



March 17, 2017

Hon. London Breed
San Francisco Board of Supervisors
City Hall Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Re: 2675 Folsom Street
File No. 161146 (CEQA Appeal)
Hearing Date: March 21, 2017

Dear President Breed and Supervisors,

Our office represents Axis Development Group (Axis), the project sponsor for the proposed development at 2675 Folsom Street (Project Site). On March 21, 2017, the Board of Supervisors will consider an appeal (CEQA Appeal) filed by the Calle 24 Latino Cultural Community Council (Appellant) challenging the Community Plan Exemption (CPE) issued under the California Environmental Quality Act (CEQA) for Axis' proposed development at 2675 Folsom (CEQA Appeal).

CEQA sets forth a very clear evidentiary standard that must be met in challenging the decision of whether to issue a CPE. CEQA also sets forth a clear standard for when a CPE is not appropriate. The Appellant has not met either standard. On the other hand, the Planning Department, in their November 28, 2016 Response to the CEQA Appeal and in the March 13, 2017 Supplement to that response (collectively referred to as 'Planning Response'), has clearly established that a CPE is legally appropriate and included substantial evidence in the record to support that decision.

For all these reasons, and as discussed in more detail below, we respectfully request that you approve the CPE prepared under CEQA. This request is based on the entirety of the evidence in the administrative record, including the supplemental information provided with this letter. **It is not intended to discount or question the concerns that the Appellant has regarding socio-economic changes and gentrification in the Latino Cultural District and the Mission, but rather to clarify that those concerns, as shown in the technical studies prepared, are policy, not CEQA issues.**

I. CPE DETERMINATION

On June 27, 2016, Planning Department staff, based on substantial evidence in the record, issued a CPE for the Project¹. A detailed discussion of the Project is outside the scope of this letter as the issue before the Board of Supervisors is **not** whether to uphold the Project approvals, but

¹ The project is a 117-unit multi-family development with 23 on-site affordable units and 5,200 square feet of production distribution and repair (PDR) space on three lots between Folsom Street and Treat Avenue near the corner of 23rd Street (Assessor's Block 3963, Lots 006, 007 and 024) (Project).

whether the CEQA analysis prepared for the Project was legally adequate.² The CPE was issued after review and analysis of technical studies prepared in house, and by outside experts under Planning Department staff's direction (i.e., historic and transportation), to determine whether the Project would have a peculiar or new significant or potentially significant environmental impact that was not previously identified in the Eastern Neighborhoods Programmatic Environmental Impact Report (EN PEIR). After reviewing and analyzing the substantial evidence, the Planning Department determined that the Project, which is consistent with the development density established for the Project Site under the Eastern Neighborhoods Rezoning, qualified for a CPE.

Public Resources Code (CEQA) section 21083.3 and 14 Cal. Code Regs. Chapter 3 (CEQA Guidelines) include very specific requirements for when a CPE is required. As stated in the Planning Department's November 28, 2016, Response to the CEQA Appeal:

“CEQA Section 21083.3 and CEQA Guidelines Section 15183 mandate that projects that are consistent with the development density established by existing zoning, community plan or general plan policies for which an EIR was certified, shall not require additional environmental review except as might be necessary to examine whether there are project-specific effects which are peculiar to the project or its site and that were not disclosed as significant effects in the prior EIR.” (emphasis added)³

The Project is consistent with the zoning, community plan or general plan policies of the Eastern Neighborhood Rezoning for which the Eastern Neighborhoods Programmatic Environmental Impact Report (EN PEIR) was certified. As a result, the City's review is limited to whether there are Project-specific impacts peculiar to the Project or its site that were not disclosed as significant impacts in the prior EN PEIR.⁴ As shown in the analysis conducted by Planning Department staff and technical experts, there are no impacts peculiar to the Project or Project Site that were not disclosed in the EN PEIR. Thus, the City cannot require any further CEQA review. The Planning Department therefore complied with CEQA in issuing the CPE for the Project.

Based on this evidence, the Planning Commission, on September 22, 2016, relied on the CPE prepared to approve the Project. As discussed below, the Appellant, on October 21, 2016, challenged that reliance and Planning Department staff's decision to prepare a CPE by filing a CEQA Appeal.⁵

II. CEQA APPEAL

The CEQA Appeal, as set forth in our letter dated March 14, 2017, has now been pending for 150 days. As noted in that letter, the CEQA appeal has been continued three (3) times to provide the Planning Department time to respond to the Board's request for additional information on socio-

² Any details of the Project that are relevant to that discussion or analysis are included in the body of this letter as needed.

³ November 28, 2016, Planning Department Response to CEQA Appeal, p. 4.

