, but would not provide for any temporary or permanent replacement parking under EOP's

management and control, bringing the number of dedicated Ferry Building parking spaces to zero. Not only would such actions violate the City's contractual obligations to EOP, they would also threaten to undo all of the progress that has been made to revitalize the northeastern waterfront.

The elimination of this particular critical waterfront parking is not an isolated phenomenon. Although one would not learn this from the FEIR, nearly 1,000 parking spaces in the Ferry Building area have recently been removed or are proposed for near-term removal in conjunction with various development projects or due to deteriorating pier conditions. The accessory parking proposed as part of the Project clearly would not solve this serious cumulative problem nor address the resulting significant impacts to traffic and circulation flow.

Not only would the proposed Project garage fail to provide parking dedicated to the Ferry Building as guaranteed by the Parking Agreement, but the number of spaces proposed is also a pittance in comparison to the 1,000 spaces that will be lost. This deficit is exacerbated by the fact that the new spaces are planned to serve the new health club and commercial uses on-site, which would bring additional visitors and additional vehicles to an area that already suffers from severe parking and traffic constraints.

The limited number of new spaces would especially affect traffic in the immediate area. All this parking would be consolidated in a single garage with a single point of ingress and egress. Therefore, the vehicle trips that are currently dispersed among parking areas in different locations along the waterfront would instead flow to a single bottleneck, with all of the attendant impacts on traffic, air quality, safety, and noise concentrated at a single location. It is astounding that despite these facts, the FEIR finds no significant traffic impacts—not even *potentially* significant—except for one cumulative impact if a

recommendation in the Northeast Embarcadero Study is implemented, and even in that case, the FEIR proposes no meaningful mitigation.

For the merchants, food artisans, and farmers who are the lifeblood of the Ferry Building Marketplace, the damage would be felt most severely in the first three to five years while the Project is being constructed. Exactly zero dedicated parking spaces would be available to their customers during this period. Other parking spaces are much farther away and their availability is limited, particularly during the week when garages are full with monthly parkers. Instead of the close, convenient parking promised by the City to exclusively serve the Ferry Building, the Project would further reduce the attractiveness of the Ferry Building as a waterfront destination for visitors and shoppers by clogging the Embarcadero with up to 200 dump truck trips per day (17,600 total one-way trips) during this three- to five-year period. The impacts would be exacerbated when hundreds of thousands of projected spectators arrive for the America's Cup program, when additional visitors are drawn to the relocated Exploratorium and Teatro ZinZanni, and when the proposed project at 75 Howard begins construction—all of which would likely overlap with the proposed construction of the Project and elimination of parking at Seawall Lot 351. These impacts are not adequately addressed in the FEIR.

**The FEIR Does Not Disclose Adequately or Accurately the Project's Other Impacts**

These initial concerns prompted EOP to carefully examine the Project proposal and the City's analysis of the environmental effects of the proposal to determine whether the other potential impacts of the Project had been properly identified, analyzed, and mitigated in accordance with CEQA. Upon review, the FEIR's analysis of several other issues proved to be fatally flawed.

EOP consistently has informed and reminded the City of its concerns about the development of Seawall Lot 351 through comments submitted on the Northeast Embarcadero Study on

March 24, 2010, comments submitted on the Draft EIR on August 15, 2011, and comments submitted on the FEIR on March 20, 2012, as well as numerous less formal communications. Without limiting any of the foregoing, our major concerns can be summarized as follows:

The Project Description Describes a Different Project. The "Project" that is evaluated in the FEIR is not the same Project that the Planning Commission approved. The Project Proponent has submitted numerous revised project descriptions to the City since the CEQA process began and as recently as February 27, 2012, well after the FEIR was released, to the extent that the Project Description is highly unstable. The Project has been substantially reconfigured in a number of ways, including expansion of some uses and changes in design and layout. The FEIR must be revised to address the actual Project as it is currently proposed.

The City's Contractual Obligations and Proposed Actions on the Parking Agreement Must Be Addressed as They Are Part of the Project. The Project Description fails to adequately address the City's obligations under the Parking Agreement with EOP. The Parking Agreement restricts the City's ability to approve projects on Seawall Lot 351 and it requires the City to provide to EOP temporary and permanent replacement parking for designated Ferry Building use in conjunction with any such projects. Nor does it address the actions that the City would have to take to address these obligations. These requirements, and the City's manner of satisfying them, must be stated clearly in the FEIR, both in the Project Description and approvals required for the Project.

The Traffic and Parking Data Are Outdated and Inadequate. The FEIR relies on stale and incomplete data that misrepresents the conditions in the area today, and, indeed what it has been for the last several years. The northeastern waterfront has been transformed in recent years with the introduction of new businesses and the exploding popularity of the Ferry Building Farmers Market. The FEIR bases its traffic and parking assumptions on data from

2007, before these changes occurred. Further, the chosen evaluation window is bizarre—a single Wednesday evening, which does not capture the true peak periods for this area during the Tuesday, Thursday, and Saturday daytime Farmers Markets. Even an occasional visitor to the Ferry Building would know that such data would not be representative of the traffic and parking patterns of the area. EOP submitted a 2011 parking study to the City that demonstrates that parking is constrained during those times, yet the FEIR failed to correct the deficiencies. As a result, the traffic and parking impacts are vastly understated. The traffic and parking analysis in the FEIR must be revised to incorporate current data for actual peak periods.

The Public Trust Impacts of the Project Must Be Properly Identified and Addressed in the FEIR. The Project, as currently proposed, depends on a land exchange, the first step of which is the extinguishment by the State Lands Commission of the public trust designation for Seawall Lot 351. This is a significant action requiring the approval of both the City and the State Lands Commission based on several required findings, including the finding that Seawall Lot 351 is "relatively useless" for public trust purposes and the removal of the public trust designation would not interfere with any other public trust resources. These findings are not possible for either the City or the State Lands Commission to make for the Project as currently proposed because Seawall Lot 351 is currently being used (as it has been for almost ten years) for an important public trust purpose—parking specifically to serve the Ferry Building. The FEIR fails to accurately identify these required actions or to analyze their environmental, public trust and related social and historical impacts, and, as a result, cannot be used to demonstrate CEQA compliance for such actions.

The FEIR Ignores Cumulative Impacts from Other Existing and Proposed Projects. The FEIR fails to adequately account for several major projects that will transform the area in the near future: The America's Cup program, the opening of Exploratorium and Teatro ZinZanni, and construction at 75 Howard, to name a few, will dramatically increase the

number of vehicle, bicycle, and pedestrian trips in the area, compounding the traffic and parking impacts from this Project. Further, the construction periods will overlap, clogging local streets with an excess of construction vehicles and exacerbating air quality, noise, safety, and aesthetics impacts. The City cannot turn a blind eye to these projects and approve this Project in feigned isolation.

The Hydro-Geologic Analysis Is Conspicuously Deficient. The FEIR skims over the obvious potential impacts from a massive parking garage built 31 feet below grade entirely in Bay fill. The Draft EIR (DEIR) is completely silent on this topic, and the FEIR unsuccessfully attempts to "paper over" the gap by referencing three 1-2 page memoranda from the developer's contractors. The memoranda are conclusory at best and they fail to provide meaningful information about dewatering, seismic and sea level rise issues—all critical oversights for a waterfront location.

The FEIR Fails to Include Meaningful Alternatives to the Project. Under CEQA, the City is required to analyze a reasonable range of alternatives that meet a specified criterion—these alternatives must avoid or substantially lessen the significant environmental effects of the Project. The FEIR fails to comply with this mandate. Other than the No Project Alternative, the FEIR does not identify a single alternative that is intended to, or would, avoid or lessen the any of the potentially significant impacts that the FEIR already identifies—much less the other effects the FEIR did not disclose. As a result, the FEIR fails to present to the public and decision-makers, as CEQA requires, a "reasonable range" of alternatives that serve generally the same Project objectives but have fewer impacts, as CEQA requires.

Significant Adverse Impacts Are Left Unmitigated—Even Though Mitigation Is Feasible. CEQA requires that an EIR identify, and that the government entity impose, all feasible measures to mitigate significant impacts. The FEIR fails to incorporate all feasible mitigation for three of the Project's significant impacts. To mitigate the significant traffic impact at the

intersection of the Embarcadero and Washington Street, the FEIR proposes "a basic Travel Demand Management Plan" that repeats many of the features that are already part of the Project anyway. It is remarkable that the FEIR does not consider any infrastructure improvements, traffic calming measures, or other feasible options that could lessen the impact.

To mitigate the significant air quality impact from exposure to toxic air contaminants, the FEIR proposes a ventilation system that would only operate when the building's heat is on. This runs counter to current science, which calls for continual operation.

Other feasible measures are rejected *because they would reduce the marketability of the Project.* This claim is not only an improper consideration under CEQA, for which "feasibility" is the standard (not a preference against a possible longer selling period for condominiums or a smaller profit to the developer), but also is unsubstantiated by any credible evidence. Finally, to mitigate the significant sea level rise impact from exposure to flooding, the FEIR proposes an Emergency Plan to be administered by the building manager. Preparing residents for emergency evacuations does nothing to address sea level rise. Instead, the FEIR should consider widely published strategies to change the Project's design and improve its resiliency.

The FEIR Must Be Corrected and the Public Must Be Given an Opportunity to Comment on that Revised FEIR. For the reasons cited above and in our previous comment letters, as well as the comments of others that have been submitted throughout this process, the FEIR must be substantially revised and recirculated. The FEIR (*i.e.*, the Comments and Responses on the DEIR) contains a substantial amount of significant new information—in fact, it is nearly the same page length as the DEIR—and materially alters the information and issues addressed in the DEIR. That alone would be sufficient to require recirculation. In addition, the new information and analysis required to correct its material remaining deficiencies will

further alter the document to the point at which it no longer resembles the DEIR that was made available for public review. The FEIR must be recirculated so that the public has a meaningful opportunity to comment on the document that is ultimately considered by the City.

**The Board Should Reverse the Planning Commission's Certification of the FEIR**

For these reasons (and those identified by the other stakeholders[3]), the Board cannot make the findings required by CEQA and the Administrative Code in order to uphold the FEIR. Specifically, the Board cannot find that the FEIR is adequate, accurate and objective; that its conclusions are correct; or that the findings contained in the Planning Commission's certification are correct. Most importantly, it cannot properly find that the FEIR complies with CEQA.

The City and the public are entitled to the best information available before the City makes any decision that would so dramatically and permanently affect the Ferry Building and the downtown waterfront as the Project would. The FEIR before the Board falls far short of that standard.

EOP respectfully requests that the Board reverse the Planning Commission's certification of the FEIR, adopt the alternative proposed findings attached to this letter, and remand the FEIR to the Planning Commission for further action consistent with the Board's findings.

[3] Rather than repeat all the facts and analysis on other issues which have been well addressed by other stakeholders, EOP joins in those comments and observations.

Sincerely,

Zane O. Gresham

cc: Angela Calvillo, Clerk of the Board

# DRAFT FINDINGS REVERSING THE CERTIFICATION BY THE PLANNING COMMISSION OF THE FINAL ENVIRONMENTAL IMPACT REPORT FOR THE 8 WASHINGTON STREET / SEAWALL LOT 351 PROJECT (CASE NO. 2007.0030ECKMRZ)

## PREAMBLE

On January 3, 2007, Neil Sekhri, on behalf of San Francisco Waterfront Partners II, LLC, filed an Environmental Evaluation Application with the Planning Department ("Department") for the 8 Washington Street / Seawall Lot 351 Project ("Project"), Case No. 2007.0030E. The Department issued a Notice of Preparation of Environmental Review on December 8, 2007.

On June 15, 2011, the Department published a Draft Environmental Impact Report ("DEIR") for the Project. The DEIR was available for public comment until August 15, 2011. On July 21, 2011, the Planning Commission ("Commission") conducted a public hearing at a regularly scheduled meeting to solicit comments regarding the DEIR. On December 22, 2011, the Department published a Comments and Responses document, purporting to respond to comments made regarding the DEIR prepared for the Project.

On March 22, 2012, the Commission reviewed and considered the Final Environmental Impact Report ("FEIR") and, by Motion 18561, found that the contents of the FEIR and the procedures through which the FEIR was prepared, publicized, and reviewed complied with the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.) ("CEQA"), California Code of Regulations Title 14, Section 15000 et seq. ("CEQA Guidelines"), and Chapter 31 of the San Francisco Administrative Code, adopted findings, and certified the FEIR.

On March 26, 2012, by letter to the Clerk of the Board of Supervisors, Zane O. Gresham, on behalf of Equity Office Properties, filed an appeal of the FEIR to the Board of Supervisors, which the Clerk of the Board of Supervisors received on March 26, 2012.

On April 4, 2012, by letter to the Clerk of the Board of Supervisors, Sue C. Hestor, on behalf of Friends of Golden Gateway (collectively with Equity Office Properties, "Appellants"), filed an appeal of the FEIR to the Board of Supervisors, which the Clerk of the Board of Supervisors received on April 4, 2012.

Chapter 31 of the San Francisco Administrative Code requires the Board of Supervisors to consolidate multiple appeals of the same project and to hold one hearing on all appeals received.

On May 15, 2012, this Board held a duly noticed public hearing to consider the appeals of the FEIR certification filed by Appellants.

This Board has reviewed and considered the FEIR, the administrative record supporting the certification of the FEIR, the appeal letters, and the written materials presented on behalf of the Appellants, the Department, and other interested parties, and has heard and considered the oral testimony presented to it at the public hearing.

The FEIR administrative record and all correspondence and other documents have been made available for review by this Board and the public. These files are available for public review at the Department offices at 1650 Mission Street, Suite 400, and are part of the record before this Board.

**FINDINGS**

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Board finds, concludes, and determines as follows:

1. The appeal of the certification of the FEIR to the Board of Supervisors filed on March 26, 2012, by letter to the Clerk of the Board of Supervisors from Zane O. Gresham, on behalf of Equity Office Properties, was duly filed in accordance with Chapter 31 of the Administrative Code.

2. The appeal of the certification of the FEIR to the Board of Supervisors filed on April 4, 2012, by letter to the Clerk of the Board of Supervisors from Sue C. Hestor, on behalf of Friends of Golden Gateway, was duly filed in accordance with Chapter 31 of the Administrative Code.

3. The Board has conducted its own independent review of the FEIR and has considered anew all facts, evidence, and issues related to the adequacy, accuracy, and objectiveness of the FEIR, including the sufficiency of the FEIR as an informational document and the correctness of its conclusions, and the Commission's certification of the FEIR, in accordance with Chapter 31 of the Administrative Code.

4. The FEIR is not adequate, accurate, and objective, it is not sufficient as an informational document, its conclusions are not correct, and the findings contained in the Commission's certification are not correct, for the following reasons:

a. The FEIR fails to describe essential facts necessary to establish accurately the setting of the Project;

b. The FEIR lacks a stable and consistent project description;

c. The FEIR fails to provide adequate facts to support critical conclusions contained in the FEIR;

d. The FEIR relies on inaccurate and outdated data;

e. The FEIR omits consideration of legitimate alternatives to the Project that would reduce substantially or eliminate potentially significant environmental effects;

f. The FEIR understates substantially the potential impacts of the Project; and

g. The FEIR fails to identify and recommend adoption of mitigation measures that are feasible and, if adopted, would reduce substantially or eliminate potentially significant environmental effects of the Project.

5. Significant new information was added to the EIR after notice was given of the availability of the DEIR for public review but before certification which changed the EIR in a way that deprived the public of a meaningful opportunity to comment upon substantial adverse environmental effects of the Project and feasible ways to mitigate or avoid such effects, including feasible Project alternatives, that the Project's proponents have declined to implement. The new information includes disclosures showing that:

a. New significant environmental impacts would result from the Project;

b. A substantial increase in the severity of environmental impacts would result unless mitigation measures are adopted that reduce the impacts to a level of insignificance;

c. Feasible Project alternatives or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the Project, but the Project's proponents decline to adopt them; and

d. The DEIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

7. The FEIR must be revised and recirculated in accordance with CEQA Section 21092.1 and CEQA Guidelines Section 15088.5.

8 Washington FEIR Appeal Materials
Quigley, Corinne
to:
Angela.Calvillo
05/07/2012 03:15 PM
Cc:
Joy.Lamug
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History: This message has been forwarded.

1 Attachment
[Untitled].pdf

Angela,

Attached please find a letter to the Board of Supervisors on behalf of Zane Gresham. Per your instructions, 18 hard copies are being delivered to your office this afternoon.

<<[Untitled].pdf>>
Regards,
Corinne

**Corinne Quigley**
Morrison & Foerster LLP
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May 7, 2012

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The limited number of new spaces would especially affect traffic in the immediate area. All this parking would be consolidated in a single garage with a single point of ingress and egress. Therefore, the vehicle trips that are currently dispersed among parking areas in different locations along the waterfront would instead flow to a single bottleneck, with all of the attendant impacts on traffic, air quality, safety, and noise concentrated at a single location. It is astounding that despite these facts, the FEIR finds no significant traffic impacts—not even *potentially* significant—except for one cumulative impact if a

recommendation in the Northeast Embarcadero Study is implemented, and even in that case, the FEIR proposes no meaningful mitigation.

For the merchants, food artisans, and farmers who are the lifeblood of the Ferry Building Marketplace, the damage would be felt most severely in the first three to five years while the Project is being constructed. Exactly zero dedicated parking spaces would be available to their customers during this period. Other parking spaces are much farther away and their availability is limited, particularly during the week when garages are full with monthly parkers. Instead of the close, convenient parking promised by the City to exclusively serve the Ferry Building, the Project would further reduce the attractiveness of the Ferry Building as a waterfront destination for visitors and shoppers by clogging the Embarcadero with up to 200 dump truck trips per day (17,600 total one-way trips) during this three- to five-year period. The impacts would be exacerbated when hundreds of thousands of projected spectators arrive for the America's Cup program, when additional visitors are drawn to the relocated Exploratorium and Teatro ZinZanni, and when the proposed project at 75 Howard begins construction—all of which would likely overlap with the proposed construction of the Project and elimination of parking at Seawall Lot 351. These impacts are not adequately addressed in the FEIR.

**The FEIR Does Not Disclose Adequately or Accurately the Project's Other Impacts**

These initial concerns prompted EOP to carefully examine the Project proposal and the City's analysis of the environmental effects of the proposal to determine whether the other potential impacts of the Project had been properly identified, analyzed, and mitigated in accordance with CEQA. Upon review, the FEIR's analysis of several other issues proved to be fatally flawed.

EOP consistently has informed and reminded the City of its concerns about the development of Seawall Lot 351 through comments submitted on the Northeast Embarcadero Study on

March 24, 2010, comments submitted on the Draft EIR on August 15, 2011, and comments submitted on the FEIR on March 20, 2012, as well as numerous less formal communications. Without limiting any of the foregoing, our major concerns can be summarized as follows:

The Project Description Describes a Different Project. The "Project" that is evaluated in the FEIR is not the same Project that the Planning Commission approved. The Project Proponent has submitted numerous revised project descriptions to the City since the CEQA process began and as recently as February 27, 2012, well after the FEIR was released, to the extent that the Project Description is highly unstable. The Project has been substantially reconfigured in a number of ways, including expansion of some uses and changes in design and layout. The FEIR must be revised to address the actual Project as it is currently proposed.

