

office of
COMMUNITY INVESTMENT
and INFRASTRUCTURE

November 20, 2015

101-0772015-259

Via Email and U.S. Mail

Thomas N. Lippe, Esq.
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Re: Appeal of Office of Community Investment and Infrastructure ("OCII") Resolution Nos. 70-2015, 71-2015, and 72-2015 (Nov. 3, 2015) and Secondary Use Determination (Nov. 3, 2015) relating to the Golden State Warriors Event Center and Mixed-Use Development Project at Mission Bay South Blocks 29-32, an Environmental Leadership Development Project ("Project")

Dear Mr Lippe:

OCII is in receipt of your appeals dated November 13, 2015 regarding the above-referenced actions of the Commission on Community Investment and Infrastructure and its Executive Director (the "Appeals"). OCII received these Appeals in two separate letters on November 13, 2015 before the close of business. Previously, OCII informed you, by email and attachment dated November 16, 2015, 05:09 p.m., of its determination that we had accepted your appeal of OCII Resolution No. 69-2015 certifying the Final Subsequent Environmental Impact Report ("FSEIR") under the California Environmental Quality Act ("CEQA") for the Project (the "Certification Appeal"). This letter addresses your other Appeals, which do not directly challenge the FSEIR certification, but rather relate to project approvals.

OCII accepted the Certification Appeal under its policy governing appeals of EIR certifications. OCII Resolution No. 33-2015 ("Appeal Policy"). The Appeal Policy covers only the certifications of certain environmental impact reports ("EIR") for projects qualifying as Environmental Leadership Development Projects under state law, the Environmental Leadership Act of 2011, Cal. Public Resources Code §§ 21178 *et seq.*, and is not required by, or intended to function as, an appeal pursuant to Cal. Public Resources Code § 21151(c). OCII's Appeal Policy provides a special appeal process to the Board of Supervisors of the City and County of San Francisco, acting in its capacity as the governing body of the Successor Agency to the Redevelopment Agency ("Board of Supervisors") as to whether the EIR complies with CEQA. The Appeal Policy does not provide for the review and appeal of CEQA findings prepared pursuant to CEQA Guidelines § 15091, statements of overriding consideration prepared pursuant to CEQA Guidelines § 15093, or other actions related to OCII's approval of such projects.

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Under state and local law, OCII is a public entity separate from the City and County of San Francisco and has the final decision-making authority over projects that fulfill certain enforceable obligations entered into by the former Redevelopment Agency. One of these obligations is the

Mission Bay South Owner Participation Agreement ("OPA") whereby the Redevelopment Agency, and now its successor, OCII, must review and consider approval of projects subject to the Mission Bay South Redevelopment Plan ("Redevelopment Plan"), such as the Project. The California Department of Finance has finally and conclusively determined that implementation of the OPA has survived the dissolution of the Redevelopment Agency and is a continuing obligation of OCII. In this regard, OCII, as the successor agency, "succeeds to the organizational status of the former redevelopment agency" with the authority to "complete any work related to an approved enforceable obligation." Cal. Health & Safety Code § 34173 (g). Until its dissolution in early 2012, the Redevelopment Agency exercised land use authority under the Redevelopment Plan and OPA and finally approved numerous projects.

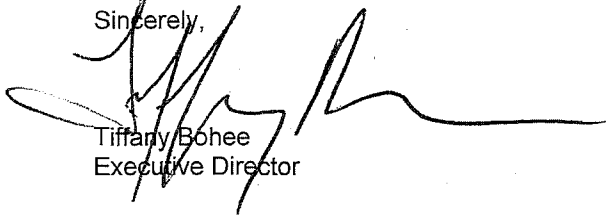
When state law dissolved the Redevelopment Agency, the Board of Supervisors became the governing body of the Successor Agency to the Redevelopment Agency under the authority of the Redevelopment Dissolution Law, Cal. Health & Safety Code §§ 34170 *et seq.* In that state-authorized capacity, the Board of Supervisors delegated its statutory authority to a mayoral-appointed commission to "act in place of the former [Redevelopment Agency] commission . . . to implement modify, enforce and complete the surviving redevelopment projects, . . . to exercise land use, development and design approval authority" for surviving redevelopment projects, and to "take any action that the Redevelopment Dissolution Law requires or authorizes on behalf of the Successor Agency. . ." SF Ordinance No. 215-12 (Oct. 4, 2012).

OCII was acting under this delegated state authority in adopting CEQA findings, including adopting a mitigation monitoring and reporting program and a statement of overriding consideration (Resolution No. 70-2015), approving amendments to the Mission Bay South Design for Development (Resolution No. 71-2015), conditionally approving a major phase and design applications (Resolution No. 72-2015), and determining the event center is a permitted secondary use under the Plan. None of these actions would have been appealable to the Board of Supervisors if they had been made by the former Redevelopment Agency. No provision of Redevelopment Dissolution Law, CEQA, local law, or the Appeal Policy now provides for an appeal of these actions related to project approvals to the Board of Supervisors.

While no appeal is available from OCII's approval of the Secondary Use Determination and Resolution Nos. 70-2015, 71-2015, and 72-2015, if the Board – in response to the Certification Appeal – reverses OCII's certification of the SEIR, then "prior project approvals would be rescinded to allow CCII to, if and as necessary, adopt additional findings, revise the F[S]EIR, or amend the project approvals." Letter, T. Bohee to A. Calvillo, Clerk of the Board, at page 2 (Nov. 12, 2015), available at <http://www.sfbos.org/Modules/ShowDocument.aspx?documentid=54283>.

Accordingly, I have determined that the Appeals do not comply with the standards under the Appeal Policy and thus reject the Appeals.

Sincerely,



Tiffany Bohee
Executive Director

cc: John Malamut, Deputy City Attorney