⁴ 14 Cal. Code Regs. § 15183, subd. (a); *Muzzy Ranch Co. v. Solano Cty. Airport Land Use Comm'n*, 41 CA4th 372, 388–89, 160 P.3d 116 (2007); *Gilroy Citizens for Responsible Planning v. City of Gilroy*, 140 Cal. App. 4th 911, 935, 45 Cal. Rptr. 3d 102, 120–21 (2006); *Gentry v. City of Murrieta*, 36 Cal. App. 4th 1359, 1374, 43 Cal. Rptr. 2d 170, 182 (1995), as modified on denial of reh'g (Aug. 17, 1995)

⁵ The Appellant also challenged the Planning Commission's issuance of a Conditional Use Authorization and Large Project Authorization (Board File No. 161150). Both these appeals were subsequently dropped and are no longer before the Board of Supervisors or the Board of Appeals for consideration.

economic and transportation issues. This request was made as part of the 1515 South Van Ness CEQA appeal (Board of Supervisors File No. 161001).⁶

The CEQA Appeal filed by the Appellant asserts that a higher level of CEQA review is required for the Project because (1) the cumulative impact of the Project and other development on the Latino Cultural District was not analyzed in the EN PEIR, (2) the number of units in the pipeline exceed the number of units contemplated in the EN PEIR and (3) the EN PEIR is out of date. Underlying all these claims is the assertion that new market-rate housing in the Mission and Latino Cultural District is causing the socio-economic changes that warrant further review under CEQA. Socio-economic issues, however, are not CEQA issues unless a causal link is established between socio-economic impacts and a physical impact on the environment.

The following is a detailed response to the Appellant's claims or CEQA Appeal. It is divided into four (4) sections. The first is an overview of the burden of proof or standard of review that the Appellant must meet to overcome the assumption that a CPE was the appropriate document under CEQA. The second is a discussion of the Latino Cultural District as a CEQA resource. The third is a discussion of the status of the EN PEIR and whether a Supplemental or Subsequent EIR is required, and the fourth is a broad discussion of socio-economic impacts and their relation to CEQA.

A. Appellant Has Not Submitted Substantial Evidence in the Record in Support of its Claims.

In challenging the City's CEQA Analysis, the Appellant has the burden of proof to establish, by substantial evidence, that the City's reliance on a CPE for the Project was legally inadequate. The Appellant, however, has not met this burden and has not presented any substantial evidence to support its claims or counter the analysis prepared by Planning Department staff. The information provided by the Appellant is unsubstantiated opinion, which is not substantial evidence.

Substantial evidence is “reasonable assumptions predicated upon facts, and expert opinion supported by facts. [Citations.] It does not include ‘[a]rgument, speculation, unsubstantiated opinion or narrative, [or] evidence which is clearly inaccurate or erroneous. . . .’ [Citations.]” (emphasis added)” (*North Coast Rivers Alliance v. Kawamura* (2015) 243 Cal.App.4th 647.) **Substantial evidence is not unsubstantiated opinion nor is it “[c]omplaints, fears, and suspicions about a projects potential environmental impact...[Citations]”** and “in the absence of a specific factual foundation in the record, **dire predictions by nonexperts regarding the consequences of a project [also] do not constitute substantial evidence.** [Citations.]” (1 Kostka & Zischke, Practice under the Cal. Environmental Quality Act (2d ed. 2015) § 6.42, pp. 6-47-6-48; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1417.)

While the Appellant has cited several cases about how a lay person's opinion can support a “fair argument” that a project may have a significant impact, **those cases are not on point.** They either apply to decisions where the applicable standard of review is the “fair argument test”⁷ (not

⁶ A record of that proceeding, and the entirety of the Board's actions on the 1515 South Van Ness appeal is included under separate cover and added to the administrative record for this Project.

⁷ *Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 CA4th 714, *Pocket Protectors v. City of Sacramento* (2004) 124 CA4th 903, *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 CA3d 151 and *Rominger v. County of Colusa* (2014) 229 CA4th 690 all involved Negative or Mitigated Negative Declarations, which are subject to a standard

substantial evidence test) or they cite *only* a portion of the findings of the decision, misleading the reader into thinking that the courts relied *only* a layperson's opinion as substantial evidence.⁸

Based on established case law, the information provided by the Appellant does not meet the legal burden of proof to find the CPE legally inadequate.⁹ In contrast, the record includes ample substantial evidence to support the preparation of a CPE under CEQA section 21083.3 and CEQA Guidelines section 15183.¹⁰ The Planning Department has conducted technical studies, retained experts and analyzed socio-economic changes, the Project and whether those changes cause an impact on the physical environment. The substantial evidence presented clearly establishes that a CPE is appropriate and that no causal link between socio-economic issues and the physical environment exists.

B. The Latino Cultural District is Not a CEQA Resource Nor Would the Project Impact It.

Appellant has asserted the Project's impacts on the Latino Cultural District are a new and significant impact that has not been analyzed in the EN PEIR.¹¹ As noted in the Planning Response, the Latino Cultural District is not an historic resource under CEQA.¹² The Latino Cultural District is an intangible cultural heritage asset that is not eligible for listing on a state, local or federal registry of historic properties and therefore does not meet the definition of an "historic resource" under CEQA Guidelines Section 15064.5(a). The Latino Cultural District's eligibility as a historic district is not something that has been overlooked as the Planning Department studied the area as part of the 2011 South Mission Historic Resource Survey. That survey did not identify the boundaries of the Latino Cultural District as an historic district, and the Appellant has not presented any evidence as to why the Latino Cultural District should be considered an historic district under CEQA. The Planning Department's survey did identify several other potential historic districts, but none of those districts

of review that only requires a "fair argument" that a potential significant environmental impact may occur. This is different than the standard of review for a CPE, which requires that the lead agency's decision be upheld if there is substantial evidence in the record to support the decision.