The City's Contractual Obligations and Proposed Actions on the Parking Agreement Must Be Addressed as They Are Part of the Project. The Project Description fails to adequately address the City's obligations under the Parking Agreement with EOP. The Parking Agreement restricts the City's ability to approve projects on Seawall Lot 351 and it requires the City to provide to EOP temporary and permanent replacement parking for designated Ferry Building use in conjunction with any such projects. Nor does it address the actions that the City would have to take to address these obligations. These requirements, and the City's manner of satisfying them, must be stated clearly in the FEIR, both in the Project Description and approvals required for the Project.

The Traffic and Parking Data Are Outdated and Inadequate. The FEIR relies on stale and incomplete data that misrepresents the conditions in the area today, and, indeed what it has been for the last several years. The northeastern waterfront has been transformed in recent years with the introduction of new businesses and the exploding popularity of the Ferry Building Farmers Market. The FEIR bases its traffic and parking assumptions on data from

2007, before these changes occurred. Further, the chosen evaluation window is bizarre—a single Wednesday evening, which does not capture the true peak periods for this area during the Tuesday, Thursday, and Saturday daytime Farmers Markets. Even an occasional visitor to the Ferry Building would know that such data would not be representative of the traffic and parking patterns of the area. EOP submitted a 2011 parking study to the City that demonstrates that parking is constrained during those times, yet the FEIR failed to correct the deficiencies. As a result, the traffic and parking impacts are vastly understated. The traffic and parking analysis in the FEIR must be revised to incorporate current data for actual peak periods.

The Public Trust Impacts of the Project Must Be Properly Identified and Addressed in the FEIR. The Project, as currently proposed, depends on a land exchange, the first step of which is the extinguishment by the State Lands Commission of the public trust designation for Seawall Lot 351. This is a significant action requiring the approval of both the City and the State Lands Commission based on several required findings, including the finding that Seawall Lot 351 is "relatively useless" for public trust purposes and the removal of the public trust designation would not interfere with any other public trust resources. These findings are not possible for either the City or the State Lands Commission to make for the Project as currently proposed because Seawall Lot 351 is currently being used (as it has been for almost ten years) for an important public trust purpose—parking specifically to serve the Ferry Building. The FEIR fails to accurately identify these required actions or to analyze their environmental, public trust and related social and historical impacts, and, as a result, cannot be used to demonstrate CEQA compliance for such actions.

The FEIR Ignores Cumulative Impacts from Other Existing and Proposed Projects. The FEIR fails to adequately account for several major projects that will transform the area in the near future. The America's Cup program, the opening of Exploratorium and Teatro ZinZanni, and construction at 75 Howard, to name a few, will dramatically increase the

number of vehicle, bicycle, and pedestrian trips in the area, compounding the traffic and parking impacts from this Project. Further, the construction periods will overlap, clogging local streets with an excess of construction vehicles and exacerbating air quality, noise, safety, and aesthetics impacts. The City cannot turn a blind eye to these projects and approve this Project in feigned isolation.

The Hydro-Geologic Analysis Is Conspicuously Deficient. The FEIR skims over the obvious potential impacts from a massive parking garage built 31 feet below grade entirely in Bay fill. The Draft EIR (DEIR) is completely silent on this topic, and the FEIR unsuccessfully attempts to "paper over" the gap by referencing three 1-2 page memoranda from the developer's contractors. The memoranda are conclusory at best and they fail to provide meaningful information about dewatering, seismic and sea level rise issues—all critical oversights for a waterfront location.

The FEIR Fails to Include Meaningful Alternatives to the Project. Under CEQA, the City is required to analyze a reasonable range of alternatives that meet a specified criterion—these alternatives must avoid or substantially lessen the significant environmental effects of the Project. The FEIR fails to comply with this mandate. Other than the No Project Alternative, the FEIR does not identify a single alternative that is intended to, or would, avoid or lessen the any of the potentially significant impacts that the FEIR already identifies—much less the other effects the FEIR did not disclose. As a result, the FEIR fails to present to the public and decision-makers, as CEQA requires, a "reasonable range" of alternatives that serve generally the same Project objectives but have fewer impacts, as CEQA requires.

Significant Adverse Impacts Are Left Unmitigated—Even Though Mitigation Is Feasible. CEQA requires that an EIR identify, and that the government entity impose, all feasible measures to mitigate significant impacts. The FEIR fails to incorporate all feasible mitigation for three of the Project's significant impacts. To mitigate the significant traffic impact at the

intersection of the Embarcadero and Washington Street, the FEIR proposes "a basic Travel Demand Management Plan" that repeats many of the features that are already part of the Project anyway. It is remarkable that the FEIR does not consider any infrastructure improvements, traffic calming measures, or other feasible options that could lessen the impact.

To mitigate the significant air quality impact from exposure to toxic air contaminants, the FEIR proposes a ventilation system that would only operate when the building's heat is on. This runs counter to current science, which calls for continual operation.

Other feasible measures are rejected *because they would reduce the marketability of the Project.* This claim is not only an improper consideration under CEQA, for which "feasibility" is the standard (not a preference against a possible longer selling period for condominiums or a smaller profit to the developer), but also is unsubstantiated by any credible evidence. Finally, to mitigate the significant sea level rise impact from exposure to flooding, the FEIR proposes an Emergency Plan to be administered by the building manager. Preparing residents for emergency evacuations does nothing to address sea level rise. Instead, the FEIR should consider widely published strategies to change the Project's design and improve its resiliency.

The FEIR Must Be Corrected and the Public Must Be Given an Opportunity to Comment on that Revised FEIR. For the reasons cited above and in our previous comment letters, as well as the comments of others that have been submitted throughout this process, the FEIR must be substantially revised and recirculated. The FEIR (*i.e.*, the Comments and Responses on the DEIR) contains a substantial amount of significant new information—in fact, it is nearly the same page length as the DEIR—and materially alters the information and issues addressed in the DEIR. That alone would be sufficient to require recirculation. In addition, the new information and analysis required to correct its material remaining deficiencies will

further alter the document to the point at which it no longer resembles the DEIR that was made available for public review. The FEIR must be recirculated so that the public has a meaningful opportunity to comment on the document that is ultimately considered by the City.

**The Board Should Reverse the Planning Commission's Certification of the FEIR**

For these reasons (and those identified by the other stakeholders[3]), the Board cannot make the findings required by CEQA and the Administrative Code in order to uphold the FEIR. Specifically, the Board cannot find that the FEIR is adequate, accurate and objective; that its conclusions are correct; or that the findings contained in the Planning Commission's certification are correct. Most importantly, it cannot properly find that the FEIR complies with CEQA.

The City and the public are entitled to the best information available before the City makes any decision that would so dramatically and permanently affect the Ferry Building and the downtown waterfront as the Project would. The FEIR before the Board falls far short of that standard.

EOP respectfully requests that the Board reverse the Planning Commission's certification of the FEIR, adopt the alternative proposed findings attached to this letter, and remand the FEIR to the Planning Commission for further action consistent with the Board's findings.

[3] Rather than repeat all the facts and analysis on other issues which have been well addressed by other stakeholders, EOP joins in those comments and observations.

Sincerely,

Zane O. Gresham

cc: Angela Calvillo, Clerk of the Board

sf-3128090

# DRAFT FINDINGS REVERSING THE CERTIFICATION BY THE PLANNING COMMISSION OF THE FINAL ENVIRONMENTAL IMPACT REPORT FOR THE 8 WASHINGTON STREET / SEAWALL LOT 351 PROJECT (CASE NO. 2007.0030ECKMRZ)

## PREAMBLE

On January 3, 2007, Neil Sekhri, on behalf of San Francisco Waterfront Partners II, LLC, filed an Environmental Evaluation Application with the Planning Department ("Department") for the 8 Washington Street / Seawall Lot 351 Project ("Project"), Case No. 2007.0030E. The Department issued a Notice of Preparation of Environmental Review on December 8, 2007.

On June 15, 2011, the Department published a Draft Environmental Impact Report ("DEIR") for the Project. The DEIR was available for public comment until August 15, 2011. On July 21, 2011, the Planning Commission ("Commission") conducted a public hearing at a regularly scheduled meeting to solicit comments regarding the DEIR. On December 22, 2011, the Department published a Comments and Responses document, purporting to respond to comments made regarding the DEIR prepared for the Project.

On March 22, 2012, the Commission reviewed and considered the Final Environmental Impact Report ("FEIR") and, by Motion 18561, found that the contents of the FEIR and the procedures through which the FEIR was prepared, publicized, and reviewed complied with the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.) ("CEQA"), California Code of Regulations Title 14, Section 15000 et seq. ("CEQA Guidelines"), and Chapter 31 of the San Francisco Administrative Code, adopted findings, and certified the FEIR.

On March 26, 2012, by letter to the Clerk of the Board of Supervisors, Zane O. Gresham, on behalf of Equity Office Properties, filed an appeal of the FEIR to the Board of Supervisors, which the Clerk of the Board of Supervisors received on March 26, 2012.

On April 4, 2012, by letter to the Clerk of the Board of Supervisors, Sue C. Hestor, on behalf of Friends of Golden Gateway (collectively with Equity Office Properties, "Appellants"), filed an appeal of the FEIR to the Board of Supervisors, which the Clerk of the Board of Supervisors received on April 4, 2012.

Chapter 31 of the San Francisco Administrative Code requires the Board of Supervisors to consolidate multiple appeals of the same project and to hold one hearing on all appeals received.

On May 15, 2012, this Board held a duly noticed public hearing to consider the appeals of the FEIR certification filed by Appellants.

This Board has reviewed and considered the FEIR, the administrative record supporting the certification of the FEIR, the appeal letters, and the written materials presented on behalf of the Appellants, the Department, and other interested parties, and has heard and considered the oral testimony presented to it at the public hearing.

The FEIR administrative record and all correspondence and other documents have been made available for review by this Board and the public. These files are available for public review at the Department offices at 1650 Mission Street, Suite 400, and are part of the record before this Board.

**FINDINGS**

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Board finds, concludes, and determines as follows:

1. The appeal of the certification of the FEIR to the Board of Supervisors filed on March 26, 2012, by letter to the Clerk of the Board of Supervisors from Zane O. Gresham, on behalf of Equity Office Properties, was duly filed in accordance with Chapter 31 of the Administrative Code.

2. The appeal of the certification of the FEIR to the Board of Supervisors filed on April 4, 2012, by letter to the Clerk of the Board of Supervisors from Sue C. Hestor, on behalf of Friends of Golden Gateway, was duly filed in accordance with Chapter 31 of the Administrative Code.

3. The Board has conducted its own independent review of the FEIR and has considered anew all facts, evidence, and issues related to the adequacy, accuracy, and objectiveness of the FEIR, including the sufficiency of the FEIR as an informational document and the correctness of its conclusions, and the Commission's certification of the FEIR, in accordance with Chapter 31 of the Administrative Code.

4. The FEIR is not adequate, accurate, and objective, it is not sufficient as an informational document, its conclusions are not correct, and the findings contained in the Commission's certification are not correct, for the following reasons:

a. The FEIR fails to describe essential facts necessary to establish accurately the setting of the Project;

b. The FEIR lacks a stable and consistent project description;

c. The FEIR fails to provide adequate facts to support critical conclusions contained in the FEIR;

d. The FEIR relies on inaccurate and outdated data;

e. The FEIR omits consideration of legitimate alternatives to the Project that would reduce substantially or eliminate potentially significant environmental effects;

f. The FEIR understates substantially the potential impacts of the Project; and

g. The FEIR fails to identify and recommend adoption of mitigation measures that are feasible and, if adopted, would reduce substantially or eliminate potentially significant environmental effects of the Project.

5. Significant new information was added to the EIR after notice was given of the availability of the DEIR for public review but before certification which changed the EIR in a way that deprived the public of a meaningful opportunity to comment upon substantial adverse environmental effects of the Project and feasible ways to mitigate or avoid such effects, including feasible Project alternatives, that the Project's proponents have declined to implement. The new information includes disclosures showing that:

a. New significant environmental impacts would result from the Project;

b. A substantial increase in the severity of environmental impacts would result unless mitigation measures are adopted that reduce the impacts to a level of insignificance;

c. Feasible Project alternatives or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the Project, but the Project's proponents decline to adopt them; and

d. The DEIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

7. The FEIR must be revised and recirculated in accordance with CEQA Section 21092.1 and CEQA Guidelines Section 15088.5.

8 Washington Street project - SFBC position

Board of Supervisors to: Joy Lamug, Carmen Chu, David Campos, David Chiu, Eric L Mar, John Avalos, Sean Elsbernd, Malia Cohen, 05/02/2012 04:03 PM

From: Andy Thornley <andy@sfbike.org>
To: David Chiu <David.Chiu@sfgov.org>, Board.of.supervisors@sfgov.org, Judson.True@sfgov.org,
Date: 05/02/2012 12:19 PM
Subject: Fwd: 8 Washington Street project - SFBC position
Sent by: andy.sfbike@gmail.com

Pardon the redundancy, I'm re-sending this to make sure it's back near the top of the pile for the Board's packet, see attached letter . . .

Thanks,

--Andy--

---------- Forwarded message ----------
From: **Andy Thornley** <andy@sfbike.org>
Date: Tue, Mar 6, 2012 at 11:45 AM
Subject: 8 Washington Street project - SFBC position
To: David Chiu <David.Chiu@sfgov.org>, Rodney Fong <rodney@waxmuseum.com>
Cc: Linda Avery <Linda.Avery@sfgov.org>, Board.of.supervisors@sfgov.org, John Rahaim <John.Rahaim@sfgov.org>, Monique Moyer <monique.moyer@sfport.com>, Ed Reiskin <Ed.Reiskin@sfmta.com>, Simon Snellgrove <ssnellgrove@pacificwaterfront.com>, Alicia Esterkamp Allbin <aallbin@pacificwaterfront.com>, Judson True <Judson.True@sfgov.org>, Leah Shahum <leah@sfbike.org>

Hello President Chiu and President Fong --

Attached is the San Francisco Bicycle Coalition's letter on the 8 Washington Street project for consideration by the Board of Supervisors and Planning Commission, please circulate to members of those bodies and other interested parties.

Thank you,

Andy Thornley
Policy Director

**********

San Francisco Bicycle Coalition
833 Market St. 10th Floor
San Francisco, CA 94103
415-431-BIKE x307
http://sfbike.org

12,000 Members Strong
Promoting the Bicycle for Everyday Transportation

8_Washington_SFBC_Mar_2012.pdf

San Francisco Bicycle Coalition
833 Market Street, 10th Floor
San Francisco CA 94103

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sfbike.org

PROMOTING THE BICYCLE FOR EVERYDAY TRANSPORTATION

5 March 2012

David Chiu, President
San Francisco Board of Supervisors
Room 244, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco CA 94102

Rodney Fong, President
San Francisco Planning Commission
1650 Mission Street
San Francisco, CA 94103

**RE: 8 Washington Street project**

Dear President Chiu and President Fong:

On behalf of the 12,000 members of the San Francisco Bicycle Coalition, I hereby express our qualified support for the 8 Washington Street project coming before the Planning Commission and Board of Supervisors for your deliberation and legislative action. The 8 Washington project would provide numerous benefits to the bicycling environment and public realm in the city's northeastern waterfront district through its bicycle parking features and streetscape enhancements. However, the vehicle parking features of the project, and the overall grasp and engagement of vehicle parking supply by the City's agencies, give us significant cause for concern.

We appreciate the project's commitment to eliminate the only curb cut on the eastern side of the Embarcadero between King and Bay Streets, which presently exists to serve the surface parking lot at Seawall Lot 351. The Embarcadero is a major City bicycle route (SF Bicycle Route 5) and a key segment of the San Francisco Bay Trail, and the elimination of the curb cut and related vehicle movements would improve the comfort and safety of pedestrians and bicycle riders on the Embarcadero.

We support and applaud the project's proposed secure bicycle parking supply, which would provide at least 134 bike spaces to serve residents (at nearly a 1:1 ratio) and 27 public bike parking spaces for non-resident users.

The project includes many features that would enhance pedestrian and view corridors and improve the connection between the city and the waterfront by creating active, pedestrian-oriented uses at street level. We support and applaud the project's commitment to widen sidewalks along its Drumm and Washington Street frontages, open a pedestrian way along Pacific Avenue, and restore Jackson Street as a public right-of-way and view corridor.

We appreciate that the parking garage would locate all vehicle parking underground (and eliminate surface parking presently occupying Seawall Lot 351), and are pleased that two existing curb cuts on the Washington Street frontage of the project would be combined into a single curb cut, lessening conflicts and hazards for pedestrian and bicycle riders on Washington Street. And we appreciate that five of the project garage's vehicle parking stalls would be dedicated to car share use.

**Nevertheless we must express our strong concern with the amount of vehicle parking proposed for the project, and our dismay at the City's engagement of the broader issues of transportation and land use planning in which this project and its vehicle parking must be considered.** The project would construct an underground garage with 400 parking stalls, replacing a 105-stall surface

parking lot presently on the site. On its face, this represents a near-quadrupling of vehicle parking on the project site, and a significant excess of vehicle parking under the City's Planning Code controls. In documents prepared by Planning staff for their Commission's deliberation and action on the project, parking excesses are inventoried and forgiven by various rationales:

> The project proposes 145 parking spaces to serve the residential uses, exceeding the maximum of 54 accessory residential spaces permitted within the RC-4 District. The conditions of approval would reduce the amount of residential parking in the project from the proposed 145 spaces (a 1 space per unit ratio) to 131 spaces (an approximately .90 space per unit ratio). This reduced ratio is compatible with the parking ratios permitted within C-3 Districts nearby, and would therefore be appropriate to the transit-rich, pedestrian-friendly context of the Project Site.

The logic of this argument seems contorted – by utilizing the limits of a different nearby zoning district (and reducing the proposed parking from nearly triple to more than double the maximum permitted) this project's excess parking might be compatible with that different nearby district, of course, but why do we have a distinct RC-4 district and when will we respect its limits? And how can such forgiveness of excess parking in the RC-4 zone be "appropriate to the transit-rich, pedestrian-friendly context of the Project Site?" And isn't this sort of ad-hoc intensification "substantially equivalent to a reclassification of property," a proscribed condition of the Planned Unit Development (PUD) process which is proposed to formalize forgiveness of the project's parking excess?

As for the balance of 255 parking spaces proposed for this project, Planning staff note that proposed non-residential commercial uses (restaurant, health club) should be provided a minimum of 90 and maximum of 135 parking spaces, and the project's proposed 80 non-residential accessory spaces are therefore deficient, but the PUD process will take that up along with the residential parking excess, and anyhow there are another 175 vehicle parking spaces proposed "to serve as general public parking for the various uses in the vicinity," and the aggregate supply of 255 non-residential spaces in the project garage would serve as parking available to the general public as a desirable public good:

> The Project also includes 255 spaces within the garage that would be accessible to the general public, in order to serve the uses on-site, and to provide parking to serve the uses in the vicinity of the Ferry Building. Several other parking facilities near the Ferry Building have been recently removed, or are planned for future removal. Therefore, the amount of non-residential parking proposed is appropriate for the Project.

Staff's recommendations for Planning Commission certification / approval / entitlement assert that "[t]he parking garage will bolster the commercial viability of the Ferry Building and enable broader access to the recreational amenities of the waterfront," and repeat elsewhere that "[t]hese parking spaces are necessary to support the continued viability of the Ferry Building, the Ferry Plaza Farmer's Market, Piers 1.5 – 5, and the Ferry Building waterfront area." This may be so, if we limit our concern for commercial viability and access to recreational amenities to users traveling by private automobile. But this argument neglects the many expenses that private automobile trips levy on public health and safety and mobility (transit, walking, and bicycling) and the real and significant interest the City has in nurturing and prioritizing access to commercial and recreational activities by transit, walking and bicycling (see Transit First Policy, General Plan, etc.). Each parking space in San Francisco has a factor of auto trip induction associated with it, and each of those auto trips have associated quanta of localized and generalized costs to public health, public

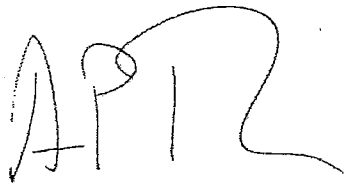
safety, and transit performance and availability. Planning's parking analysis begins and ends on concern for the convenience and comfort of some users while omitting the many significant shared costs of that parking, in the vicinity and across the city, region, and planet.

Throughout the documents prepared for their Commission's deliberation and action on the 8 Washington project, Planning staff refer to, and defer to, a parking study conducted for the Port of San Francisco in 2008, developed to a draft state, but never brought forward to the Port Commission for adoption as part of a parking and transportation management plan or policy. The draft 2008 study undoubtedly contains interesting information and may be a valuable tool in formulating a coherent policy or plan, but in itself the study does not constitute an adequate policy basis for establishing a 255-stall public garage at 8 Washington Street.

We are concerned that a draft parking study prepared for one agency would have the power to outweigh and confound adopted City code and policy. We are concerned that an important series of legislative actions affecting transportation and mobility and access in the city's northeast might be taken on the basis of such informal and incomplete information, without proper consultation and adoption of a coherent and intentional vehicle parking plan that respects and advances the City's transit-first policy goals.

We believe that it is essential to substantiate this project's parking needs and the Port's parking needs as separate and discrete things. There may be a policy-defensible case made for this project's parking garage, and for a new public parking facility to address a perceived deficit in vehicle parking supply for the Port's domain of property interest. But without proper substantiation for each as separate concerns, and formal deliberation and adoption of a plan for the Port's transportation needs (with vehicle parking as a harmonious element of such a plan, regarding and conforming with the interests of the city's northeastern waterfront and city as a whole), a responsible evaluation of the "right amount" of vehicle parking for this project cannot be made.

Sincerely,



Andy Thornley
Policy Director
San Francisco Bicycle Coalition

cc: Monique Moyer, Port of San Francisco
John Rahaim, SF Planning
Ed Reiskin, SF Municipal Transportation Authority
Simon Snellgrove, Pacific Waterfront Partners

Re: Fw: Appeal of the FEIR for the 8 Washington Street / Seawall Lot 351 Project
Paul Maltzer to: Joy Lamug 04/24/2012 03:24 PM

Thanks, Joy. I am also confirming that based upon my conversation with Sue Hestor today (I understand that she spoke with you, as well) and an email that I received from Amy Chan about the project sponsor and Appellants agreeing to a consolidated hearing date of May 15, Sue and I agreed that we would be submitting our packets to the Board (with copies to Appellants) on May 7.

Paul
Joy Lamug/BOS/SFGOV

Joy Lamug/BOS/SFGOV
04/24/2012 02:03 PM

To BOS-Supervisors@SFGOV.sfgov.org

cc bos-legislative.aides@sfgov.org <bos-legislative.aides@sfgov.org>, Cheryl Adams/CTYATT@CTYATT, Kate Stacy/CTYATT@CTYATT, Marlena Byrne/CTYATT@CTYATT, Scott Sanchez/CTYPLN/SFGOV@SFGOV, AnMarie Rodgers/CTYPLN/SFGOV@SFGOV, Tina Tam/CTYPLN/SFGOV@SFGOV, Nannie Turrell/CTYPLN/SFGOV@SFGOV, Linda Avery/CTYPLN/SFGOV@SFGOV, Paul Maltzer/CTYPLN/SFGOV@SFGOV, Monique Moyer/SFPORT/SFGOV@SFGOV, Phil Williamson/SFPORT/SFGOV@SFGOV, Trisha Prashad/SFPORT/SFGOV@SFGOV, Byron Rhett/SFPORT/SFGOV@SFGOV, Jonathan Stern/SFPORT/SFGOV@SFGOV, Brad Benson/SFPORT/SFGOV@SFGOV, Kevin Guy/CTYPLN/SFGOV@SFGOV, ssnellgrove@pacificwaterfront.com, aallbin@pacificwaterfront.com, NSekhri@gibsondunn.com

Subject Fw: Appeal of the FEIR for the 8 Washington Street / Seawall Lot 351 Project

Good Afternoon Supervisors,

Please see the email below from Quigley Corinne on behalf of Zane Gresham for the above referenced.

Thanks,
Joy

Joy Lamug
Board of Supervisors
Legislative Division
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Tel: 415.554.7712
Fax: 415.554.7714
Email: joy.lamug@sfgov.org

—— Forwarded by Angela Calvillo/BOS/SFGOV on 04/24/2012 01:25 PM ——

| | |
|---|---|
| From: | "Quigley, Corinne" <cquigley@mofo.com> |
| To: | Angela.Calvillo@sfgov.org |
| Cc: | hestor@earthlink.net |
| Date: | 04/23/2012 04:47 PM |
| Subject: | Appeal of the FEIR for the 8 Washington Street / Seawall Lot 351 Project |

Ms. Calvillo,

Attached please find a letter on behalf of Zane Gresham.

<<[Untitled].pdf>>
Regards,
Corinne Quigley

**Corinne Quigley**
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105
Phone: (415) 268-6249
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cquigley@mofo.com

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---[attachment "[Untitled].pdf" deleted by Paul Maltzer/CTYPLN/SFGOV]

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April 23, 2012

Writer's Direct Contact
415.268.7145
ZGresham@mofo.com

By Electronic Mail (Angela.Calvillo@sfgov.org)

Angela Calvillo
Clerk of the Board of Supervisors
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Re: Appeal of the Planning Commission's Certification of the Final Environmental Impact Report for the 8 Washington Street / Seawall Lot 351 Project (Case No. 2007.0030ECKMRZ)

Dear Ms. Calvillo:

This letter concerns the hearing date for the appeal, on behalf of Equity Office Properties, of the Planning Commission's certification of the Final Environmental Impact Report (EIR Appeal) for the 8 Washington Street / Seawall Lot 351 Project (Project). That EIR Appeal hearing recently was set for May 1, 2012. On April 17, 2012, Friends of Golden Gateway appealed the Planning Commission's approval of a Conditional Use Authorization for a Planned Unit Development for the Project (CU Appeal). The hearing date for the CU Appeal has been scheduled for May 15, 2012. Thus, the Board of Supervisors is currently scheduled to consider the appeals on one project at two separate hearings.

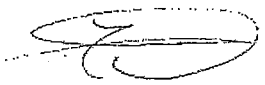
We understand it is the Board's standard practice to consider all appeals related to a single project at a single hearing. The efficiencies and convenience of this approach benefit both the Board and the public. Accordingly, we understand that these two appeals will be consolidated for hearing at the May 15 Board meeting. To the extent that a formal request for a continuanee and consolidation may be appropriate, we respectfully request that the May 1 hearing on Equity Office Properties' EIR Appeal be continued to May 15 and consolidated with the CU Appeal.

Accordingly, we will be providing additional materials we wish to make available to the Board prior to the hearing at a later date.

Please contact me as soon as possible to confirm that the EIR Appeal hearing has been continued to May 15 and consolidated with the CU Appeal hearing.

sf-3136631

Sincerely,



Zane O. Gresham

cc: Sue Hestor, Friends of Golden Gateway

BOARD of SUPERVISORS

City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 544-5227

April 5, 2012

Sue C. Hestor
Attorney for Friends of Golden Gateway
870 Market Street, Suite 1128
San Francisco, CA 94102

**Subject: Appeal of Planning Commission's Certification of the Final Environmental Impact Report - 8 Washington Street/Seawall Lot 351 Project**

Dear Ms. Hestor:

The Office of the Clerk of the Board is in receipt of your appeal filed on April 4, 2012, from the decision of the Planning Commission's March 22, 2012, Certification of a Final Environmental Impact Report identified as Planning Case No. 2007.0030E, through its Motion No. 18560, for the proposed 8 Washington Street/Seawall Lot 351 Project.

Pursuant to Section 31.16(b) of the Administrative Code, if more than one person submits an appeal on a final EIR, the Board shall consolidate such appeals so that they are heard simultaneously.

The first appeal was filed on March 26, 2012, therefore a hearing date has been tentatively scheduled for both appeals on **Tuesday, May 1, 2012, at 4:00 p.m.,** at the Board of Supervisors meeting to be held in City Hall, Legislative Chamber, Room 250, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

Please provide 18 copies to the Clerk's Office by:

| | |
|---|---|
| **8 days prior to the hearing:** | any documentation which you may want available to the Board members prior to the hearing; |
| **11 days prior to the hearing:** | names of interested parties to be notified of the hearing in label format. |

If you have any questions, please feel free to contact Legislative Deputy Director, Rick Caldeira, at (415) 554-7711 or Legislative Clerk, Joy Lamug, at (415) 554-7712.

Sincerely,

Angela Calvillo
Clerk of the Board

c:
Cheryl Adams, Deputy City Attorney
Kate Stacy, Deputy City Attorney
Marlena Byrne, Deputy City Attorney
Scott Sanchez, Zoning Administrator, Planning Department
Bill Wycko, Environmental Review Officer, Planning Department
AnMarie Rodgers, Planning Department
Tina Tam, Planning Department
Nannie Turrell, Planning Department
Paul Maltzer, Planning Department
Linda Avery, Planning Commission Secretary
Phil Williamson, Port
Trisha Prashad, Port
Byron Rhett, Port
Jonathan Stern, Port
Brad Benson, Port
Appellant, Zane O. Gresham, Esq., Morrison & Foerster, LLP, 425 Market Street, San Francisco, CA 94105-2482
Project Sponsor, Monique Moyer, Port Executive Director, Pier 1, The Embarcadero, San Francisco, CA 94111
Project Sponsor, San Francisco Waterfront Partners, LLC, Pier 1, Bay 2, The Embarcadero, San Francisco, CA 94111
Attn: Simon Snellgrove

SUE C. HESTOR
Attorney at Law
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(415) 362-2778 · FAX (415) 362-8048

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2012 APR -4 PM 1:33

April 4, 2012

Angela Calvillo
Clerk of the Board of Supervisors
City Hall Room 244
San Francisco CA 94102

APPEAL OF PLANNING COMMISSION CERTIFICATION OF FINAL ENVIRONMENTAL IMPACT REPORT FOR THE 8 WASHINGTON STREET/SEAWALL LOT 351 PROJECT - 2007.0030ECKMRZ

Dear Ms. Calvillo:

The Friends of Golden Gateway appeals the Planning Commission's certification of the Final Environmental Impact Report for the 8 Washington/SWL 351 Project (Project) because the Planning Commission action violates the California Environmental Quality Act (CEQA).

The FEIR and its March 22, 2012 Planning Commission certification do not comply with the requirements of CEQA. Among other deficiencies are the following:

- It fails to describe essential facts necessary to accurately establish the setting of the Project;
- It lacks a stable, finite and consistent project description, such that it is impossible to track changes in impacts and mitigation measures;
- It omits any information on prior EIRs for the Golden Gateway Redevelopment Area which includes most of this site, specifically omitting information on findings of significant impact that development of this site by building over 84' would have impacts that contradict the purported findings based on this EIR;
- It improperly relies on the Northeast Embarcadero Study (NES) which has never been subjected to CEQA review;
- It fails to analyze feasible alternatives to reduce significant impacts, including alternative public trust uses for Seawall Lot 351, as required to support mandatory public trust findings;
- It fails to adequately disclose impacts of flooding dues to sea level rise, or adequately mitigate those impacts which it does disclose;

- It fails to analyze alternatives that eliminate a multi-level underground garage on a site created by filling the Bay, while simultaneously finding unmitigated significant impact from flooding due to sea level rise;

- It fails to describe or analyze visual impacts of the bulk of the Project, which violates Planning Code bulk limits, and extends along the northern boundary of Sue Bierman Park and for two blocks along The Embarcadero;

- It fails to describe or analyze impacts of dedicating limited public land to extremely expensive housing when the City is producing market rate housing significantly beyond the City's identified need, while at the same time the Project takes away land for community recreation facilities that Golden Gateway developer had been required to support middle-income housing which housing is not being produced at anything near the City's identified need;

- It fails to provide adequate facts to support critical conclusions in the EIR;

- It relies on inaccurate, inconsistent and outdated data; and

- It omits consideration of legitimate alternatives to the Project that would substantially reduce or eliminate potentially significant effects of the Project.

The FEIR must be re-circulated because it contains substantial new information that was not included in the Draft Environmental Impact Report for the Project, specifically including but not limited to the total elimination of the tennis courts from the existing Tennis and Swim Club and the relocation of the swimming pools, changes after close of public comments depriving the public of an opportunity to comment.

As a result the required analysis for the Project is defective under CEQA.

For the above reasons, among others, the FEIR fails to adequately provide the City with the information mandated by CEQA for understanding environmental consequences in deciding whether to approve the proposed Project. The FEIR therefore cannot serve as a basis for any approval or action by the City, acting through any of its departments, boards or commissions, including the Board of Supervisors, on the Project. The Planning Commission's certification should be set aside by the Board of Supervisors.

In other submissions, FOGG, its members and supporters, including Telegraph Hill Dwellers and other members of the community, have set out the defects of the FEIR and the City's reliance on the FEIR for any future action on the Project. Instead of duplicating the Comments and Responses volume, FOGG is attaching a copy of the index to the DEIR hearing transcript marking all of its members and supporters who commented on the DEIR at that hearing. There is no index to written submissions

which are too voluminous to be attached, but which are included in the printed Comments and Responses Volume 2 - Appendices.

We look forward to submitting additional evidence and argument to the Board of Supervisors.

Respectfully submitted,

Sue C. Hestor
Attorney for Friends of Golden Gateway

Encl - index to comments at DEIR hearing

cc: Bill Wycko, Environmental Review Officer
John Rahaim, Planning Director
Rodney Fong, Planning Commission President
Linda Avery, Planning Commission Secretary
Doreen Woo Ho, Port Commission President
Amy Quesada, Port Commission Secretary
Paul Maltzer
Lee Radner, Friends of Golden Gateway

BEFORE THE SAN FRANCISCO PLANNING COMMISSION

REGULAR MEETING

ITEM E.13, 2007.0030

8 WASHINGTON STREET

PUBLIC HEARING ON THE

DRAFT ENVIRONMENTAL IMPACT REPORT

3:00 P.M.

July 21, 2011

Commission Chambers - Room 400

City Hall, 1 Dr. Carlton B. Goodlett Place

San Francisco, California

REPORTED BY: FREDDIE REPPOND, STENOGRAPHIC REPORTER

A P P E A R A N C E S

SAN FRANCISCO PLANNING COMMISSION:

Vice-President Ron Miguel

Jonas Ionin, Commission Secretary

COMMISSIONERS:

Michael Antonini

Gwyneth Borden

Hisashi Sugaya

PRESENTATION:

Nannie Turrell, Senior Environmental Planner, San Francisco Planning Department

FOR THE PLANNING DEPARTMENT:

John Rahaim, Director

FROM THE PUBLIC:

* Bob Planthold

Marvin Kasoff

* Kathleen Dooley

* Ernestine Waters Weiss

Jane Connors

Dave Stockdale

* Paul Wermer

Sarah Karlinsky

Sally Tooley

* Bill Hannan

* Charles Dutkin

* FOGG MEMBERS, SUPPORTERS + OTHER MEMBERS OF THE COMMUNITY

Alec Bash
Bill Sauro
James Joannides
Lisa Schreiber
Paula Aspin
Justin Allamano
Irene Glassgold
Al Glassgold
Veronica Sanchez
Nan McGuire
Frederick Allardyce
Lee Radner
Nan Roth
Tim Colon
Bob Iverson
Joel Rosenblatt
Jim Chappell
John Huang
Brad Paul
Jill Tannenbaum
Sue Hestor
Jamie Whitaker

--oOo--

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# Planning Commission Motion No. 18560

**HEARING DATE: March 22, 2012**

| | |
|---|---|
| *Date:* | March 22, 2012 |
| *Case No.:* | **2007.0030E** |
| *Project Address:* | **8 Washington Street/Seawall Lot 351** |
| *Zoning:* | RC-4 (Residential/Commercial Combined: High Density)<br>84-E Height and Bulk District |
| *Block/Lot:* | Assessor's Block 168/Lot 58, Block 171/69, Block 201/Lot 12 and Seawall Lot 351, which includes Lot 13. |
| *Staff Contact:* | Paul Maltzer – (415) 575-9038<br>paul.maltzer@sfgov.org |

**ADOPTING FINDINGS RELATED TO THE CERTIFICATION OF A FINAL ENVIRONMENTAL IMPACT REPORT FOR A PROPOSED MIXED-USE, RESIDENTIAL, COMMERCIAL, FITNESS CENTER AND PUBLIC OPEN SPACE PROJECT AT 8 WASHINGTON STREET/SEAWALL LOT 351.**

MOVED, that the San Francisco Planning Commission (hereinafter "Commission") hereby CERTIFIES the Final Environmental Impact Report identified as Case No. 2007.0030E, 8 Washington Street/Seawall Lot 351 (hereinafter "Project"), based upon the following findings:

1. The City and County of San Francisco, acting through the Planning Department (hereinafter "Department") fulfilled all procedural requirements of the California Environmental Quality Act (Cal. Pub. Res. Code Section 21000 *et seq.*, hereinafter "CEQA"), the State CEQA Guidelines (Cal. Admin. Code Title 14, Section 15000 *et seq.*, (hereinafter "CEQA Guidelines") and Chapter 31 of the San Francisco Administrative Code (hereinafter "Chapter 31").

   A. The Department determined that an Environmental Impact Report (hereinafter "EIR") was required and provided public notice of that determination by publication in a newspaper of general circulation on December 8, 2007.

   B. On June 15, 2011, the Department published the Draft Environmental Impact Report (hereinafter "DEIR") and provided public notice in a newspaper of general circulation of the availability of the DEIR for public review and comment and of the date and time of the Planning Commission public hearing on the DEIR; this notice was mailed to the Department's list of persons requesting such notice.

   C. Notices of availability of the DEIR and of the date and time of the public hearing were posted near the project site by Department staff on June 15, 2011.

   D. On June 15, 2011, copies of the DEIR were mailed or otherwise delivered to a list of persons requesting it, to those noted on the distribution list in the DEIR, to adjacent property owners, and to government agencies, the latter both directly and through the State Clearinghouse.

E. Notice of Completion was filed with the State Secretary of Resources via the State Clearinghouse on June 15, 2011.

2. The Commission held a duly advertised public hearing on said DEIR on July 21, 2011, at which opportunity for public comment was given, and public comment was received on the DEIR. The period for acceptance of written comments ended on August 15, 2011.

3. The Department prepared responses to comments on environmental issues received at the public hearing and in writing during the 61-day public review period for the DEIR, prepared revisions to the text of the DEIR in response to comments received or based on additional information that became available during the public review period, and corrected errors in the DEIR. This material was presented in a Draft Comments and Responses document, published on December 22, 2011, distributed to the Commission and all parties who commented on the DEIR, and made available to others upon request at the Department.