⁸ In *Banker's Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego* (2006) 139CA4th 249, the court found that "**although** local residents may testify to their *observations* regarding existing traffic conditions, **in the absence of a specific factual foundation in the record, dire predictions by non-experts regarding the consequences of a project do not constitute substantial evidence**... [and] we conclude that substantial evidence supports a finding that the Project will not have a significant effect on traffic relating to the offset intersection." (citing *Gentry, supra*, 36 Cal.App.4th at p. 1417, italics added.) The **bolded** language is what was excluded from the quotation cited by the Appellants.

⁹ The technical reports included in the record from the Appellant is not substantial evidence because it is general in nature and not Project specific. The information regarding changing demographics and new demographics do not create a causal link between that demographic change and specific physical impacts to the environment.

¹⁰ See *Wal-Mart Stores, Inc. v. City of Turlock* (2006) 138 CA4th 273, overruled on other grounds in *Hernandez v. City of Hanford* (2007) 41 C4th 279; *Gentry v. City of Murrieta* at 1406 n24; *Citizens for Responsible Equitable Ent'l Dev. V. City of San Diego Redeve. Agency* (2005) 134 CA4th 598, 610.

¹¹ The Appellant has raised several claims related to the Project's potential impact on the Latino Cultural District as a CEQA Resource. A discussion of the socio-economic impacts of the Project on the Latino Cultural District is included in Section III below, including a discussion of the Appellant's claims regarding commercial gentrification. This section discusses only issues raised related to the Latino Cultural District as a CEQA Resource.

¹² This issue was also raised in the CEQA appeal on 1296 Shotwell Street (Board File No. 170024) and it was publicly noted, on the record by the Board of Supervisors, that the Latino Cultural District is not a historic resource under CEQA. A copy of that transcript and audio file as well as the Board packet for that appeal is provided under separate cover and added to the Administrative Record.

are near the Project site, and therefore cannot be impacted by the Project. Thus, the Appellant's claims about the impact of the Latino Cultural District on the determination to prepare a CPE are without merit.

Regardless, a review of the Latino Cultural District and the Project indicates that the Project is not inconsistent with the intent and key components of the district nor is the Project Site listed as a cultural asset or its previous use a cultural asset theme to be protected. Based on numerous discussions with the community facilitated by Planning Director John Rahaim, there are three key components of the Latino Cultural District. They are as follows: (1) protecting commercial spaces; (2) providing high quality jobs; and (3) affordable housing. The Project is consistent with each of these components.

First, the Project does not eliminate the type of commercial space envisioned for protection under the Latino Cultural District. The existing building to be demolished is a large space previously occupied by a regional restaurant equipment salvage and auction service business. It is not a commercial space that caters to the Mission District or a commercial space occupied by a small, local Latino business. While the existing commercial space does not meet the intent of the Latino Cultural District, the Project is creating over 5,000 square feet of PDR (i.e., community art space) to be managed by local Mission residents and community groups. This PDR space will be provided at a cost of \$1 per year and the Project sponsor has committed to building out or funding the necessary tenant improvements for the space to allow immediate occupancy.

Second, the Project creates high quality jobs. It is committed to using union labor and has signed not only with the Carpenters Union, but has selected Fisher Construction, a union signatory, as its General Contractor. Finally, the last component, affordable housing, has been met by the Project Sponsor's commitment to provide approximately 20% of the units on-site as affordable units, which exceeds the requirement under the Trailing Legislation. The inclusionary housing provided by the Project, combined with the 473 affordable units in the pipeline will result in more than 42% of the units to be built in the Mission (including in the Latino Cultural District) being set aside for affordable housing. This high percentage of affordable units meets the intent of the Latino Cultural District.¹³

C. The EN PEIR Remains Valid.

Appellant has raised several claims questioning the validity of the EN PEIR. Those claims are based on an assertion that the information in the EN PEIR is out of date and that development under the EN PEIR has exceeded what was analyzed. These assertions are without merit.

¹³ This figure is based on Appellant's Claims that 666 new market-rate units will be constructed in and around the Latino Cultural District and the facts in the record that there are 473 new affordable housing units being proposed in independent housing developments. As this figure of 473 new affordable housing units does not take into consideration on-site inclusionary housing units in many Mission developments, the 42% affordable housing figure is likely below the actual number of affordable housing units to be developed.