4. A Final Environmental Impact Report (hereinafter "FEIR") has been prepared by the Department, consisting of the DEIR, any consultations and comments received during the review process, any additional information that became available, and the Comments and Responses document all as required by law.

5. Project EIR files have been made available for review by the Commission and the public. These files are available for public review at the Department at 1650 Mission Street, Suite 400, and are part of the record before the Commission.

6. On March 22, 2012, the Commission reviewed and considered the FEIR and hereby does find that the contents of said report and the procedures through which the FEIR was prepared, publicized, and reviewed comply with the provisions of CEQA, the CEQA Guidelines, and Chapter 31 of the San Francisco Administrative Code.

7. The project sponsor has indicated that the presently preferred project is the Project Variant, described in the FEIR, with the additional modification that the presently preferred project would contain 145 residential units, 15 residential units less than the Project Variant, and the presently preferred project would contain 400 parking spaces, 20 parking spaces less than the Project Variant.

8. The Planning Commission hereby does find that the FEIR concerning File No. 2007.0030E, 8 Washington Street/Seawall Lot 351 Project, reflects the independent judgment and analysis of the City and County of San Francisco, is adequate, accurate and objective, and that the Comments and Responses document contains no significant revisions to the DEIR. The Planning Commission further finds that Final EIR does not add significant new information to the Draft EIR that would require recirculation of the EIR under CEQA because the Final EIR contains no information revealing (1) any new significant environmental impact that would result from the Project or from a new mitigation measure proposed to be implemented, (2) any substantial increase in the severity of a previously identified environmental impact, (3) any feasible project alternative or mitigation measure considerably different from others previously analyzed that would clearly lessen the environmental impacts of the Project, but that was rejected by the Project's proponents, or (4) that the Draft EIR was

so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded, and hereby does CERTIFY THE COMPLETION of said FEIR in compliance with CEQA and the CEQA Guidelines.

9. The Commission, in certifying the completion of said FEIR, hereby does find that the Project Variant described in the EIR and the project preferred by the project sponsor:

A. Will have a significant project-specific effect on the environment in that:

B. It could expose people or structures to increased risk of flooding due to climate-induced sea level rise;

C. Construction of the proposed project would expose sensitive receptors to substantial levels of $PM_{2.5}$ and other TACs, including DPM; and

D. The proposed project would expose new (on-site) sensitive receptors to significant levels of $PM_{2.5}$ and other TACs from a single source.

E. Will have a significant cumulative effect on the environment in that:

F. The proposed project would expose new (on-site) sensitive receptors to cumulatively considerable levels of $PM_{2.5}$ and other TACs from off-site and on-site sources;

G. Project construction activities would result in a considerable contribution to cumulatively significant levels of $PM_{2.5}$ and other TACs on off-site receptors; and

H. The proposed project would contribute to cumulative traffic impacts at study intersections.

I hereby certify that the foregoing Motion was ADOPTED by the Planning Commission at its regular meeting of March 22, 2012.

Linda Avery

Commission Secretary

AYES: Antonini, Borden, Fong, Miguel

NOES: Sugaya, Wu

ABSENT: Moore

ADOPTED: March 22, 2012

BOARD of SUPERVISORS

City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 544-5227

March 27, 2012

Zane O. Gresham, Esq.
Morrison & Foerster, LLP
425 Market Street
San Francisco, CA 94105-2482

**Subject: Appeal of Planning Commission's Certification of the Final Environmental Impact Report - 8 Washington Street/Seawall Lot 351 Project**

Dear Mr. Gresham:

The Office of the Clerk of the Board is in receipt of your appeal filed on March 26, 2012, from the decision of the Planning Commission's March 22, 2012, Certification of a Final Environmental Impact Report identified as Planning Case No. 2007.0030E, through its Motion No. 18560, for the proposed 8 Washington Street/Seawall Lot 351 Project.

A hearing date has been scheduled on **Tuesday, April 24, 2012, at 4:00 p.m.,** at the Board of Supervisors meeting to be held in City Hall, Legislative Chamber, Room 250, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

Please provide 18 copies to the Clerk's Office by:

| | |
|---|---|
| **8 days prior to the hearing:** | any documentation which you may want available to the Board members prior to the hearing; |
| **11 days prior to the hearing:** | names of interested parties to be notified of the hearing in label format. |

If you have any questions, please feel free to contact Legislative Deputy Director, Rick Caldeira, at (415) 554-7711 or Legislative Clerk, Joy Lamug, at (415) 554-7712.

Sincerely,

Angela Calvillo
Clerk of the Board

c:
Cheryl Adams, Deputy City Attorney
Kate Stacy, Deputy City Attorney
Marlena Byrne, Deputy City Attorney
Scott Sanchez, Zoning Administrator, Planning Department
Bill Wycko, Environmental Review Officer, Planning Department
Project Sponsor, Monique Moyer, Port Executive Director, Pier 1, The Embarcadero, San Francisco, CA 94111
Project Sponsor, San Francisco Waterfront Partners, LLC Pier 1, Bay 2, The Embarcadero, San Francisco, CA 94111 Attn: Simon Snellgrove
AnMarie Rodgers, Planning Department
Tina Tam, Planning Department
Nannie Turrell, Planning Department
Linda Avery, Planning Department
Paul Maltzer, Planning Department
Phil Williamson, Port
Trisha Prashad, Port
Byron Rhett, Port
Jonathan Stern, Port
Brad Benson, Port

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BEIJING, SHANGHAI, HONG KONG

March 26, 2012

Writer's Direct Contact
415.268.7145
ZGresham@mofo.com

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2012 MAR 26 PM 2:09

By Hand Delivery

Angela Calvillo
Clerk of the Board of Supervisors
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

**Re: Appeal of the Planning Commission's Certification of the Final Environmental Impact Report for the 8 Washington Street / Seawall Lot 351 Project (Case No. 2007.0030ECKMRZ)**

Dear Ms. Calvillo:

This appeal is submitted on behalf of Equity Office Properties (EOP).[1] The appeal is from the Planning Commission's purported certification of the Final Environmental Impact Report (FEIR) for the 8 Washington / Seawall Lot 351 Project (Project), Case No. 2007.0030E by Motion No. 18560 adopted on March 22, 2012 (attached), because the Planning Commission's action violates the California Environmental Quality Act (CEQA).

The FEIR and its purported certification by the Planning Commission do not comply with the requirements of CEQA. Among other deficiencies, the FEIR fails to describe essential facts necessary to establish accurately the setting of the Project; lacks a stable and consistent project description; fails to provide adequate facts to support critical conclusions contained in the FEIR; relies on inaccurate and outdated data; omits consideration of legitimate alternatives to the Project that would reduce substantially or eliminate potentially significant environmental effects; understates substantially the potential impacts of the Project; and fails to identify and recommend adoption of mitigation measures that are feasible and, if adopted, would reduce substantially or eliminate potentially significant environmental effects of the Project. Moreover, the FEIR in any event must be recirculated because it contains substantial new information that was not included in the Draft Environmental Impact Report for the Project. As a result, the required analysis for the Project is defective under CEQA.

[1] EOP, with respect to the Ferry Building, includes Equity Office Management, L.L.C., as agent for Ferry Building Associates, LLC and Ferry Building Investors, LLC.

For these reasons, among others, the FEIR fails to adequately provide the City with the information mandated by CEQA for understanding the environmental consequences in deciding whether to approve the proposed Project. The FEIR therefore cannot serve as a basis for any approval or action by the City, acting through any of its departments, boards, or commissions, on the Project. The Planning Commission's purported certification should be set aside by the Board of Supervisors.

In separate submissions, EOP and other stakeholders have made clear the defects of the FEIR and the City's reliance on the FEIR for any future action on the Project. A copy (without attachments) of EOP's comment letter on the FEIR is enclosed. A number of other individuals and organizations have submitted comments on the inadequacies of the FEIR, which relate to the topics discussed in above and in EOP's comment letters. Rather than restating in this appeal letter all the information and analyses contained in those other parties' comments, EOP joins in those comments, which also serve as a basis for this appeal.

We look forward to the opportunity to present to the Board of Supervisors additional evidence and argument.

In addition, we are delivering with this appeal a check written in the amount of $510 for the requisite filing fee for this appeal.

Sincerely,

Zane O. Gresham

Enclosures

cc: Bill Wycko, Environmental Review Officer
John Rahaim, Director of Planning
Rodney Fong, Planning Commission President
Linda Avery, Planning Commission Secretary
Doreen Woo Ho, Port Commission President
Amy Quesada, Port Commission Secretary

SAN FRANCISCO
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# Planning Commission Motion No. 18560

**HEARING DATE: March 22, 2012**

| | |
|---|---|
| *Date:* | March 22, 2012 |
| *Case No.:* | **2007.0030E** |
| *Project Address:* | **8 Washington Street/Seawall Lot 351** |
| *Zoning:* | RC-4 (Residential/Commercial Combined: High Density)<br>84-E Height and Bulk District |
| *Block/Lot:* | Assessor's Block 168/Lot 58, Block 171/69, Block 201/Lot 12 and Seawall Lot 351, which includes Lot 13. |
| *Staff Contact:* | Paul Maltzer – (415) 575-9038<br>paul.maltzer@sfgov.org |

**ADOPTING FINDINGS RELATED TO THE CERTIFICATION OF A FINAL ENVIRONMENTAL IMPACT REPORT FOR A PROPOSED MIXED-USE, RESIDENTIAL, COMMERCIAL, FITNESS CENTER AND PUBLIC OPEN SPACE PROJECT AT 8 WASHINGTON STREET/SEAWALL LOT 351.**

MOVED, that the San Francisco Planning Commission (hereinafter "Commission") hereby CERTIFIES the Final Environmental Impact Report identified as Case No. 2007.0030E, 8 Washington Street/Seawall Lot 351 (hereinafter "Project"), based upon the following findings:

1. The City and County of San Francisco, acting through the Planning Department (hereinafter "Department") fulfilled all procedural requirements of the California Environmental Quality Act (Cal. Pub. Res. Code Section 21000 *et seq.*, hereinafter "CEQA"), the State CEQA Guidelines (Cal. Admin. Code Title 14, Section 15000 *et seq.*, (hereinafter "CEQA Guidelines") and Chapter 31 of the San Francisco Administrative Code (hereinafter "Chapter 31").

   A. The Department determined that an Environmental Impact Report (hereinafter "EIR") was required and provided public notice of that determination by publication in a newspaper of general circulation on December 8, 2007.

   B. On June 15, 2011, the Department published the Draft Environmental Impact Report (hereinafter "DEIR") and provided public notice in a newspaper of general circulation of the availability of the DEIR for public review and comment and of the date and time of the Planning Commission public hearing on the DEIR; this notice was mailed to the Department's list of persons requesting such notice.

   C. Notices of availability of the DEIR and of the date and time of the public hearing were posted near the project site by Department staff on June 15, 2011.

   D. On June 15, 2011, copies of the DEIR were mailed or otherwise delivered to a list of persons requesting it, to those noted on the distribution list in the DEIR, to adjacent property owners, and to government agencies, the latter both directly and through the State Clearinghouse.

so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded, and hereby does CERTIFY THE COMPLETION of said FEIR in compliance with CEQA and the CEQA Guidelines.

9. The Commission, in certifying the completion of said FEIR, hereby does find that the Project Variant described in the EIR and the project preferred by the project sponsor:

A. Will have a significant project-specific effect on the environment in that:

B. It could expose people or structures to increased risk of flooding due to climate-induced sea level rise;

C. Construction of the proposed project would expose sensitive receptors to substantial levels of $PM_{2.5}$ and other TACs, including DPM; and

D. The proposed project would expose new (on-site) sensitive receptors to significant levels of $PM_{2.5}$ and other TACs from a single source.

E. Will have a significant cumulative effect on the environment in that:

F. The proposed project would expose new (on-site) sensitive receptors to cumulatively considerable levels of $PM_{2.5}$ and other TACs from off-site and on-site sources;

G. Project construction activities would result in a considerable contribution to cumulatively significant levels of $PM_{2.5}$ and other TACs on off-site receptors; and

H. The proposed project would contribute to cumulative traffic impacts at study intersections.

I hereby certify that the foregoing Motion was ADOPTED by the Planning Commission at its regular meeting of March 22, 2012.

Linda Avery

Commission Secretary

AYES: Antonini, Borden, Fong, Miguel

NOES: Sugaya, Wu

ABSENT: Moore

ADOPTED: March 22, 2012

March 20, 2012

Writer's Direct Contact
415.268.7145
ZGresham@mofo.com

By Hand Delivery and Electronic Mail

Bill Wycko, Environmental Review Officer
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, CA 94103

**Re: Comments on the Final Environmental Impact Report for 8 Washington Street / Seawall Lot 351 Project (Case No. 2007.0030ECKMRZ)**

Dear Mr. Wycko:

Equity Office Properties (EOP)[1] submits these comments on the Comments and Responses and the Final Environmental Impact Report (FEIR) for the 8 Washington Street / Seawall Lot 351 Project (Project).

## SUMMARY OF CEQA DEFECTS IN PROCESS AND FEIR

This letter supplements EOP's August 15, 2011, letter ("Aug 2011 Letter"), incorporated herein by reference, and addresses the Response to Comments in the FEIR, which responded to, among other things, EOP's prior letter. A number of other individuals and organizations have submitted comments on the inadequacies of the FEIR, which relate to the topics

[1] EOP, with respect to the Ferry Building, includes Equity Office Management, L.L.C., as agent for Ferry Building Associates, LLC and Ferry Building Investors, LLC.

discussed in this and the previous comment letter. Rather than restating all the information and analyses contained in those other parties' comments, EOP joins in those comments.

As explained in greater detail below, the FEIR does not adequately address the flaws identified in the previous letters and, as a result, the FEIR fails to satisfy the California Environmental Quality Act (CEQA).

Among other deficiencies, the FEIR fails to describe essential facts necessary to establish accurately the setting of the Project; lacks a stable and consistent project description; fails to provide adequate facts to support critical conclusions contained in the FEIR; relies on inaccurate and outdated data; omits consideration of legitimate alternatives to the Project that would reduce substantially or eliminate potentially significant environmental effects; understates substantially the potential impacts of the Project; and fails to identify and recommend adoption of mitigation measures that are feasible and, if adopted, would reduce substantially or eliminate potentially significant environmental effects of the Project. Among the specific flaws in the environmental analysis:

- The Project Description—the starting point of any analysis of potential environmental impacts of a project—is unclear and unstable due to numerous changes to the Project made by the Project Sponsor after the DEIR, and even the Comments and Responses, were released. The Project must be fully and properly described, and the impacts need to be reassessed, to account for these changes. However, even if such major modifications had been disclosed and studied properly, the Project Description is flawed for failing to identify accurately and analyze correctly the legal and practical effects of the Project on the parking the City is required to provide to EOP to serve the Ferry Building.

- The Parking and Transportation analysis relied on outdated and inapplicable traffic and parking data. The record demonstrates clearly that these data do not accurately account for current traffic and parking conditions at the Ferry Building and surrounding areas, and cumulative effects taking into account, for example, the Exploratorium and the proposed Teatro Zinzanni and 75 Howard projects.

- The FEIR fails to properly and fully address the Project's specific and cumulative traffic, parking and transportation impacts, both during construction and after completion of the Project.

- The FEIR ignores the Project's significant impacts on the America's Cup, including, but not limited to, the noise and aesthetic impacts associated with construction during the event; traffic and parking demand; and conflicts between construction vehicles entering and leaving the site and event goers.

- The hydro-geological analysis is practically non-existent, despite the obvious environmental impacts (such as dewatering and seismic issues) associated with building an underground parking garage 31 feet below grade entirely in Bay fill.

- The FEIR rejects feasible alternatives that would minimize impacts, preserve parking and respect EOP's rights. As a result, the alternatives discussion fails to provide the public and decision-makers with what CEQA requires: a reasonable range of options and trade-offs between the proposed Project and alternatives that may serve some of the proper objectives of a project.

- The FEIR identifies significant and unavoidable impacts related to traffic, air quality and sea level rise, yet fails to assess all potentially feasible mitigation measures, or to incorporate all feasible mitigation—or any mitigation—to address these significant issues, leaving them as wholly unmitigated impacts of the Project.

For these reasons, among others, the FEIR fails to adequately provide the City and the public with the necessary information for understanding the environmental consequences in deciding whether to approve this Project. Moreover, the FEIR in any event must be recirculated because it contains substantial new information that was not included in the DEIR for the Project. As a result, the required analysis for the Project is defective under CEQA and the FEIR therefore cannot serve as a basis for any approval or action by the City on the Project.

**EOP HAS A BENEFICIAL INTEREST IN ENSURING COMPLIANCE WITH CEQA**

EOP holds a long-term lease from the City and County of San Francisco (City)[2] on the San Francisco Ferry Building and is the licensee from the City for the term of that Ferry Building lease of Seawall Lot 351 for parking to serve the Ferry Building. Accordingly, EOP has a strong interest in ensuring that development of the area surrounding the Ferry Building occurs in a manner that accounts for existing and reasonably foreseeable uses. As a result of its proximity to the Project, EOP has an interest in ensuring that the Project's environmental impacts are fully considered and actually mitigated to the extent feasible. This proximity also gives EOP an interest in ensuring that the impacts of the Project are minimized so that the Project can be developed in a manner that actually works within the context of the City's waterfront and infrastructure. A full and open CEQA process is in the best interest of the public, EOP and everyone involved.

An EIR's purpose is "to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR protects not only the

[2] The City acts administratively through subdivisions of the City, such as the Port of San Francisco, the Department of Parking and Traffic and the Recreation and Park Department. All such actions are, of course, actions of the City. Accordingly, although these comments sometimes refer to the various departments of the City, those references all are to the City and County of San Francisco.

environment but also informed self-government." *Citizens of Goleta Valley v. Bd. of Supervisors*, 52 Cal. 3d 553, 564 (1990); CEQA Guidelines § 15002(a)(2). Here, the FEIR fundamentally fails to provide the necessary and accurate information required for informed decision-making by CEQA.

EOP has a strong interest in the economic vitality of the downtown waterfront and supports responsible development that would sustain and enhance San Francisco's iconic Ferry Building. Through extensive review of the FEIR and other Project documents, and careful consideration of all the facts, EOP has concluded that the Project, as currently proposed, would not achieve these goals. Accordingly, EOP cannot support the Project, as currently proposed, and respectfully requests the Planning Commission to decline certifying the FEIR or taking any further action on the Project unless and until the significant flaws in the environmental analysis and the Project are addressed and resolved.

## THE FEIR DOES NOT ADEQUATELY ANALYZE THE PROJECT AS CURRENTLY PROPOSED BECAUSE THE PROJECT HAS CHANGED SUBSTANTIALLY SINCE THE DEIR WAS PUBLISHED

At the outset, it is uncertain what in fact is the "project" that is the subject of review in the FEIR because there has been no stability as to what is being proposed for the site. *After* the DEIR was prepared and *after* the close of public comments, the project proponents released yet another configuration for the Project in December 2011 and February 2012. The EIR contains no explanation as to how the new project proposals would affect the previously prepared environmental analysis for the Project. These changes include significant expansion of public amenities, which, in turn, could result in greater or different impacts to parking, traffic and other concerns. The Project was changed yet again in the last few weeks, to reduce the number of units (and possibly parking spaces as well). *See, e.g.*, Memorandum to Planning Commission dated February 27, 2012 (attached as Exhibit A.)

Given the lack of any explanation of how these last minute changes affect the FEIR, the City cannot rely on the previously prepared analysis for any of its decision-making and must revise and recirculate the FEIR to reflect the current Project. An EIR must be recirculated when significant new information is added, including "changes in the project or environmental setting as well as additional data or other information." CEQA Guidelines § 15088.5(a). In addition to the changes in the Project, the data and information we have provided in this letter, and the additional data and information that the City must provide to correct the deficiencies in the FEIR, is significant. Such new information could show that new significant environmental impacts would result from the Project, or that the severity of the identified environmental impacts would be substantially increased unless mitigation measures are adopted. These all would require recirculation and the City should take no further action on the FEIR or the Project until this recirculation has occurred and public review is allowed. *See* CEQA Guidelines § 15088.5(a)(1),(2).

## THE FEIR FAILS TO ADDRESS THE MANY FLAWS IDENTIFIED IN THE ENVIRONMENTAL ANALYSIS FOR THE PROJECT

The Project and the City's environmental analysis continue to suffer from numerous flaws that have not been addressed in the FEIR.

### Project Description

As explained in EOP's August 2011 Letter, the Project Description does not accurately state the facts about Seawall Lot 351, the Parking Agreement, the rights of EOP, and the obligations of the Port.

An accurate project description enables the public to understand the full scope of the project and its potential effects on the environment. "A curtailed or distorted project description may stultify the objectives of the reporting process. Only through an accurate view of the

project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal . . . and weigh other alternatives in the balance. An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR." *County of Inyo v. City of Los Angeles*, 71 Cal. App. 3d 185, 192-93 (1977).

Here, as discussed below, the Project Description omits important obligations of the City to provide EOP the use of SWL 351 (among other things) for parking to serve the Ferry Building. The omission of these facts misleads the public, other reviewing agencies and decision-makers as to the true scope and impact of the Project.

***The Project Description Ignores the Legal Requirement to Provide Permanent and Temporary Parking for the Ferry Building.*** The Environmental Setting correctly acknowledges that "The entire Seawall Lot 351 is controlled by the ground lessee of the Ferry Building pursuant to a Parking Agreement with the Port, in satisfaction of parking rights granted to the ground lessee." DEIR at IV.A.2. In other words, EOP has the *exclusive right to control* the entire Seawall Lot 351. Under the Parking Agreement, the Port may develop Seawall Lot 351 as a parking facility to serve the Ferry Building area only if the Port provides to EOP equal parking, both temporary and permanent. Development of Seawall Lot 351 is thus restricted until the Port satisfies its contractual obligations to EOP.

Yet, despite EOP's exclusive right to control, the Project Description states that the proposed parking will include "90 spaces required to serve the Ferry Building waterfront area . . . with no access restrictions." DEIR at II.17. What is proposed—unrestricted public parking that may at some times be *available* to waterfront visitors—does not satisfy the Port's obligation to provide to EOP for use under its *exclusive control* parking for the Ferry Building. Thus, the FEIR fails to disclose that the Port has not met its obligations under the Parking Agreement to provide to EOP equal replacement parking and violates the contractual

restrictions on development of Seawall Lot 351.[3] Merely stating that EOP's comment with respect to the need to comply with the Parking Agreement is "noted" (FEIR at III.B.5) ignores, and does not remedy this fundamental flaw in the project description..

The FEIR also impermissibly dismisses the requirement that the Port provide EOP with temporary replacement parking during construction of the Project. Although this equal replacement parking must be within close proximity to the Ferry Building, as specified in the Parking Agreement, the FEIR merely states that the "inventory of parking in the vicinity of the Ferry Building" would provide adequate parking during construction of the Project. FEIR at III.B.6. The FEIR purports to respond by adding new language that Embarcadero 3 and 4 Garages, Pier 3, the lot at Broadway and The Embarcadero, Golden Gateway Garage and 75 Howard[4] might provide weekend and weekday parking for the Ferry Building during construction; that mere observation in no way addresses the Port's obligation to provide such parking. Moreover, the FEIR's listing of possible places to park in no way addresses the obligation of the Port to provide to EOP comparable parking (in number, distance and certainty) for the loss of Seawall Lot 351. FEIR at III.B.6-7. However, even if merely listing those garages was sufficient to satisfy the Port's obligation to ensure temporary parking for the Ferry Building (which it is not), the provision of temporary parking is a part of development of Seawall Lot 351 and under CEQA must be included in the Project Description. Impacts to traffic flow, parking, air quality, safety, and noise that could result

[3] It is telling that the Authors and Persons Consulted includes the Port as "Property Owner, Seawall Lot 351," but EOP was not consulted as the long-term licensee with exclusive control of the property. *See* DEIR at VII.3.

[4] It is especially untenable that the FEIR suggests 75 Howard as substitute parking for Seawall Lot 351. Putting aside that it is a considerable distance from the Ferry Building, the FEIR itself admits that a Preliminary Project Assessment has been submitted for a residential project at the site that would eliminate this so-called replacement parking. FEIR at III.B.7; *see also* Exhibit B (Preliminary Project Assessment for 75 Howard).

from the designation of a new parking area to satisfy the Port's obligation must be evaluated in the FEIR.

Rather than acknowledging and remedying these significant errors, the FEIR dismisses them as solely a product of a contractual dispute that does not have to be addressed at this time. *See, e.g.*, FEIR at III.B.4-5, III.B.4-9. This is contrary to CEQA. Even if, for the sake of argument, the need to provide parking for the Ferry Building were characterized as purely contractual in nature, it does not excuse the City from the requirement to accurately describe the issue in the FEIR. *See County of Inyo*, 71 Cal. App. 3d at 192-93; *Cmties. for a Better Env't v. City of Richmond*, 184 Cal. App. 4th 70, 80-85 (2010). As it stands, the FEIR provides an incomplete and misleading description of the Project's parking requirements, which must be corrected before any future action on the Project.

***The Project Description Must Include, as One of the Required Approvals, Action by the City to Meet the Obligation to Provide EOP with Parking.*** As noted in our previous letter, the Project Description on page II.23 of the DEIR omits from the list of Required Approvals the Port's obligation under the Parking Agreement to provide to EOP temporary and permanent replacement spaces equal to those currently controlled by EOP on Seawall Lot 351, right on until the expiration of EOP's ground lease and Parking Agreement in 2066. The Port must satisfy these obligations before any disturbance of EOP's rights to Seawall Lot 351. The FEIR simply ignores this requirement, stating it is "unclear" that any formal action by the Port is required and, even if it was, it would not be a discretionary approval under CEQA. FEIR at III.B.7-8. Indeed, it is clear that the Port has such an obligation and that discretionary action by the Port is required related to that obligation. CEQA Guideline § 15124(d)(1) requires the lead agency to list "permits and other approvals required to implement the project"; there is no limitation that would excuse the Port from informing the public, other reviewing agencies (such as the State Lands Commission) and the decision-

making bodies that approving the Project is contingent on the Port taking action to satisfy the Parking Agreement and ensure that required parking is provided to the Ferry Building. The failure to disclose this significant required approval and action undermines meaningful review of the Project.

***The Project Description is Inconsistent with the Project's Alleged Objective to Provide Parking for the Ferry Building.*** The failure to adequately identify the obligation to provide Ferry Building parking in the Project Description also creates inconsistencies with the Project Objectives. The DEIR states an objective of the Project is "[t]o increase the supply of public underground parking to support the continued economic viability of the Ferry Building Farmers Market and the retail and restaurant uses at the Ferry Building, Pier 1 and Piers 1½ - 5." DEIR at II.20. The proposed Project is inconsistent with this goal because it would negatively affect the actual parking which EOP now has at Seawall Lot 351, and would adversely affect the economic viability of the Ferry Building. The Project would remove one of the most highly used and easily accessible parking areas serving the Ferry Building and replace it with an underground garage that would not be readily accessible or easily visible from The Embarcadero (particularly compared with the current parking arrangements at Seawall Lot 351), and would increase walking time. These are significant deterrents for Ferry Building tenants and patrons, leading to decreased use of the Ferry Building and decreased economic viability.

Likewise, the Project Description on page II.22 of the DEIR states that the Port's objectives for the Project include avoiding parking access from The Embarcadero, encouraging pedestrian flow from the Ferry Building through location of parking, including no fewer than 90 parking spaces for visitors to the Ferry Building waterfront area, and operating parking in a manner to optimize utilization. The proposed Project is inconsistent with these goals, which themselves are contradictory. First, it is not possible to remove parking access from

The Embarcadero and simultaneously to encourage pedestrian flow from the Ferry Building, which is located on the other side of the Embarcadero from the Project. The location of the entrance to the proposed parking for vehicles, and the completed elevator access for drivers to exit and re-enter the garage, will discourage pedestrian flow. Second, the proposed parking garage does not include "90 spaces for Ferry Building visitors" because the spaces have not been provided to EOP for its exclusive management and control, which is required under the terms of the Parking Agreement. In fact, the Project explicitly states that the spaces will have "no access restrictions." DEIR at II.17. Third, to optimize utilization of parking at Seawall Lot 351, the parking must be accessible to the Ferry Building and the current validation services must be continued. None of those characteristics is present in the Project as proposed.

***The Project Description Must Include the City's Approval of a Change in Land Use Designation as One of the Required Approvals.*** The list of Required Approvals is deficient in another respect—it fails to include the necessary approval of a zoning map amendment for the land use designation change for Seawall Lot 351 from P (Public) to RC-4 (High-Density Residential/Commercial). As explained in the Initial Study:

> Seawall Lot 351 is zoned P (Public). The P District applies to land that is owned by a governmental agency and is in some form of public use. As the proposed development would not be a public use, an amendment to the zoning map would be required to change the designation for the applicable part of Seawall Lot 351 from "P" to "RC-4."

Initial Study at 32. Yet, the DEIR states that "Like the Golden Gateway Center lots, Seawall Lot 351 is in an RC-4 use district and an 84-E height and bulk district." DEIR at II.3. No explanation is given in either the DEIR or FEIR for this complete deviation from the information provided in the Initial Study. Furthermore, the City's publicly available zoning database states that the zoning for Seawall Lot 351 is P (Public), which makes sense because

it is (a) owned by the City, (b) subject to public trust protection from the State Lands Commission and (c) currently used for public use purposes of providing parking for the Ferry Building. *See* Exhibit C (Zoning Report for Seawall Lot 351 from San Francisco Property Map Database dated March 20, 2012). Although the Planning Department staff has indicated that the database and Initial Study are in error, there is nothing in the administrative record that demonstrates how or when this change in land use designation occurred or how the Initial Study reached the opposite conclusion. At the very least, the record should include some explanation to the public as to how the City-owned Seawall Lot 351 was re-zoned RC-4, if that, in fact, had actually occurred through the proper City zoning process. If the "re-zoning" was not legally effected and Seawall Lot 351 should still be properly zoned as P, then this approval is critical for the Project and has not been properly identified and analyzed in the EIR.

**Parking & Transportation**

Some of the most serious omissions and inadequacies are in the FEIR's analysis of transportation and parking impacts. CEQA requires that an EIR provide sufficient analysis and detail about the proposed project and its potential environmental impacts to enable informed decision-making by the agency and informed participation by the public. *See* CEQA Guidelines § 15151; *Kings County Farm Bureau v. City of Hanford*, 221 Cal. App. 3d 692 (1990). An EIR must contain facts and analysis, not just an agency's bare conclusions. *Citizens of Goleta Valley*, 52 Cal. 3d at 568. Here, the FEIR fundamentally fails to address the impacts of the Project on parking for the Ferry Building, ignoring significant environmental, economic and public trust impacts. Moreover, it fails to provide a factual basis for many of its most significant assertions and conclusions.

***The Effects on and of Parking Must be Analyzed Under CEQA.*** The FEIR attempts to bypass analysis of the parking impacts by claiming they are not environmental impacts under

CEQA, but merely a social concern. *See, e.g.*, FEIR at III.B.5-6, III.G.43. However, a project's inadequate parking design or capacity that in turn causes significant environmental impacts (such as traffic congestion, air quality, noise and safety impacts) must be analyzed under CEQA. CEQA Guidelines § 15131(a). For example, drivers "cruising" for scarce parking can cause traffic congestion and add significant amounts of carbon dioxide and other pollutants to the air. Increased vehicular/pedestrian conflicts caused by a project also are environmental effects. Because an EIR will be required for the project's impact on the environment as a result of the changes in traffic and the changes in parking, it follows that the EIR analysis of traffic must necessarily include an analysis of how the changes in supply and demand for parking will affect traffic. The FEIR does not do this and, accordingly, it is inherently flawed and must be revised before any action can be taken on the Project.

Furthermore, the FEIR's dismissive and cursory treatment of the parking impacts of the Project fails to take into account the Project's very real physical and economic impacts on the Ferry Building, the jewel of the waterfront and an important public trust resource. The FEIR claims that there is no need to consider such impacts without outright "blight" to the Ferry Building. FEIR at III.B.8. However, the law contains no such limitation: CEQA is not triggered only by economic impacts that lead to blight; if the consequences of a project lead to secondary physical effects, as here, those must be analyzed under CEQA. *See, e.g., Christward Ministry v. Superior Court*, 184 Cal. App. 3d 180, 197 (1986). This is particularly important when a project may affect a unique resource or activity. *See id.*

Here, there is substantial credible evidence in the record that the Project's interference with parking for the Ferry Building may have significant and lasting impacts on the businesses in the Ferry Building and the Ferry Building's public trust uses as a waterfront marketplace. For example, when the City closed off Pier ½ from public parking for the Ferry Building, retail sales at Ferry Building merchants declined from $3.4 million per month to $3 million

per month. Although some of the decline could be attributed to general economic conditions, these impacts were greater at the Ferry Building than felt at other waterfront (such as Fisherman's Wharf) establishments, indicating that the decline was not due solely to a downturn in the economy, but rather to the loss of close and easy-to-identify parking for the Ferry Building. *See* Memorandum from Monique Moyer to Port Commission, dated December 3, 2009, at 3-4 (attached as Exhibit D If the last of the remaining parking which was explicitly dedicated for the Ferry Building, Seawall Lot 351 (which provides even more parking than Pier ½ did), is eliminated, even temporarily for construction of the Project, the economic impacts of such closure would be just as significant, possibly leading to the shutting of businesses and drop in use of the Ferry Building. *See id.*; *see also* Ferry Building - Northeast Waterfront Study - Public Comments from Equity Office, dated March 24, 2010 (enclosed as Exhibit E. The FEIR cannot ignore these impacts as being simply "social concerns," particularly when the public trust uses of the Ferry Building are at risk. The FEIR must be revised to address these concerns before any action can be taken on the Project.

***The FEIR Impermissibly Relies on Old Traffic and Parking Data.*** The FEIR, like the DEIR, continues to rely on stale and incomplete data. The FEIR does not (and cannot) remedy this fatal flaw, As explained in EOP's August 2011 Letter, the analysis in the DEIR is based on outdated information that does not reflect current conditions. "[U]sing scientifically outdated information" in a DEIR does not constitute "a reasoned and good faith effort to inform decision makers and the public" about the effects of a project. *Berkeley Keep Jets Over the Bay Committee v. Bd. of Port Commissioners*, 91 Cal. App. 4th 1344, 1367 (2001). This is particularly so when updated information was readily and reasonably available.

Here, although the Project is proposed for a congested area with diverse traffic conditions across the days of the week and the seasons, and that has undergone significant changes in

use in recent years, the intersection operating conditions used in the FEIR were evaluated based on a *single PM peak period during a single Wednesday in 2007*. The DEIR claims that this period was chosen because it allegedly "represents the time of maximum utilization of the transportation system in San Francisco" and because travel demand for the Project would be higher during the PM period. DEIR at IV.D.5. Upon a closer look (as discussed in more detail below), it is clear that this single day evaluation was hardly representative of peak traffic in this area then, much less now.

The DEIR only evaluates a single Wednesday evening for traffic and it only evaluates weekday afternoons and evenings for parking, failing to account for other times of peak utilization of the transportation system in this uniquely situated area near the Ferry Building Marketplace. The Farmers Market is held on Tuesdays and Thursdays from 10:00 a.m. to 2:00 p.m. and on Saturdays from 8:00 a.m. to 2:00 p.m. Wednesday evening traffic data and weekday afternoon/evening parking data do not account for the tens of thousands of Ferry Building visitors who come to this area during other days of the week and particularly during earlier hours which are the true "peak periods" for this area.

Moreover, there have been significant changes in the area since 2006-2007 that have resulted in changes to the transportation and parking. At the time the data were collected, the Ferry Building Farmers Market had just begun to gain popularity. Since 2007, its popularity as an attraction has continued to grow, as evidenced by an overall growth in vendor and restaurant surcharges collected since 2007 for both the Saturday and Tuesday markets. The Saturday Farmers Market now draws nearly 25,000 visitors to the area, many via automobile. In addition, numerous notable new businesses have opened in the area since 2007, including: Water Bar, Epic Roasthouse, La Mar, Lafitte and Plant Café. In summer of 2013, the Exploratorium will be completed, further drawing many more visitors to the area. The additional employee and customer trips and parking needs for the Farmers Market and these

nearby businesses must be accounted for in the "current conditions." Failing to include them renders the traffic analysis flawed and misleading.

The parking analysis similarly took an extremely narrow approach to data gathering. The DEIR purports to establish existing parking conditions using *surveys conducted in 2006 and 2007 for the midday (1:00 p.m. to 3:00 p.m.) and evening (6:30 p.m. to 8:00 p.m.) periods. See* 8 Washington St./SWL 351 Transportation Study Final Report (May 25, 2011) at 33, 36. Despite the popularity of the weekend Farmers Market and its parking challenges, no surveys were conducted for the morning or weekend periods. Indeed, the FEIR admits that the retail parking demand for the Ferry Building is highest on Saturday mid-day (during the Farmers Market) than even on weekdays. FEIR at III.G.8. Yet, the parking data and analysis fails to provide data regarding these vital parking conditions.

Compounding the error of using almost five-year-old traffic data, the proposed Project trip generation and trip distribution are based on data from the *2000 U.S. Census*, rather than current information from the 2010 U.S. Census. *See* DEIR at IV.D.20, IV.D.21. The FEIR claimed the updated census data was unavailable at an earlier date, but that does not excuse the failure to account the obvious discrepancies that would result from reliance on 12-year-old population information. FEIR at III.G.10.

The FEIR improperly dismissed the argument that the data are old, claiming that the later studies for other projects on other parts of The Embarcadero indicate that traffic is down from 2007. FEIR at III.G.6. However, these studies are for projects at Pier 27, 31 and 33, all of which are at a much different location on the Embarcadero than the Project. Moreover, the FEIR is silent as to what days and times these other studies took place, and whether they accounted for the high traffic during Farmers Market days at the Ferry Building. Without such information, the FEIR has failed to provide any facts for determining whether these later studies can be used to verify the 2007 data—indeed, without knowing whether and how

the Farmers Market and other more recent developments are accounted for in the later studies, it is as invalid as comparing apples to oranges.

In order to serve CEQA's goals of informed decision making and public participation, the FEIR must include updated data traffic and parking, which is particularly important here where well-known changes have occurred in the area since 2007. As described above, the extraordinary increase in popularity of the Farmers Market, the addition of new nearby businesses, and the loss of other parking areas such as Pier ½ all contribute to a very different set of "current conditions" than those that existed in 2007. The analysis in the FEIR must be updated to account for current conditions and impacts must be measured by this new baseline in order to fully analyze the environmental effects of the Project.