Under CEQA section 21166, a Supplemental or Subsequent EIR is only required for the Eastern Neighborhoods if one or more of the following events occurs:

- a. Substantial changes are proposed to the zoning in the Eastern Neighborhoods that requires major revisions to the EN PEIR;
- b. Substantial changes to the circumstances under which the Eastern Neighborhoods Rezoning is being undertaken that require major revisions to the EN PEIR¹⁴; and/or,
- c. New information, which was not known and could not have been known at the time the EN PEIR was certified as complete, becomes available.¹⁵

None of the three triggers for preparing a Supplemental or Subsequent EIR have been met. The City is not proposing a rezoning or to change the zoning in the Eastern Neighborhood and the Project is not seeking a Zoning Map or other amendment.¹⁶ There are no new significant environmental effects nor is there a substantial increase in the severity of **previously identified significant effects** than what was studied in the EN PEIR and there is no evidence of a significantly new or significantly worse impact that **was not and could not have been known** when the EN PEIR was prepared.¹⁷

Concerns regarding displacement were well known at the time the EN PEIR was prepared and the EN PEIR carefully considered these issues and built it into the EN PEIR's analysis of physical impacts on the environment. No evidence has been presented that shows "changed conditions" or that there are "new significant environmental effects or a substantial increase in the severity of

¹⁴ This standard is only met where evidence shows "new significant environmental effects or a substantial increase in the severity of previously identified significant effects." 14 Cal. Code Regs. § 15162, subd. (a)(2).

¹⁵ New CEQA analysis cannot be ordered if the new information presented could have been known at the time the original EIR was prepared. See *Citizens for a Megaplex-Free Alameda v City of Alameda* (2007) 149 CA4th 91, 113 (a petitioner failed to establish why a report that was not available at the time the mitigated negative declaration was prepared could not have been prepared earlier with the exercise of reasonable diligence); *Citizens for Responsible Equitable Env'tl Dev. v City of San Diego* (2011) 196 CA4th 515, 531 (impacts relating to global warming caused by greenhouse gas emissions are not new information, because that information had been available at the time the EIR was certified in 1994)

¹⁶ The Planning Department has released Mission Area Plan (MAP) 2020, which could result in zoning changes in the Mission Area Plan. Until those zoning changes are adopted, the zoning under the Eastern Neighborhood Plan Rezoning remain valid.

¹⁷ *Concerned Dublin Citizens v City of Dublin* (2013) 214 Cal.App.4th 1301, 1320 (adoption of new GHG guidelines was not new information because information about the potential effects of GHG emissions was known and could have been addressed in original EIR). *A Local & Reg'l Monitor (ALARM) v City of Los Angeles* (1993) 12 Cal.App.4th 1773, 1802 (a letter containing reformulated quantifications of traffic study information that was already included in the EIR did not permit subsequent CEQA review). *Friends of the College of San Mateo Gardens v. San Mateo Cnty. Cmty. College* (2016) 1 CA5th 937, 949 (CEQA's limits on subsequent EIRs "are designed to balance CEQA's central purpose of promoting consideration of the environmental consequences of public decisions with interests in finality and efficiency").

previously identified significant effects.”^{18,19} Moreover, EN PEIR thoroughly studied traffic and air quality impacts anticipated to occur under the Eastern Neighborhoods Community Plan, and there is no evidence that development occurring pursuant to that Plan is causing impacts that exceed those analyzed in the EN PEIR.

In sum, there is no evidence in the record to support a finding that the statutory standards for supplemental review contained in section 21166 of CEQA have been met.

1. Recent Precedent Indicates the EN PEIR Remains Legally Valid.

The issue of the validity of the EN PEIR has been before the Board of Supervisors multiple times over the last three years.

On April 7, 2015, the Board of Supervisors heard the appeal of a CPE for a 45,000-square foot commercial project located at 340 Bryant Street (Board File No. 150171). The CPE for the project relied on the EN PEIR. The appellants in that case alleged that the project’s transportation impacts were not adequately studied in the EN PEIR. The Board of Supervisors rejected the appeal finding that the appeal did not raise substantial evidence supporting a fair argument that the project would result in a new significant environmental effect, nor an environmental effect of greater severity than already analyzed under the EN PEIR, confirming the validity of the EN PEIR.²⁰

On September 13, 2016, the Board of Supervisors heard the appeal of a CPE for a 199-unit residential project located at 2070 Bryant Street. The CPE for the project relied on the EN PEIR environmental analysis, analogous to the CPE for the Project. The appellant in that case claimed that the EN PEIR was “out of date” and that changed circumstances required “major revisions” to the EN PEIR. The Board of Supervisors rejected the appeal and in support of the EN PEIR stating that, “...the project is consistent with the development density established by the zoning, community plan and general plan policies in the Eastern Neighborhood Rezoning and Area Plan project area, for which the FEIR was certified...and is therefore exempt from further environmental review...”²¹ In rejecting the appeal, the Board affirmed that the EN PEIR remains analytically sound and absent a particular project’s new significant environmental effects, or effects of greater severity than were analyzed in the EN PEIR, a CPE can appropriately rely on the EN PEIR.

¹⁸ 14 Cal. Code Regs. § 15162, subd. (a)(2); *Bowman v City of Petaluma* (1986) 185 Cal.App.3d 1065 (changes in project’s street configuration were not substantial, because the project’s overall impact, including the changed circumstances, was essentially the same as had been projected in the EIR). Note that the development that has occurred pursuant to the Eastern Neighborhood EIR is *below* the level projected in the EIR. See also *Fed. of Hillside & Canyon Ass’ns v. City of Los Angeles* (2004) 126 Cal.App.4th 1180, 1200 (no supplemental EIR required because petitioners had not shown that change in circumstances would result in new or substantially more severe impact); *Fund for Env’tl Defense v County of Orange* (1988) 204 Cal.App.3d 1538 (project permitted to use 5-year old EIR, despite the fact that the project site had since been included within a wilderness park, because the record demonstrated that the change in circumstances raised no new adverse effects that were not analyzed and discussed in the original EIR).