***The FEIR's Traffic Data Is Deficient in Other Respects.*** In addition to relying on unreliable out-of-date data, the FEIR's traffic analysis is flawed in numerous other ways:

- The parking and traffic analysis in the DEIR improperly used a limited evaluation window (particularly, in restricting the data to only Wednesday p.m. traffic, which almost appears to be designed to intentionally ignore the peak traffic and parking periods at the Ferry Building for the Farmers Market events) based on generalizations about citywide transportation patterns, rather than transportation usage for the specific site.

- The EIR provides no site-specific evidence to support its claim that "given the proposed uses of the Project, its travel demand would be higher during the PM peak period than during the AM peak commute period." *See* DEIR at IV.D.5. Rather, the FEIR appears to base this conclusion on generic trip generation for residential projects, failing to recognize the site's unique and diverse uses including recreational, restaurant, and retail that will draw visitors during various

hours. FEIR at III.G.8-9. Indeed, the FEIR completely ignores the reality that by including a public parking garage, its parking demand would necessarily include waterfront tourists who are in no way connected with the Project.

- The exclusion from the FEIR of current traffic and parking data for weekday mornings and weekends is simply unjustifiable, as these are well known peak periods for the area surrounding the Ferry Building. Because this area is recognized as being uniquely situated from a traffic and transportation perspective, the FEIR must evaluate weekday AM data on a Farmers Market day as well as weekend AM and mid-day data.

***More Recent Traffic and Parking Data Demonstrate that the Project Would Result in Significant Impacts.*** In order to better understand the current situation and trends with respect to traffic, parking and access, EOP engaged Arup which prepared a parking and access study, *San Francisco Ferry Building Comprehensive Access and Parking Study* ("Arup Report"), which is attached to this letter as Exhibit F. Key findings from the Arup Report include:

- Parking supply is constrained and declining due to redevelopment in the area.
- Parking demand peaks on Saturday, nearly 70% more than peak weekday demand.
- Ferry Building visitors and Farmers Market patrons account for the largest portion of parking demand for both weekday and weekend use. As confirmed by various tenants, Saturdays are significantly busier than other days, and parking is highly constrained.

- Parking demand is concentrated in AM hours and tapers off considerably in PM hours.

- Parking data in the 2008 *Ferry Building Area Parking Evaluation Study* is outdated and inadequate to determine current parking supply and demand.

These findings were further confirmed by a recent survey conducted of Farmers Market patrons in which 53% indicated there is not enough parking near the Farmers Market. During that survey, patrons voiced a host of concerns relating to parking and transportation, as can be seen in Exhibit F, which contains a sampling of parking-related complaints during the Farmers Market. Despite the unique and well-known parking demand associated with the Farmers Market, the EIR's traffic and parking analysis failed to conduct surveys that would accurately reflect the current conditions during this congested and parking-constrained time.

The FEIR discounts the Arup Report as being prepared by a "contractor," which is a rather bizarre insult to a highly regarded transportation and engineering firm. Then the FEIR asserts the study did not include "information about current parking utilization in the vicinity of the Ferry Building." FEIR at III.G.43. This is simply not true as the study specifically provides detailed analysis and charts for the parking occupancy for the lots and garages in the vicinity of the Ferry Building. *See, e.g.*, Arup Report at 14-15. Moreover, the FEIR's survey of parking facilities near the Project Site, conducted in response to EOP's comments on August 17, 2011, is again limited to a Wednesday afternoon and evening, neither of which is indicative of peak usage at the Ferry Building (which is during Farmers Market hours). FEIR at III.G.43. The FEIR itself recognized that the Farmers Market patronage results in at least a 38% (if not more) increase in parking demand. FEIR at III.G.44. Accordingly, the City's intransigent refusal to even conduct a study that would overlap with the greatest traffic and parking demand for the area is perplexing, at the least, if not intentionally misleading.

As confirmed by the Arup Report and the survey of the Ferry Building patrons, it is the DEIR's analysis which is faulty and unreliable, relies on inaccurate data and underestimates the Project's impacts on parking and circulation. Accordingly, the FEIR must be significantly revised to account for this accurate and up-to-date information and recirculated for further public review and comment.

***The Flawed Traffic Data Underestimates Traffic Impacts.*** Because the DEIR used inaccurate data to establish the current conditions, Impact TR-1 underestimates the incremental impacts of the Project above the baseline. The "Existing Plus Project Conditions" scenario must be reevaluated to account for current congestion at the study intersections. Further, Impact TR-1 must evaluate additional scenarios beyond the Wednesday PM peak hour, including weekday AM and weekend AM scenarios.

***The Pedestrian and Bicycle Counts Are Similarly Flawed.*** For similar reasons, the DEIR's reliance on pedestrian and bicycle counts from the PM peak period of a single Wednesday in 2007 is insufficient. *See* DEIR at IV.D.12. Pedestrian and bicycle traffic has increased significantly on a citywide basis since 2007, and likely even more so in the Project area with the success of the Farmers Market and other businesses in the area. According to the most recent data collected by the San Francisco Municipal Transportation Agency, between 2006 and 2010, the City saw a 58% increase in the number of bicyclists. In that same time period, the SFMTA measured a 233% increase in bicyclists along The Embarcadero by the Ferry Building. San Francisco Municipal Transportation Agency, *City of San Francisco 2010 Bicycle Count Report*, Nov. 2010, at 3, 8 (attached as Exhibit H. The FEIR recognizes these increases, but downplays any impacts by claiming the 233% increase in bicyclists at the Ferry Building occurred entirely *behind* the Ferry Building. FEIR at III.G.40. There simply is no factual basis offered for this bald assertion. Even if such a conclusion could be proven true in a limited sense—that many bicyclists prefer to bike near the water than in front of the

Ferry Building when they get to that portion of The Embarcadero (which is unclear given the lack of any data in the FEIR), the broader conclusion is untenable when bicycle traffic is analyzed as a whole, as these bicyclists have to get to the Ferry Building in order to go behind it (unless they simply just ride in loops behind the Ferry Building!). Thus, those bicyclists should be accounted for as part of the road traffic in the area. As a result of using this outdated information, the discussion in TR-3 and TR-4 continues to grossly underestimate the incremental impacts of the Project on bicycle and pedestrian safety.

The FEIR's evaluation of pedestrian, bicycle, and vehicular conflicts also remains inadequate. Impact TR-3 concludes that pedestrian conflicts would be minimal because "The numbers of vehicles and pedestrians per minute are relatively small (about one vehicle and three pedestrians every 30 seconds on average) . . . ." DEIR at IV.D.25; *see also* FEIR at III.G.41. Similarly, Impact TR-4 concludes that vehicular and bicycle traffic at the garage entrance "would be relatively small . . . ." DEIR at IV.D.27. No factual basis is provided in the FEIR for the claim that these numbers are "relatively small." Thus, there are insufficient facts to support a determination of less-than-significant for these impacts.

The FEIR only evaluates pedestrian, bicycle, and vehicular conflicts at the entrance to the garage. It fails completely to assess conflicts at other locations. However, such conflicts are common along The Embarcadero, where many modes of transportation intersect. Residents and patrons of the Project who will undoubtedly cross or travel along The Embarcadero will increase these conflicts; the FEIR appears to claim that because a driveway (from Seawall Lot 351) will be eliminated, that the Project will cause no vehicle-pedestrian-bicyclist conflicts on The Embarcadero. FEIR at III.G.40. This is a cursory and unsubstantiated conclusion that does not excuse the need for further study into safety issues along this busy road. The FEIR must evaluate these safety impacts based on real, current conditions and at

meaningful locations, not just at the proposed garage entry. Why no change is "anticipated" remains unexplained nor supported by facts.

***The FEIR's Parking Supply and Utilization Analysis Is Also Outdated.*** As is explained more fully in the Arup Report, the demand analysis of the sufficiency of the parking for the proposed Project itself is inadequate. Most significantly, the parking occupancy data is significantly out-of-date. In particular, the DEIR relies on the 2008 *Ferry Building Area Parking Evaluation Study* for which data were collected in 2006 and 2007. That study also relies on previous surveys from 2005 and earlier. Based on the age of those data, and the many changes that have occurred since they were collected, existing parking conditions in the waterfront area cannot be ascertained and the data cannot be used in any scientifically valid way to make findings regarding Project impacts on parking supply or demand.

The FEIR claims that because traffic along The Embarcadero is 9% lower than in 2007, parking utilization is as well. FEIR at III.G.43. This cursory conclusion, based on a flawed assumption, has no support in the record and should be rejected outright.

Not only is this approach inadequate in any event, it is particularly indefensible since more recent data are available. As part of the City's SF*park* project, for which the City received a $19.8 million grant from the U.S. Department of Transportation's Urban Partnership Program, the San Francisco Municipal Transportation Agency undertook an extensive census of city-wide parking supply and availability, a study it has referred to as "the first of its kind in the country."[5] Further, many of the meters in the vicinity of the Project are currently installed with sensors as part of the SF*park* project, so accurate and recent data is readily available for the demand for those spaces. In addition, a key purpose of the SF*park* project is to influence parking behavior by both giving drivers more information about available spaces

[5] A copy of the SF*park* Parking Census is enclosed at Exhibit I

and using demand-responsive pricing to redistribute parking demand. Yet, the FEIR discounts any possible effects of or data from this state-of-the-art system, claiming merely, without any elaboration or analysis, "it is not anticipated that SF*park* will change parking occupancy in the vicinity of the project, except that it may be easier for visitors to find parking in the area." FEIR at III.G.10.

***The Flawed Parking Analysis Underestimates Parking Impacts.*** The analysis for Impact TR-5 finds that parking impacts will be less-than-significant based in part on the incorrect statement that the existing spaces at Seawall Lot 351 "would be relocated within the parking garage as part of the proposed project." As discussed above, the parking garage would have different access, visibility, walking time, and validation service, making the garage an unequal substitute for the Seawall Lot 351 parking spaces. The FEIR also does not provide adequate information about the management, control, and long-term dedication of the new parking to allow reasonable analysis. Because the parking garage does not provide equal replacement spaces for the loss of Seawall Lot 351 under the terms of the Parking Agreement, the EIR cannot assume that parking impacts from said "relocation" will be less-than-significant.

Impact TR-5 incorrectly concludes that because the FEIR asserts there is no parking shortfall, there will be no impacts to traffic congestion, air quality, safety, and noise caused by increased circling for parking. Moreover, a parking shortfall is not the only cause of such impacts. The proposed parking garage would be accessible from Washington Street, a change from Seawall Lot 351's current access off The Embarcadero. The change in access and visibility of the garage entrance could have impacts to traffic congestion, air quality, and noise from increased circling by Ferry Building visitors as well as safety impacts to visitors who have to walk a farther distance and more complicated route from the parking garage

entrance to the Ferry Building. The FEIR must evaluate these impacts before any action can be taken on the Project.

The cumulative impacts of the lost parking facilities are also ignored in the FEIR. Rather, the FEIR claims again that such cumulative impacts are not a CEQA issue and, in any event, the Project will eventually replace the parking lost at Seawall Lot 351. FEIR at III.G.45. However, the very real impacts identified above are seriously compounded by the recent loss of other parking areas in the Ferry Building vicinity, including Pier ½ and the Muni turnaround area, as well as proposed projects such as the Downtown Ferry Terminal Expansion and the eventual closure of Pier 3 which threaten to displace more parking. The temporary Zip Line also further constrains parking during certain seasons. There have also been changes to parking provided for farmers' trucks on Farmers Market days, including shifting farmer parking from Washington Street to Steuart Street in 2009. The effects caused by the cumulative loss of parking in the area must be evaluated in the FEIR and cannot simply be ignored as a "temporary impact" of the Project.[6] Nor does any of the analysis account for the proposed elimination of parking by the 75 Howard and Teatro Zinzanni projects.[7]

[6] The transportation and parking analysis in the DEIR is merely a summary of the "8 Washington St./SWL 351 Transportation Study Final Report" prepared by Adavant Consulting on May 25, 2011, but the study itself is not included in the DEIR. *See* DEIR at IV.D.1 n. 1. The Adavant study is not a general background document; it "contribute[s] directly to the analysis of the problem at hand" and thus is not appropriate for incorporation by reference. *See* CEQA Guidelines § 15150(f). Because an EIR is an informational document, the Adavant study must be included in the DEIR as an appendix so the public can have a meaningful opportunity to review the analysis underlying the DEIR's conclusions. The FEIR's statement that it is available "on file" does not satisfy the requirement that the EIR be complete and accurate. FEIR at III.R.5-6.

[7] *See* San Francisco Port Commission Agenda, dated February 28, 2012, and attached map (enclosed as Exhibit J

***The EIR Impermissibly Ignores Traffic and Parking Impacts Related to the America's Cup Program.*** The FEIR ignores potential conflicts with the America's Cup, scheduled for 2012-2013, because "[t]hese sport activities are generally considered temporary" and thus they will not have a long-term impact on traffic and land use. DEIR at IV.A.7; *see also* FEIR at III.G.56 ("The AC34 is considered a temporary condition for the purposes of this analysis . . . ."). Although environmental effects may be "temporary," they nonetheless may be significant. Indeed, given the projections for visitors and those working on the America's Cup and the many days of racing that are contemplated, the potential for adverse effects on the environment from adding the Project's impacts on top of those of the America's Cup is clear. *See* Final Environmental Impact Report, The 34th America's Cup and James R. Herman Cruise Plaza and Northeast Wharf Plaza (attached as Exhibit K. The FEIR fails to adequately analyze the traffic impacts that will occur during the two years of races. Changes to traffic flow and parking along the waterfront area could conflict with construction of the Project. The City cannot artificially segregate the Project from the cumulative impacts of the area. These impacts must be evaluated before any further consideration of the Project.

***The FEIR Fails to Fully Identify and Analyze the Cumulative Traffic and Parking Impacts of the Project in Light of Other Waterfront Projects.*** In addition to failing to properly account for the cumulative impacts associated with hosting of the America's Cup, the FEIR failed to properly identify and analyze the litany of other waterfront projects that will significantly affect traffic circulation and parking availability for the area around the Project site. *See, e.g.*, DEIR at IV.D.32-34; FEIR at III.G.55-58. This includes such major projects as the Exploratorium, 75 Howard and Teatro Zinzanni. Indeed, the EIR attempts to improperly and artificially segregate the Project from future planned development along the waterfront, which is most egregious in the FEIR's claim that 75 Howard (the site of another proposed residential tower) and The Embarcadero/Broadway parking lot (the future home of Teatro Zinzanni) would both be suitable as substitute parking for the Ferry Building during

the construction of the Project. FEIR at III.B.7. By ignoring these other developments, the EIR has overestimated parking supply and underestimated the impacts of the Project. It thus fails to provide the public with an accurate analysis of its cumulative impacts. These omissions must be fixed before the FEIR can be certified or any action taken on the Project.

***The FEIR Ignores the Project's Conflicts with the San Francisco Planning Code's Off-Street Parking Requirements.*** The FEIR fails to acknowledge that the Project is inconsistent with the San Francisco Planning Code's policy on retention of off-street parking spaces, which provides: "Once any off-street parking or loading space has been provided which wholly or partially meets the requirements of this Code, such off-street parking or loading space shall not thereafter be reduced, eliminated or made unusable in any manner . . . ." San Francisco Planning Code § 150(d). The Parking Agreement for the Ferry Building requires the Port to provide to EOP 150 parking spaces, including the entirety of Seawall Lot 351 less 10 spaces for Port vehicles or visitors. These spaces are required in order to satisfy the Ferry Building's off-street parking requirements. The Project as currently proposed does not retain the parking spaces that must be ***provided to EOP*** in accordance with the Planning Code. The FEIR must analyze whether the Project "conflict(s) with any applicable land use plan, policy, or regulation," including the off-street parking policies in the Planning Code which are designed to avoid or mitigate potential environmental effects caused by the loss of off-street parking.

The above is but a small sampling of the fundamental flaws in the parking and traffic analysis for this Project. The City cannot (as a matter of law) consider approving such a large-scale Project on one of the last remaining Seawall Lots used for waterfront parking to support public trust uses without an adequate analysis that fully informs the public and the decision-makers of the true impacts of the Project. More research, analysis and recirculation

is required to not only meet the bare minimum of CEQA, but to ensure that the public's interests are adequately protected for the future.

**Hydro-Geologic Impacts**

The proposed parking garage would be constructed beneath the residential buildings to a depth of 31 feet below grade on land entirely composed of Bay fill. Yet, because the Initial Study conclusorily and erroneously concluded the Project posed no hydro-geological impacts (despite the obvious water table and seismic issues), the DEIR was completely silent on the potentially significant impacts from this unprecedented waterfront land use. This is significant, as potential impacts from such construction include the following:

- There is no description of the quantity of water that inevitably will seep in around the garage that will need to be pumped out and disposed of properly. The DEIR does not discuss the energy requirements for this ongoing pumping and water disposal or the related air quality impacts associated with the energy necessary to operate such pumps (including backup generators).

- Nor does the DEIR identify the recipient waters for the pumped water. If the pumped water, which will be contaminated with pollutants from the parking garage and sediment, will be discharged into the Bay, the DEIR must analyze the potential water quality impacts. If the pumped water and sediment will be discharged into the City's already overloaded wastewater system, particularly during winter storm and high-tide conditions, the DEIR must analyze these impacts as well. Such discharges may require issuance of a Waste Discharge Requirement from the San Francisco Regional Water Quality Control Board, yet no such permit is listed under the Required Approvals.

- Sea level rise will exacerbate these impacts by raising the water level around the parking garage and adding more water pressure against the structure and the pumping system. These impacts must be evaluated and circulated for public comment. The DEIR ignored these impacts.

When this remarkable omission was brought to the City's attention in EOP's previous letter, the FEIR attempted to "paper over" the problems inherent in the DEIR and Initial Study with newly prepared memoranda from contractors that claim (but offer no credible evidence to show) that there will be no hydro-geological impacts from the Project. Such a claim appears to ignore obvious effects that would result from such significant excavation. Not only would the Project include an unprecedented three-story underground parking garage in Bay fill north of Market Street, but there are also documented concerns about the engineering issues involved in building underground parking garages in Bay fill. *See, e.g., Case Studies in Mission Bay, San Francisco: Deep Foundations in Challenging Soil Conditions* (2006) (attached as Exhibit L. In fact, the potential for water-related problems and seismic hazards in areas composed of Bay fill, including vulnerable areas along the Embarcadero waterfront that are especially prone to settlement, has long been documented. *See, e.g., Flatland Deposits of the San Francisco Bay Region, California—Their Geology and Engineering Properties, and Their Importance to Comprehensive Planning* (1979) (attached as Exhibit M).

The FEIR's response to comments on hydro-geologic impacts relies almost entirely on three brief memoranda from the Project's engineering contractors that were transmitted to the Project applicant after the DEIR was made available for public review. FEIR at III.N.6-10. These are referred to in the FEIR as the "Rollo and Ridley memo, August 31, 2011," the "AMEC memo, August 31, 2011," and "Chuck Palley, President, Cahill Contractors, letter to Simon Snellgrove, September 12, 2011."

The memoranda, and the FEIR discussion which relies upon them, make conclusory statements about the Project's potential hydro-geologic impacts without offering any facts, technical detail or analysis to support those claims. For example, the AMEC memo states that "The design of the building's foundation to resist hydrostatic uplift forces will have to consider the rise in groundwater levels caused by the potential future rises in sea level . . . ." Hydro-geologic impacts from the building's design and hydrostatic uplift forces must be considered now and not improperly deferred to a future design stage. The AMEC memo also claims that "The Project plans will include several provisions to prevent significant effects on groundwater," but these potential significant effects and mitigation measures were not disclosed or analyzed in the DEIR. Even this memorandum reveals that the Project's own consultant does not know what the "hydro-geologic impacts from the building's design and hydrostatic uplift forces" are, much less what impact those may have. All it concludes is that they must be "considered."