¹⁹ While Appellant has asserted that the Latino Cultural District is new and was not studied in the EN PEIR, as noted above in Section II.B, the Latino Cultural District is not a CEQA resource.

²⁰ A copy of the transcript and Board Motion M15-069 for this matter is provided under separate cover and is hereby included in the Administrative Record.

²¹ A copy of the transcript, Board packet and Board Motion No. M16-119 dated September 13, 2016 is provided under separate cover and is hereby included in the Administrative Record.

Most recently, on February 14, 2017, the Board of Supervisors considered these same issues related to a 94-unit senior housing project at 1296 Shotwell Street.²² While 1296 Shotwell Street relied on CEQA’s “In-Fill Exemption”²³, the issues raised by the appellants in that appeal also involved analysis of whether the project would cause any significant environmental effects that were not analyzed in or that are substantially greater than previously analyzed and disclosed in the EN PEIR. In response to claims raised by the appellant in that case, that the EN PEIR was “out of date,” Planning Department staff concluded that “[a]bsent a change in the Eastern Neighborhoods Rezoning and Area Plan reopening the Eastern Neighborhoods PEIR is neither warranted nor required under CEQA.”²⁴ Moreover, staff found that “**the growth projections contained in the EIR were not intended as a cap or limit to growth within the areas that would be subject to the Eastern Neighborhoods Plan** and were based upon the best estimates available at the time the Eastern Neighborhoods PEIR was prepared.” (emphasis added)²⁵ In upholding the EN PEIR for 1296 Shotwell Street, the Board of Supervisors found not only the growth projections in the EN PEIR continued to be valid, but that none of the triggers to prepare a Supplemental or Subsequent EIR existed.²⁶

The Board of Supervisor’s findings on the 340 Bryant Street project, the 2070 Bryant Street project and the 1296 Shotwell Street project not only establish recent precedent finding that the EN PEIR remains valid, but is consistent with **established case law that find that “[a]fter an initial EIR is certified, there is a strong presumption against additional environmental review.”**²⁷

2. The Number of Units in the Pipeline and Developed in the Mission is Consistent with the Assumptions in the EN PEIR.

The Appellant has raised on multiple occasions claims that the number of housing units in the development pipeline exceeds the number of units analyzed in the EN PEIR.²⁸ Planning Department staff has responded to these assertions, on multiple occasions, providing evidence that these claims are inconsistent with the well-documented facts on completed developments and the current pipeline. Most recently, in the context of the CPE appeal for the project located at 1515 S. Van Ness Avenue (Board File No. 161001), the Planning Department noted that the EN PEIR projected an increase of approximately 7,400 to 9,900 residential units in the plan area during the life of the plan and as of October 17, 2016 only 4,829 residential building permits had been granted. Thus, the Planning

²² The 1296 Shotwell Street project site is located approximately ½ mile from the Project at 2675 Folsom Street.

²³ Pub. Res. Code § 21094.5.

²⁴ See the February 14, 2017 Planning Department memorandum “Appeal of Infill Project Determination 1296 Shotwell Street Project” p. 8.

²⁵ See the February 14, 2017 Planning Department memorandum “Appeal of Infill Project Determination 1296 Shotwell Street Project” p. 8.

²⁶ A copy of the Board File for the 1296 Shotwell Street CEQA Appeal [Board File No. 170024] and the transcript and audio file from the hearing are provided under separate cover and hereby entered into the Administrative Record.

²⁷ *San Diego Navy Broadway Complex Coalition v City of San Diego* (2010) 185 Cal.App.4th 924, 934.

²⁸ Appellant has also asserted that there has been a significant influx of “luxury housing” in the Mission. As shown in the City’s Housing Balance Report, fewer than 600 units have been built in the Mission District under the Eastern Neighborhoods Plan adopted in 2008.

Department concluded, unequivocally, that "...the number of units approved, let alone constructed, is well below the PEIR projection."²⁹

Regardless, even if this were true, as noted in the staff report for the 1296 Shotwell Avenue appeal, "growth projections contained in the EIR **were not intended as a cap or limit to growth**...they were based upon the best estimates available at the time."³⁰ Exceeding those growth projects do not by themselves trigger a requirement to prepare a Supplemental or Subsequent EIR under CEQA section 21166. As noted above, those triggers have not been met and further CEQA review is not required.

3. Traffic Impacts Are the Same or Slightly Less Severe Than Anticipated Under the EN PEIR.

In response to claims raised by the Appellant regarding the traffic analysis in the EN PEIR and questions raised by the Board of Supervisors, Fehr & Peers prepared a technical study to determine whether new or substantially more severe transportation impacts exist than were identified in the EN PEIR (Supplemental Traffic Analysis). This Supplemental Traffic Analysis was in addition to the 222-page Project-specific transportation analysis that Fehr & Peers prepared to evaluate the Project-level and cumulative impacts of the Project on vehicle miles traveled, transit, bicycle and pedestrian safety (including pick up and drop off at the nearby Cesar Chavez Elementary School), loading, and emergency services and access.