The memoranda now relied on by the City actually reveal that that FEIR is fundamentally inadequate because it did not properly analyze hydro-geologic impacts from the below-grade parking garage. Further, the conclusory statements in the memoranda which are reiterated in the FEIR demonstrate that the City is deferring true analysis of the impacts and identification of mitigation measures until a future stage. While the Project's design may likely undergo changes as it is fine-tuned before and during construction, CEQA requires that the environmental impacts caused by the Project be disclosed and analyzed in advance of Project approval. To the extent that the City intends to rely on these memoranda, which were added to the case file and cited as references in the FEIR, this is significant new information that reveals the inadequacy of the DEIR. Accordingly, the public was deprived of a meaningful opportunity to comment upon these impacts, and the EIR should be recirculated before any action is taken on the Project.

These are significant effects that have been repeatedly overlooked in the CEQA process for this Project. Now that the City finally acknowledges that as, identified by the consultants, the public is entitled to an opportunity to review and comment on them. A lead agency is required to recirculate a DEIR when significant new information is added after notice is given that the DEIR is available for public review. This includes new information showing that the DEIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. CEQA Guidelines § 15088.5(a)(4). The City cannot just keep ignoring these issues—it must recirculate the FEIR for further review and comment.

**Construction-Related Impacts**

The FEIR continues to underestimate significantly the construction impacts of the Project. The FEIR admitted that the DEIR underestimated the number of truck trips necessary for the excavation by 350%. FEIR at III.B.44. Even if the revised numbers in the FEIR are accurate (which is suspect), the FEIR still states that the construction phase of the Project would result in 90 one-way truck trips on average (and 200 one-way truck trips on peak days). *Id.* This would be a large dump truck passing by every two to three minutes on The Embarcadero. Nor does the FEIR provide any basis for treating these large dump trucks as if they would have the same effect as passenger cars. Taken alone, this would be a significant impact, but when coupled with the America's Cup and Force Main Project, these impacts could be crippling and must be fully analyzed in the FEIR before it can be certified and any action is taken on the Project.

**Sewage System (Force Main Project) Impacts**

Because the December 2007 Initial Study found that impacts on the City's wastewater system would be less than significant, the DEIR contains no analysis of such impacts.

However, as discussed in the RFP for Seawall Lot 351, in June 2008, the San Francisco Public Utility Commission (SFPUC) discovered a leak in the North Point force main sewer line that runs along The Embarcadero directly adjacent to the Project. During the leak repairs, SFPUC identified significant deterioration in the force main line and determined that the area needed a new force main. That line bisects Seawall Lot 351 and the Project. Although the Port identified this as an issue that potential developers would be interested in, the DEIR failed to address this new information. This is a particular concern as the underground garage will abut the SFPUC Right-of-Way, resulting in potential construction conflicts. It must also be confirmed that the proximity of the underground garage to the force main line does not pose any seismic safety risks. Further, if any groundwater from the site will be dewatered and discharged into the City's wastewater system, potential conflicts with the Force Main Project (including any temporary loss of capacity or functionality near the Project site) must be evaluated.

The FEIR did not even address these crucial omissions. Rather, it merely states that the Force Main Project will be a temporary condition and that impacts associated with its construction will be coordinated between the Project sponsor and SFPUC. FEIR at III.G.56-57. This is woefully inadequate for addressing the serious seismic, hydro-geological, construction and safety aspects of the concurrent projects. The EIR needs to be revised to fully address this SFPUC force main replacement project and the ongoing risks associated with that location of the force main before any future action can be taken on the Project. Even in the near term, there are serious timing issues with respect to construction and other disruptive impacts (particularly in light of the America's Cup scheduled to occur at the same time as these major projects) that must be addressed in greater detail.

**Mitigation Measures**

If a project has a significant and unavoidable effect on the environment, the agency may approve the project only upon finding that it has "[e]liminated or substantially lessened all significant effects on the environment where feasible." CEQA Guideline § 15092(b)(2)(A). Thus, a project with significant and unavoidable impacts can only be approved if all feasible mitigation is required of those significant impacts. The EIR identifies significant and unavoidable impacts relating to traffic, air quality and sea level rise, yet it fails to incorporate all feasible mitigation. The FEIR did nothing to remedy these significant omissions, leaving significant environmental impacts completely unmitigated.

***Traffic.*** Impact TR-9 finds that the Project would make a considerable contribution to cumulative traffic impacts at study intersections, including degrading the intersection of The Embarcadero/Washington Street to LOS F. DEIR at IV.D.34. The DEIR admits that this is a significant environmental impact contributed to by the Project (*id.*), yet the DEIR fails to identify any mitigation measure that would actually reduce Project traffic to mitigate this impact. *Id.* at IV.D.34-35. The only thought the FEIR suggests is that the Project sponsor should develop and implement a Travel Demand Management Plan for residential and commercial uses at the site (Mitigation Measure M-TR-9), but admits it is "uncertain" whether this mitigation measure would be effective and, thus, claims that the impact is significant and unavoidable. *See id.* Given the phalanx of consultants deployed on this Project and EIR, it strains credulity that this one idea is the only possible one. Indeed, what other possible measures were even considered is not revealed.

The FEIR ignores this serious issue, claiming that if the left turn lane is not eliminated as planned in the Northeast Embarcadero Study (NES), then the Project would not have any impact at The Embarcadero/Washington Street intersection. FEIR at III.G.39. However, this is not an excuse to ignore the significant impact that *would* occur if the lane is eliminated,

much less claim that it is "unavoidable." This issue is especially troubling due to the fact Ferry Building patrons are expected to use the intersection to access the so-called "replacement" parking that the City is obligated to provide EOP under the Parking Agreement. If the intersection will be operating at LOS F, this is hardly comparable parking for Seawall Lot 351.

Further, the FEIR's inclusion of the NES in the cumulative impacts analysis reveals that the City is improperly applying the NES recommendations as mandatory planning and zoning requirements without any CEQA review. *See also* Preliminary Project Assessment for 8 Washington, dated May 25, 2011 (attached as Exhibit N. The FEIR admits that the NES has not "obtained its environmental clearance," yet the City "chose to include the NES in the cumulative impact analysis as a reasonably foreseeable future project . . . ." FEIR at III.G.57.[8] Because the City did not conduct any CEQA review for the NES, no mitigation measures have been identified and analyzed that would mitigate impacts at The Embarcadero/Washington Street intersection caused by the recommendations in that study. The City appears to be using the NES as a loophole whereby it can approve projects in the NES study area with significant and unavoidable impacts, yet avoid identifying any meaningful mitigation measures. The City admitted the doubtful effectiveness of the sole measure proposed in the DEIR for this Project, Mitigation Measure M-TR-9, and it elaborated the point in the FEIR, noting that "many of the elements to be included as part of the TDM Plan such as car share spaces, secured bicycle parking or taxi call service are either already required or typically provided," which means this measure is not really mitigation at

[8] Including the NES as a reasonably foreseeable future project also contravenes the San Francisco Superior Court's order in *Neighbors to Preserve the Waterfront v. City and County of San Francisco*, in which the court concluded that it was "persuaded by the arguments of the City" that the NES was not a project subject to CEQA. *See* Order Denying Petitioners' Petition for Writ of Mandamus, attached as Exhibit O.

all. The City must address reasonable measures to mitigate this identified impact before any action can be taken on the Project.

Finally, and most importantly, CEQA requires a good faith examination of potential mitigation measures, an analysis of the benefits of them, and then the feasibility, in order to satisfy the requirements of CEQA Guideline § 15126.4. The rejection of any mitigation measure without going through those steps is, in itself, a violation of CEQA. Apparently, the approach in the FEIR was intended to allow the City to avoid imposing any mitigation and instead leap to waiving that requirement in favor of a finding "significant and unavoidable," and adopting findings of overriding considerations.

***Toxic Air Contaminants.*** Impact AQ-7 finds that the Project would expose new (on-site) sensitive receptors to significant levels of PM2.5 and other toxic air contaminants. To reduce this impact, Mitigation M-AQ-7 requires the installation of a ventilation system that will remove 80% of the PM2.5 pollutants, although the impact remains significant and unavoidable. The filtration system required by Mitigation M-AQ-7 is inadequate. The DEIR notes that the system would only be operated when the building's heat is on. Given San Francisco's mild climate, this would likely mean that the ventilation system provides no benefit during a substantial portion of the year. Scientific literature analyzing the filtration for cleaning indoor air suggests that to be effective, a system should include one air exchange per hour of outside air and four air exchanges per hour of recirculated air. *See*, Fisk, W.J., D. Faulkner, J. Palonen, and O. Seppanen, *Performance and costs of particle air filtration technologies*, INDOOR AIR, 12:223-234 (2002) (attached as Exhibit P). Thus, to be effective, the Project should be required to operate the ventilation system continually, regardless of whether the heat or air conditioning is operating. That same study also noted that high efficiency particulate air (HEPA) filters increase the removal efficiency to 95%, yet Mitigation M-AQ-7 only requires a minimum of 80%. Finally, the Bay Area Air Quality

Management District recommends that filtration systems be designed such that air intakes are located away from emission sources, such as major roadways. In addition to filtration, other mitigation options include:

- phasing the residential portion of the project to allow time for the California Air Resources Board diesel regulations to take effect in reducing diesel emissions,
- including tiered plantings between the Project and The Embarcadero to screen emissions,
- requiring that all windows be inoperable, and
- eliminating outdoor decks or patios off individual residences.

The FEIR claims these changes would reduce the marketability of the Project. FEIR at III.I.10. That the profit on luxury condominiums may be lower than hoped for by the developer does not meet the CEQQ test for "infeasibility." Moreover, it is not an excuse to expose future residents to dangerous and fatal toxic air contaminants. To further reduce risks to the residents, Mitigation M-AQ-7 must be revised to require these additional mitigation measures.

***Sea Level Rise.*** For the significant and unavoidable impact of sea level rise, the FEIR identifies a single mitigation measure that the project sponsor prepare an emergency plan that consists of the building manager monitoring forecasts of flooding, methods for notifying residents and businesses of such risks, and preparing evacuation plans. This mitigation measure does virtually nothing to address sea level rise (indeed, the FEIR admits as much, as it notes the impact remains significant and unavoidable). Sea level rise will occur gradually over many years and will unlikely be a sudden emergency inundation (although the Project's architects, Skidmore, Owens and Merrill, recently noted that if nothing is done, San

Francisco will be "Venice by the Bay" within the next century).[9] The 2009 California Climate Adaption Strategy identified strategies agencies should consider for addressing sea level rise when approving new development, including designing coastal structures to be resilient to the impacts of climate change, or so that they can be easily relocated or removed to allow for progressive adaptation to sea level rise. *2009 California Climate Adaption Strategy* at 74 (attached as Exhibit R). The Bay Conservation and Development Commission (BCDC) has amended the Bay Plan to include policies to address sea level rise, including policies that encourage new development to be resilient or adaptable. As discussed further below in the discussion about the flawed alternatives analysis, the FEIR actually discusses (and continues to reject) an alternative that would incorporate these concepts of resiliency, yet it is rejected because that alternative would not meet some of the design goals set forth in the Port's RFP for Seawall Lot 351. FEIR at III.N.13-14.

The FEIR does not state that the alternative is infeasible, but merely states that the project proponents are not obligated under CEQA to protect future residents of the Project. *Id.* This is particularly problematic due to the hydro-geological issues identified above; an unprecedented deep foundation in bay fill is highly at risk for inundation with sea level rise. *See* "RISE: Climate Change and Coastal Communities," Part 1, Transcript at 11. As noted recently by Will Travis, former executive director of BCDC, "[i]t's important to remember as we look down here now and we see a street, that you're going to get flooding on what's underneath all that too. BART lines, MUNI lines, sewer lines, the basements of hotels and office buildings." *Id.* Yet, the EIR simply ignores these realities of constructing in the City by the Bay—a reality that many predict may occur as early as 2050. *See id.* Accordingly, the EIR must include, as mitigation measures, requirements to make the Project more

[9] "RISE: Climate Change and Coastal Communities," Part 1, Transcript at 10 (attached as Exhibit Q).

resilient to sea level rise, such as those design modifications described in the DEIR at page VI.34.

**Analysis of Alternatives**

The purpose of the alternatives discussion in an EIR is to identify ways to reduce or avoid significant environmental effects. For this reason, an EIR must focus on alternatives that avoid or substantially lessen a project's significant environmental effects and the alternatives discussed should be ones that offer substantial environmental advantages over the proposed project. Cal. Pub. Res. Code § 21002; CEQA Guidelines § 15126.6(a)-(b).

Here, the FEIR's Alternative Analysis remains inadequate. The DEIR stated that the Project will have significant and unavoidable impacts relating to traffic, air quality, and sea level rise. However, the FEIR does not examine any alternative which would lessen substantially any of these significant and unavoidable impacts, either as the alternatives are discussed in the DEIR or as "refined" in the FEIR. To the contrary, as discussed below, under each of the purported alternatives, these undesirable impacts are either increased or remain the same. Only Alternative E provides a benefit to traffic impacts, but those too remain significant and unavoidable. This creates a reasonable inference that the alternatives were not selected, as CEQA requires, to provide choices with less environmental impacts, but as "straw men" to justify approving the Project.

As a result, the alternatives discussion fails in its purpose under CEQA to give the public and decision-makers a sense of the options and trade-offs between the proposed Project, and alternatives that may serve some of the proper objectives of a project. In short, the alternatives as presented are nothing more than lip service to CEQA's mandate, and do not satisfy the legal and policy requirement to provide the decision-makers with any real choices in making a final decision on the Project.

Indeed, the FEIR continues to suffer from the same flaws as before:

- For traffic, Alternatives B and C would result in increased traffic. Alternative D would include three fewer units and generate basically the same traffic as the proposed Project. While Alternative E reduces traffic, the impact remains significant and unavoidable.

- The alternatives similarly fail to address significant and unavoidable air quality impacts. Again, Alternatives B and C would generally have greater air quality impacts than the Project and Alternative D would have the same air quality impact. While Alternative E would show some air quality improvements, those improvements relate only to air quality aspects that are already less than significant for the proposed Project. None of the alternatives have any advantage over the proposed Project with respect to the air quality impacts that are found to be significant and unavoidable.

- As for sea level rise, none of the alternatives address that significant effect.. Instead of analyzing an alternative that addresses this critical issue, the DEIR summarily rejects an alternative that would greatly reduce the potential for flooding resulting from sea level rise because it would apparently not meet some project objectives. However, alternatives do not need to implement every project objective. *Mira Mar Mobile Community v. City of Oceanside*, 119 Cal. App. 4th 477 (2004). Indeed, alternatives that can eliminate significant environmental impacts should be studied even if they would impede attainment of project objectives to some degree. CEQA Guidelines § 15126.6(b). Importantly, the DEIR does not suggest that this alternative would be infeasible. Thus, because there is a feasible alternative that would reduce to a less than significant level the sea level rise impacts, that alternative must be included. The fact that the design

would not implement every goal proposed by the Port as part of its RFP is not a reason to eliminate study of this alternative.

The FEIR does not provide sufficient facts or analysis to support its rejection of Alternative E, the environmentally superior alternative. Under Alternative E, Seawall Lot 351 would remain in its current state as a parking lot operated by EOP under the Parking Agreement to serve the Ferry Building. The FEIR continues to reject this alternative in large part because it would not further the Port's objectives for Seawall Lot 351. FEIR at III.Q.9-10. This logic is, of course, a bit of "Alice in Wonderland." The Port is under obligations to EOP with respect to Seawall Lot 351, which would be met by Alternative E, but the Port wants to reject Alternative E because the Port would prefer to pursue a plan that violates its obligations to EOP! Moreover, as noted above, the proposed Project itself is not consistent with the Port's objectives. Therefore, the Port's confused and improper objectives are not, under CEQA, a valid measure of the feasibility of this alternative.

## THE CITY CANNOT ACT ON THE PROJECT UNLESS AND UNTIL THE CITY COMPLIES WITH ITS OBLIGATION UNDER CEQA

For all the reasons stated above (and in the comments submitted by numerous other parties[10]), EOP respectfully requests that the Planning Commission decline to certify the FEIR or take any further action on the Project unless and until the significant flaws in the Project and the environmental analysis are addressed and resolved in full compliance with CEQA and other laws. If the Planning Commission decides to certify the EIR without recirculating the FEIR with accurate, complete and current information, and correcting the other deficiencies in the FEIR, EOP intends to appeal that decision to the Board of Supervisors. Under the City Code, while that appeal is pending, the Planning Commission

[10] Rather than repeat all the facts and analysis on other issues which have been well addressed by others, EOP joins in those comments and observations.

(or any decision-making body of the City) is prohibited from carrying out or considering the approval of any part of the Project that is subject to the EIR. *See* Administrative Code § 31.16(a)(3). It is vital that the City ensure full compliance with CEQA before any further action is taken on the Project.

Thank you for this opportunity to comment on the 8 Washington Street / Seawall Lot 351 Project. Please forward these comments, along with our previous letter dated August 15, 2011, to the Board of Supervisors before any action is taken by that body with respect to the Project.

Very truly yours,

Zane O. Gresham

Attachments (included on the enclosed CD):

Exhibit A (Memorandum to Planning Commission dated February 27, 2012)
Exhibit B (Preliminary Project Assessment for 75 Howard)
Exhibit C (Zoning Report for Seawall Lot 351 from San Francisco Property Map Database dated March 20, 2012)
Exhibit D (Memorandum from Monique Moyer to Port Commission dated December 3, 2009)
Exhibit E (Ferry Building - Northeast Waterfront Study - Public Comments from Equity Office, dated March 24, 2010)
Exhibit F (*San Francisco Ferry Building Comprehensive Access and Parking Study*)
Exhibit G (Ferry Building Patron Survey Materials)

Exhibit H (San Francisco Municipal Transportation Agency, *City of San Francisco 2010 Bicycle Count Report*, Nov. 2010)

Exhibit I (SF*park* Parking Census)

Exhibit J (San Francisco Port Commission Agenda, dated February 28, 2012, and attached map)

Exhibit K (Final Environmental Impact Report, The 34th America's Cup and James R. Herman Cruise Plaza and Northeast Wharf Plaza)

Exhibit L (*Case Studies In Mission Bay, San Francisco: Deep Foundations In Challenging Soil Conditions*)

Exhibit M (*Flatland Deposits of the San Francisco Bay Region, California—Their Geology and Engineering Properties, and Their Importance to Comprehensive Planning*)

Exhibit N (Preliminary Project Assessment for 8 Washington, dated May 25, 2011)

Exhibit O (*Neighbors to Preserve the Waterfront v. City and County of San Francisco*, San Francisco County Superior Court Case No. CPF-10-510634, Order Denying Petitioners' Petition for Writ of Mandamus)

Exhibit P (Fisk, W.J., D. Faulkner, J. Palonen, and O. Seppanen, *Performance and Costs of Particle Air Filtration Technologies*, INDOOR AIR, 12:223-234 (2002))

Exhibit Q ("RISE: Climate Change and Coastal Communities," Part 1, Transcript)

Exhibit R (*2009 California Climate Adaption Strategy*)

BOS-11
CA
COB

SUE C. HESTOR
Attorney at Law
870 Market Street, Suite 1128 · San Francisco, CA 94102
(415) 362-2778 · FAX (415) 362-8048

415 846-1021
hestor@earthlink.net

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2012 APR 17 PM 2:08
BY

April 12, 2012

sent by email and delivered by hand

Angela Calvillo, Clerk of the Board
Board of Supervisors
City Hall
San Francisco CA 94102

David Chiu, President of the Board
Board of Supervisors
City Hall
San Francisco CA 94102

RE: 120271 - Zoning Map Amendment - 8 Washington Street
120272 - General Plan Amendment - 8 Washington Street

Dear Ms. Calvillo and President Chiu:

The Land Use calendar posted this afternoon shows RECEIPT by the Board of the above two legislative proposals from the Planning Department on Monday, March 26, 2012, and their assignment under the 30-day rule to Land use on April 3, 2012.

My first question is HOW and WHEN they were transmitted? The second is whether it was appropriate for the General Plan Amendment to start the clock running before final resolution of at least the CEQA appeal?

The morning of Friday, March 23 I made a formal request that Kevin Guy, the planner on this case, transmit the FINAL MOTIONS electronically as soon as they were available and also offered to pick hard copies. He replied that he would provide them to me when they were complete, but that it was unlikely they would be finalized that day. They were not available later that afternoon when I also emailed him. Since I heard nothing further from Mr. Guy, on Tuesday, March 27 I made a follow-up request for those motions. Mr. Guy forwarded the motions to me on Wednesday, March 28, two days AFTER the Board of Supervisors supposedly received them. It appears that the approval motions were final and available several days before they were provided to my clients. I note that the CEQA appeal of Equity Office Properties was filed on Monday, March 26.

Of particular concern is the transmittal of the Proposed General Plan Amendment. As you are probably aware a 90-day clock starts running on Board action on all General Plan Amendments from the day of receipt. Planning Code 340(d) The 90 days will run on June 24, which means Board action is necessary by their June 19 meeting.

There are currently TWO EIR appeals filed with the Board and we anticipate filing an appeal of the Planned Unit Development/Conditional Use early next week. Each of these appeals require hearings by the full Board. No Board action can occur on either of the matters transmitted March 26, 2012, until at least the CEQA appeals are resolved.

Has the Board been advised that hearings on these matters can occur as of 30 days from April 3?

Sincerely,

Sue C. Hestor
Attorney for appellant Friends of Golden Gateway

cc: Kevin Guy
Zane Gresham, attorney for Equity Office Properties
Louise Renne
Lee Radner
Brad Paul

Re: Appeal of Final Environmental Impact Report - 8 Washington Street/Seawall Lot 351 Project

AnMarie Rodgers to: Angela Calvillo 03/28/2012 10:28 AM

Cc: Jonathan Stern, Kevin Guy, Joy Lamug, Rick Caldeira, Paul Maltzer, Elaine Warren

Dear Clerk Calvillo,

You have asked to be notified about complicated projects with multiple hearing requirements and appeal potential. This project appears to be one of those cases. This project has many components which you may want to discuss with City staff to ensure the timing goes as smoothly as possible.

As you know, we currently have an appeal of the EIR filed. To my knowledge the other hearing needs include:

- A General Plan Amendment: this item has a deadline for Board action. Without action during the 90-day timeline, this Ordinance would be deemed approved.
- Zoning Map Amendment: This Ordinance will need Board action.
- Port Commission Hearings: These are necessary prior to Board action on the Ordinance but cannot be scheduled unless and until the Board upholds the EIR.
- Potential appeal of the Conditional Use authorization. This has not yet been filed but is likely to be filed within the next few weeks.

I haven't been involved in this project yet to date, if I've gotten any thing incorrect in this email I'd ask that the knowledgeable staffers chime in and correct the above summary.

In the past we've had the City Attorney and Planning Staff work on scheduling with your office. Due the need for Port hearings, I've also included Jonathan Stern from the Port on this email.

AnMarie Rodgers
Manager of Legislative Affairs

SF Planning Department
1650 Mission Street, #400
San Francisco CA, 94103
anmarie@sfgov.org
415.558.6395

Have a question about a proposed development? See our new SF Property Info Map!
http://propertymap.sfplanning.org

Joy Lamug/BOS/SFGOV

Joy Lamug/BOS/SFGOV
03/27/2012 04:56 PM

To ZGresham@mofo.com

cc Cheryl Adams/CTYATT@CTYATT, Kate Stacy/CTYATT@CTYATT, Marlena Byrne/CTYATT@CTYATT, Scott Sanchez/CTYPLN/SFGOV@SFGOV, AnMarie Rodgers/CTYPLN/SFGOV@SFGOV, Tina Tam/CTYPLN/SFGOV@SFGOV, Nannie Turrell/CTYPLN/SFGOV@SFGOV, Linda Avery/CTYPLN/SFGOV@SFGOV, Paul Maltzer/CTYPLN/SFGOV@SFGOV, Monique Moyer/SFPORT/SFGOV@SFGOV, Phil Williamson/SFPORT/SFGOV@SFGOV, Trisha

Prashad/SFPORT/SFGOV@SFGOV, Byron Rhett/SFPORT/SFGOV@SFGOV, Jonathan Stern/SFPORT/SFGOV@SFGOV, Brad Benson/SFPORT/SFGOV@SFGOV, Kevin Guy/CTYPLN/SFGOV@SFGOV, BOS-Supervisors@SFGOV.sfgov.org, bos-legislative.aides@sfgov.org <bos-legislative.aides@sfgov.org>, Angela Calvillo/BOS/SFGOV@SFGOV, Rick Caldeira/BOS/SFGOV@SFGOV, Victor Young/BOS/SFGOV@SFGOV

Subject Appeal of Final Environmental Impact Report - 8 Washington Street/Seawall Lot 351 Project

Dear Mr. Gresham:

The Office of the Clerk of the Board is in receipt of your appeal filed on March 26, 2012, from the decision of the Planning Commission's March 22, 2012, Certification of a Final Environmental Impact Report identified as Planning Case No. 2007.0030E, through its Motion No. 18560, for the proposed 8 Washington Street/Seawall Lot 351 Project.

A hearing date has been scheduled on **Tuesday, April 24, 2012, at 4:00 p.m.,** at the Board of Supervisors meeting to be held in City Hall, Legislative Chamber, Room 250, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

Please provide 18 copies to the Clerk's Office by:

**8 days prior to the hearing:** any documentation which you may want available to the Board members prior to the hearing;

**11 days prior to the hearing:** names of interested parties to be notified of the hearing in label format.

If you have any questions, please feel free to contact Legislative Deputy Director, Rick Caldeira, at (415) 554-7711 or Legislative Clerk, Joy Lamug, at (415) 554-7712.

[attachment "8 Washington St. Seawal Lot 351 FEIR Appeal.pdf" deleted by AnMarie Rodgers/CTYPLN/SFGOV]

Thank you,
Joy

Joy Lamug
Board of Supervisors
Legislative Division
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Tel: 415.554.7712

Fax: 415.554.7714
Email: joy.lamug@sfgov.org

Complete a Board of Supervisors Customer Satisfaction form by clicking the link below.
http://www.sfgov.org/site/bdsupvrs_form.asp?id=18548

8 Washington - Port Contacts
Alisa Miller to: Joy Lamug 03/27/2012 11:33 AM

History: This message has been replied to.

Joy... the Port has asked you send all appeal stuff to:

Monique Moyer, Executive Director (main contact)
Phil Williamson
Trisha Prashad
Byron Rhett
Jonathan Stern
Brad Benson

Thank you!

**Alisa Miller**
Assistant Clerk
Board of Supervisors
1 Dr. Carlton B. Goodlett Place, City Hall, Room 244
San Francisco, CA 94102
Phone: (415) 554-4447 | Fax: (415) 554-7714
alisa.miller@sfgov.org | www.sfbos.org

Complete a Board of Supervisors Customer Satisfaction form by clicking the link below.
http://www.sfbos.org/index.aspx?page=104

Submission of copies of 8 Washington briefs
hestor
to:
Paul.maltzer, kevin.guy, joy.lamug
04/24/2012 01:56 PM
Cc:
elaine.warren, Zane Gresham, Shaye Diveley
Please respond to hestor
Show Details

Paul and I just talked about the mechanics of delivery of copies of my briefs on the 8 Washington appeals. Followed by my conversation with Joy Lamug in Clerk's Office.

Here is how I will deliver copies of the briefs from FOGG, which will have briefs on both our appeals of the EIR and the PUD/Conditional Use. It is based on an assumption that the Board will consolidate the EIR and PUD/CU appeals for hearing on May 15. Briefs are due on Monday, May 7 on both cases.

The Clerk's office has requested that we deliver 18 copies to that office for delivery to the Board and parties. Those copies include 2 copies that will be delivered to the City Attorney and a copy for the real party in interest.

Rather than mailing or messenger-ing the Planning briefs to me, I would rather pick them up at 1650 Mission at the same time FOGG's are delivered. Please leave them out for me in the pickup bin.

I have never received a copy of any submission by real party SF Waterfront Partnership or their counsel, nor has there been any to the Planning Commission that I know of except for formal applications to the Department. Their set will be part of my FOGG's submission to the Clerk.

Sue Hestor
Attorney for Friends of Golden Gateway (FOGG)
846-1021 - if you need to call me

Re: Appeal of Final Environmental Impact Report - 8 Washington Street/Seawall Lot 351 Project

Kevin Guy to: AnMarie Rodgers 03/28/2012 10:52 AM

Cc: Angela Calvillo, Elaine Warren, Jonathan Stern, Joy Lamug, Paul Maltzer, Rick Caldeira, Trisha Prashad, Phil Williamson

Thank you AnMarie. I would just add that the legislation for the General Plan and Zoning Map amendments was transmitted to the Clerk's office on Monday (prior to the appeal filing), with a target date of April 3 for introduction at the BOS. Port staff also transmitted a number of documents for an April 3 hearing, and can provide further details on the nature of those actions.

-Kevin

Kevin Guy
San Francisco Planning Department
Northeast Quadrant
1650 Mission Street, Suite 400
San Francisco, CA 94103
P: (415) 558-6163
F: (415) 558-6049
Kevin.Guy@sfgov.org

AnMarie Rodgers | Dear Clerk Calvillo, You have asked to be notifie... 03/28/2012 10:29:29 AM

AnMarie Rodgers/CTYPLN/SFGOV
03/28/2012 10:29 AM

To Angela Calvillo/BOS/SFGOV@SFGOV

cc Jonathan Stern/SFPORT/SFGOV@SFGOV, Kevin Guy/CTYPLN/SFGOV@SFGOV, Joy Lamug/BOS/SFGOV@SFGOV, Rick Caldeira/BOS/SFGOV@SFGOV, Paul Maltzer/CTYPLN/SFGOV@SFGOV, Elaine Warren/CTYATT@CTYATT

Subject Re: Appeal of Final Environmental Impact Report - 8 Washington Street/Seawall Lot 351 Project

Dear Clerk Calvillo,

You have asked to be notified about complicated projects with multiple hearing requirements and appeal potential. This project appears to be one of those cases. This project has many components which you may want to discuss with City staff to ensure the timing goes as smoothly as possible.

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- Zoning Map Amendment: This Ordinance will need Board action.
- Port Commission Hearings: These are necessary prior to Board action on the Ordinance but cannot be scheduled unless and until the Board upholds the EIR.
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I haven't been involved in this project yet to date, if I've gotten any thing incorrect in this email I'd ask that

the knowledgeable staffers chime in and correct the above summary.

In the past we've had the City Attorney and Planning Staff work on scheduling with your office. Due the need for Port hearings, I've also included Jonathan Stern from the Port on this email.

AnMarie Rodgers
Manager of Legislative Affairs
---
SF Planning Department
1650 Mission Street, #400
San Francisco CA, 94103
anmarie@sfgov.org
415.558.6395

Have a question about a proposed development? See our new SF Property Info Map!
http://propertymap.sfplanning.org
Joy Lamug/BOS/SFGOV

Joy Lamug/BOS/SFGOV
03/27/2012 04:56 PM

To ZGresham@mofo.com

cc Cheryl Adams/CTYATT@CTYATT, Kate Stacy/CTYATT@CTYATT, Marlena Byrne/CTYATT@CTYATT, Scott Sanchez/CTYPLN/SFGOV@SFGOV, AnMarie Rodgers/CTYPLN/SFGOV@SFGOV, Tina Tam/CTYPLN/SFGOV@SFGOV, Nannie Turrell/CTYPLN/SFGOV@SFGOV, Linda Avery/CTYPLN/SFGOV@SFGOV, Paul Maltzer/CTYPLN/SFGOV@SFGOV, Monique Moyer/SFPORT/SFGOV@SFGOV, Phil Williamson/SFPORT/SFGOV@SFGOV, Trisha Prashad/SFPORT/SFGOV@SFGOV, Byron Rhett/SFPORT/SFGOV@SFGOV, Jonathan Stern/SFPORT/SFGOV@SFGOV, Brad Benson/SFPORT/SFGOV@SFGOV, Kevin Guy/CTYPLN/SFGOV@SFGOV, BOS-Supervisors@SFGOV.sfgov.org, bos-legislative.aides@sfgov.org <bos-legislative.aides@sfgov.org>, Angela Calvillo/BOS/SFGOV@SFGOV, Rick Caldeira/BOS/SFGOV@SFGOV, Victor Young/BOS/SFGOV@SFGOV

Subject Appeal of Final Environmental Impact Report - 8 Washington Street/Seawall Lot 351 Project

Dear Mr. Gresham:

The Office of the Clerk of the Board is in receipt of your appeal filed on March 26, 2012, from the decision of the Planning Commission's March 22, 2012, Certification of a Final Environmental Impact Report identified as Planning Case No. 2007.0030E, through its Motion No. 18560, for the proposed 8 Washington Street/Seawall Lot 351 Project.

A hearing date has been scheduled on **Tuesday, April 24, 2012, at 4:00 p.m.,** at the Board of Supervisors meeting to be held in City Hall, Legislative Chamber, Room 250, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

Please provide 18 copies to the Clerk's Office by:

**8 days prior to the hearing:** any documentation which you may want available to the Board members prior to the hearing;

**11 days prior to the hearing:** names of interested parties to be notified of the hearing in label format.

If you have any questions, please feel free to contact Legislative Deputy Director, Rick Caldeira, at (415) 554-7711 or Legislative Clerk, Joy Lamug, at (415) 554-7712.

[attachment "8 Washington St. Seawal Lot 351 FEIR Appeal.pdf" deleted by AnMarie Rodgers/CTYPLN/SFGOV]

Thank you,
Joy

Joy Lamug
Board of Supervisors
Legislative Division
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Tel: 415.554.7712
Fax: 415.554.7714
Email: joy.lamug@sfgov.org

Complete a Board of Supervisors Customer Satisfaction form by clicking the link below.
http://www.sfgov.org/site/bdsupvrs_form.asp?id=18548

Re: 8 Washington - Project Sponsor?
Alisa Miller to: Paul Maltzer 03/27/2012 10:15 AM
Cc: Kevin Guy, Trisha Prashad, Joy Lamug

Thanks, Paul.

Yes, we received an EIR Appeal yesterday. I am attaching for your reference.

8 Washington EIR Appeal.pdf

**Alisa Miller**
Assistant Clerk
Board of Supervisors
1 Dr. Carlton B. Goodlett Place, City Hall, Room 244
San Francisco, CA 94102
Phone: (415) 554-4447 | Fax: (415) 554-7714
alisa.miller@sfgov.org | www.sfbos.org

Complete a Board of Supervisors Customer Satisfaction form by clicking the link below.
http://www.sfbos.org/index.aspx?page=104

| Paul Maltzer | Alisa For 8 Washington, in terms of the project s... | 03/27/2012 09:53:19 AM |
|---|---|---|

From: Paul Maltzer/CTYPLN/SFGOV
To: Kevin Guy/CTYPLN/SFGOV@SFGOV
Cc: Alisa Miller/BOS/SFGOV@SFGOV, Trisha Prashad/SFPORT/SFGOV@SFGOV
Date: 03/27/2012 09:53 AM
Subject: Re: 8 Washington - Project Sponsor?

Alisa

For 8 Washington, in terms of the project sponsor, there is a public/private partnership between the Port and San Francisco Waterfront Parners. In addition to the Port, you should also send notice of an appeal to:

San Francisco Waterfront Partners, LLC
Pier 1, Bay 2
The Embarcadero
San Francisco, CA 94111
Attn: Simon Snellgrove

Have you already received an appeal? We will need to get a copy over here at Planning, as well, as we will be working on the appeal response.

Thanks

Paul Maltzer

Kevin Guy/CTYPLN/SFGOV

Kevin Guy/CTYPLN/SFGOV
03/27/2012 09:42 AM To Alisa Miller/BOS/SFGOV@SFGOV

cc Trisha Prashad/SFPORT/SFGOV@SFGOV, Paul Maltzer/CTYPLN/SFGOV@SFGOV
Subject Re: 8 Washington - Project Sponsor?

Alisa - Paul Maltzer (CC'ed here) is the staff contact for the EIR (I am working on the entitlements and the rezoning/General Plan Amendment legislation). Do, I will defer to Paul for confirmation here.

-Kevin

Kevin Guy
San Francisco Planning Department
Northeast Quadrant
1650 Mission Street, Suite 400
San Francisco, CA 94103
P: (415) 558-6163
F: (415) 558-6049
Kevin.Guy@sfgov.org

| Alisa Miller | So its the Port for purposes of the EIR appeal? I... | 03/27/2012 08:09:03 AM |
|---|---|---|

BOARD of SUPERVISORS

City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

# NOTICE OF PUBLIC HEARING

## BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO

NOTICE IS HEREBY GIVEN THAT the Board of Supervisors of the City and County of San Francisco will hold a public hearing to consider the following proposal and said public hearing will be held as follows, at which time all interested parties may attend and be heard:

**Date:** Tuesday, May 1, 2012

**Time:** 4:00 p.m.

**Location:** Legislative Chamber, Room 250 located at City Hall, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102

**Subject:** **File No. 120266. Hearing of persons interested in or objecting to the Planning Commission's decision, dated March 22, 2012, Certification of a Final Environmental Impact Report identified as Planning Case No. 2007.0030E, through its Motion No. 18560, for a proposed mixed-use, residential, commercial, fitness center, and public open space project at 8 Washington Street/Seawall Lot 351. (District 3) (Appellant: Zane Gresham on behalf of Equity Office Properties, Filed March 26, 2012; Sue Hestor on behalf of Friends of Golden Gateway, Filed April 4, 2012).**

Pursuant to Government Code Section 65009, notice is hereby given, if you challenge, in court, the matter described above, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Board of Supervisors at, or prior to, the public hearing.

In accordance with Section 67.7-1 of the San Francisco Administrative Code, persons who are unable to attend the hearing on these matters may submit written comments to the City prior to the time the hearing begins. These comments will be made a part of the official public records in these matters, and shall be brought to the attention of the Board of Supervisors. Written comments should be addressed to

Angela Calvillo, Clerk of the Board, Room 244, City Hall, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102. Information relating to this matter is available in the Office of the Clerk of the Board and agenda information will be available for public review on Thursday, April 26, 2012.

Angela Calvillo
Clerk of the Board

MAILED/POSTED: April 20, 2012