The Supplemental Traffic Analysis was prepared using the latest transportation models and impact assessment methodologies, incorporating up-to-date transportation, population, growth, and demographic data to evaluate the effects of the proposed project on both existing and 2040 cumulative transportation conditions. It was prepared to specifically answer the following three questions:

- i. Whether the potential displacement of low-income workers as part of market-rate housing generates more automobile trips from workers commuting from distant suburbs;
- ii. Whether new housing that attracts higher income residents with more cars thereby generates more automobile trips; and,
- iii. Whether commuter shuttles create traffic not previously analyzed.

Although there was insufficient data to determine with certainty whether displacement of lower income workers is leading those workers to increase their vehicle miles traveled, Fehr & Peers was able to use regional traffic modelling and traffic counts to answer the three questions above. Specifically, if displaced workers were generating more automobile trips or if higher income residents had more cars or if commuter shuttles created traffic, then traffic counts in the areas studied in the Eastern Neighborhood PEIR would or should be higher than anticipated. **What Fehr & Peers found instead, with certainty, was that observed traffic volumes in 2016 were around 5 - 10 percent**

²⁹ Planning Department response the Appeal of Community Plan Exemption for 1515 South Van Ness Avenue, October 17, 2016. p.12-13.

³⁰ See the February 14, 2017 Planning Department memorandum "Appeal of Infill Project Determination 1296 Shotwell Street Project" p. 8.

lower than expected under the EN PEIR and that at three of the four intersections counted, total traffic volume had in fact decreased from the 2000 baseline count data.³¹ Specifically, Fehr & Peers found that:

“...the Eastern Neighborhoods Plan EIR took a fairly conservative approach to transportation analysis and findings. The EIR generally estimated that a slightly higher percentage of new trips would be made by private vehicles than recent traffic counts as well as census travel survey data would suggest are occurring. On a more detailed level, Fehr & Peers found that while the Mission has undergone significant demographic and economic change, residents on average still appear to own around the same number of vehicles, and use non-auto modes at similar rates as in the period from 2000- 2009.”³²

Fehr & Peers also found, relying on census data, that between 2000-2014, the number of vehicles per household in the Mission District has not increased, that the same percentage of households have zero cars, the average number of vehicles per household has remained nearly constant over that same period and the share of Mission residents commuting to work by driving alone has remained steady.³³ These findings are further supported by the decreased traffic counts noted above, reflecting unchanged or better counts than would be expected if vehicle ownership rates were unchanged.

Finally, Fehr & Peers found that City estimates are that shuttle vehicles remain less than 10 percent of vehicles traveling on arterials.³⁴ Similarly, despite the impression that transportation network companies (e.g., Lyft or Uber) increase traffic counts, the combination of taxi and on-demand/smartphone-based transportation represents only between three to eight percent (3%-8%) of all trips. These trip percentage and the empirical data showing that current levels of traffic within the Mission remain below expected volumes based on the amount of development completed under the EN PEIR, indicate that trips from commuter shuttles and transportation network companies have not led to growth in traffic in the Eastern Neighborhoods study intersections that exceed what was predicted under the EN PEIR.³⁵

For all these reasons and based on all the evidence in the record, claims by the Appellant that the EN PEIR is outdated and that a Supplemental or Subsequent EIR is needed are unsupported by any factual data and are therefore without merit.³⁶ **The Project is consistent with the Eastern**

³¹ Fehr & Peers Letter p. 14.

³² Fehr & Peers Letter p.1-2.

³³ Fehr & Peers Letter p. 10.

³⁴ Fehr & Peers Letter p. 17.

³⁵ Fehr & Peers Letter, p. 17.

³⁶Planning Staff found as follows: “On September 20, 2016 the Department determined that the proposed application did not require further environmental review under Section 15183 of the CEQA Guidelines and Public Resources Code Section 21083.3. The Project is consistent with the adopted zoning controls in the Eastern Neighborhoods Area Plan and was encompassed within the analysis contained in the Eastern Neighborhoods Final EIR. Since the Eastern Neighborhoods Final EIR was finalized, there have been no substantial changes to the Eastern Neighborhoods Area Plan and no substantial changes in circumstances that would require major revisions to the Final EIR due to the involvement of new significant environmental effects or an increase in the severity of previously identified significant impacts, and there is no new information of substantial importance that would change the conclusions set forth in the Final EIR.” (Staff Report to Planning Commission, at Page 3.)

Neighborhood Area Plan, the EN PEIR and none of the standards for a subsequent CEQA analysis have been met.

III. GENTRIFICATION AND SOCIO-ECONOMIC ISSUES

The Appellant's primary claim regarding the validity of the CPE relates to socio-economic changes and gentrification. While the Appellant's claims are based on real feelings and emotions, **"CEQA does not require an analysis of subjective psychological feelings or social impacts."**³⁷ Rather, **CEQA's overriding and primary goal is to protect the physical environment.**³⁸ **"Economic or social effects of a project shall not be treated as significant effects on the environment....[and] [t]he focus of [] analysis shall be on [] physical changes."**³⁹

The CPE prepared for the Project is consistent with that established standard. Based on the analysis conducted and as set forth in established case law the Projects qualifies for an exemption under Public Resources Code section 21083.3 and 14 Cal. Code Regs. Chapter 3 ("CEQA Guidelines"), section 15183) as **substantial evidence exists to support the decision that the Project is exempt and that evidence exists in the record.**⁴⁰ This evidence has been presented by the Planning Department in the preparation of the CPE and in the detailed response to the Appellant's Claims. By contrast, no substantial evidence has been presented by the Appellant that counters the analysis conducted as part of the CPE nor has any substantial evidence been submitted to create the necessary link between the Project and any physical environmental impacts.⁴¹

As noted above, the socio-economic issues become CEQA issues only where there is a causal link between the Project, individually or cumulatively and a physical impact on the environment. This causal link is necessary **and required** under *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 CA4th 1184 and related line of cases. The Board of Supervisors has acknowledged the requirement for this link in two prior CEQA appeals before the Board of Supervisors (i.e., 2070 Bryant Street and 1515 South Van Ness Avenue). In both cases, the City Attorney and the Board of Supervisors clearly stated that gentrification and socio-economic issues are only CEQA issues if there is a causal link between them and a physical impact on the environment. Nothing in the evidence presented by the Appellant creates that link.

³⁷ See *City of Pasadena v. State of California* (1993) 14 Cal.App.4th 810, 829, 17 Cal.Rptr.2d 766 ["CEQA does not address the purely social effects of a project"], disapproved on other grounds as stated in *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 570, fn. 2, 38 Cal.Rptr.2d 139, 888 P.2d 1268.

³⁸ A "significant effect on the environment" is defined under CEQA as a "substantial, or potentially substantial, adverse changes in *physical* conditions" (§ 21100. subd. (d) (*italics added*). Moreover, the "environment" is defined under CEQA as the "*physical* conditions which exist within the area which will be affected by a proposed project...." (§ 21060.5. (*italics added*). Thus, CEQA analyzes the physical, not sociological impact associated with a Project.

³⁹ *Preserve Poway v. City of Poway* (2016) 245 Cal. App. 4th 560, 579, rehearing denied (Apr. 4, 2016), review denied (June 22, 2016). (*emphasis added*); (Guidelines, § 15131, subd. (a).)

⁴⁰ See *Wal-Mart Stores, Inc. v. City of Turlock* (2006) 138 CA4th 273, overruled on other grounds in *Hernandez v. City of Hanford* (2007) 41 C4th 279; *Gentry v. City of Murrieta* at 1406 n24; *Citizens for Responsible Equitable Ent'l Dev. V. City of San Diego Redeve. Agency* (2005) 134 CA4th 598, 610.

⁴¹ The technical reports included in the record as evidence note facts related to changing demographics and information regarding the new demographic, but fail to create a causal link between that demographic change and specific physical impacts to the environment.

Although the Appellant has not provided evidence to support a link between socio-economic impacts and a physical impact, in response to the Board of Supervisor’s questions on this important issue, Amy Herman of ALH Urban and Regional Economics (“ALH”), an economist with over 35 years of urban and regional economic analysis and consulting, was retained to analyze the issue and prepare a report answering the following three (3) questions:

- i. Whether the development of market-rate housing results in displacement of existing commercial tenants in the Latino Cultural District;
- ii. Whether based on a review of academic and related literature there is a relationship between market-rate development and displacement or gentrification⁴²; and,
- iii. Whether the conclusions reached in #1 and #2 above result in a physical impact under CEQA that requires further CEQA review.

As detailed below, ALH found that while commercial gentrification and residential displacement are occurring in the Latino Cultural District and the Mission, these changes are the result of many factors and are not linked to new market-rate development. Moreover, new market-rate development is not creating socio-economic changes that result in a physical impact on the environment and because CEQA analyzes physical impacts only, these are not issues to be analyzed or considered in making a decision on the CEQA Appeal.⁴³

A. Market-Rate Development Will Not Cause Indirect Displacement and Gentrification of Commercial Tenants in the Latino Cultural District or the Mission.

Appellant claims, without offering any substantial evidence, that the Project would lead to the displacement of Latino-owned businesses in the Latino Cultural District. The Planning Department’s Staff Report notes:

“[T]he assertion that the project [at 2675 Folsom] would contribute to or accelerate the “Valenciazation of the Calle 24 District –is presented only as a theoretical possibility, without empirical evidence as to the causes of the changes along Valencia Street. The transition of Valencia Street to a regional shopping, dining and entertainment dictation has been underway at least since the early 2000s, pre-dating the recent uptick in the residential development in the corridor. ***The types of “gentrifying” business cited by the appellants, such as “high end restaurants, clothing and accessory stores, and personal trainer gyms and yoga***

⁴² The ALH report includes a literature review of five (5) published papers on the relationship of housing production/supply and housing costs, as well as a review of 11 separate published papers on the relationship between gentrification and displacement. Copies of all 16 published reports will be submitted into the record under separate cover.

⁴³ That does not, however, mean they were not considered by the Planning Commission in approving the Project. In January 2016, the Planning Commission adopted Mission District Interim Controls which require all projects in the Mission District to prepare an analysis of the project’s potential socio-economic impact on the neighborhood and community. Mission Interim Control findings were prepared by the Project sponsor that provided information on the socio-economic characteristics of the neighborhood and the Project’s potential impact on existing and future residents and businesses.

studios,” have been in operation along Valencia Street since well before the adoption of the Mission Area Plan.” (Staff Report Page 13, emphasis added)

Notwithstanding the lack of empirical evidence offered by the Appellants, ALH prepared a neighborhood retail demand taking into consideration household income as well as the retail demand generated by proposed new residential projects in or near the Latino Cultural District, including the Project. The analysis included the amount of net new retail space to be included in the proposed new residential projects.

ALH found that new residential projects proposed in or near the Latino Cultural District are expected to generate a demand for 34,400 square feet of new commercial space. These same new projects will generate 30,447 square feet of net new commercial space thereby creating an “almost equilibrium between the amount of neighborhood-oriented retail demand and the net new amount of planned retail space in Pipeline projects in both the LCD and near the LCD.”⁴⁴

Because some of the new demand is expected to shop in other neighborhoods, ALH concluded that new development will actually likely create a surplus of net new neighborhood oriented retail space. This surplus means there will not be rent pricing pressure on existing retail base from new residential projects since they are generating the amount of retail space they demand. This analysis is also true for the Mission District as whole where the supply of “total retail is 2.5 times the amount of retail supportable by its residents.”⁴⁵

Looking beyond San Francisco, the Mission District and the Latino Cultural District, ALH also analyzed a 2016 study of gentrification and its impacts on commercial displacement in New York City.⁴⁶ This detailed examination of New York City neighborhoods is one of the only detailed published studies on the topic and examined neighborhoods that had undergone changes due to development. It concluded that commercial displacement is no more likely in a gentrifying neighborhood than in a non-gentrifying neighborhood. Based on this report and its findings, ALH concludes that “it is therefore reasonable to conclude that ...commercial displacement is no more likely to occur in the LCD where gentrification is presumed to be occurring than in other San Francisco neighborhoods not experiencing gentrification...and that opportunity exists for neighborhoods...to...retain more businesses under conditions of gentrification, perhaps due to new and increased spending power locally.”⁴⁷

B. Market-Rate Development Does Not Cause Indirect Residential Displacement in the Latino Cultural District or the Mission.

Appellant asserts that the Project and other market-rate developments are causing displacement in the Latino Cultural District and the Mission and that the number of units in the

⁴⁴ ALH, “Socioeconomic Effects of Market Rate Development on the Calle 24 Latino Cultural District, San Francisco CA” March 2017. p. 11.

⁴⁵ ALH, “Socioeconomic Effects of Market Rate Development on the Calle 24 Latino Cultural District, San Francisco CA” March 2017. p. 12.

⁴⁶ Rachel Meltzer, *Gentrification and Small Business: Threat or Opportunity?*, Cityscape: A Journal of Policy Development and Research, Volume 18, Number 3, 2016

⁴⁷ ALH, “Socioeconomic Effects of Market Rate Development on the Calle 24 Latino Cultural District, San Francisco CA” March 2017. p. 1.

planning pipeline exceeds the number of units contemplated in the EN PEIR rendering the EN PEIR is out of date. Regarding the number of units in the pipeline and built, the Planning Department based on substantial evidence and facts, has repeatedly disproved the Appellant's assertions. The facts and evidence presented by the Planning Department, however, has been continually disregarded.⁴⁸ As shown in the City's Housing Balance Report in the Mission District between 2011-2015, there was a net increase of 564 housing units and between 2006-2011, there was a net increase of 861 net units. Based on the data collected by the Planning Department, fewer than 600 units have been built in the Mission District under the Eastern Neighborhoods Plan adopted in 2008. Given the number of new units built, the Appellant's claims regarding thousands of "luxury apartments" in the Mission District is simply not true.

As for whether the construction of market-rate development causes displacement, ALH analyzed this issue by looking first at the link between housing production/supply and housing costs. The purpose of this analysis was to assess whether increased housing production can lead to a rise in rents. The analysis was based on a review of historical housing costs data for the City of San Francisco, the Mission District and the Latino Cultural District and a review of five (5) studies prepared by experts on the topic of housing supply/production and housing costs.

ALH found that, in general, rents are always rising. In San Francisco those rents have increased at a nominal annual average rate of 5.5% or an inflation-adjusted annual increase of 2.9%. In 2016, however, rent growth actually tapered off.⁴⁹ This reduction in rent may be due to several factors, including the release of thousands of new residential units in San Francisco. Citing increased supply, this reduction in rents has been observed in media reports indicating that in some cases rents are down as much as 8.9% since March 2016.⁵⁰

In reviewing the data and empirical studies, ALH found that on a macro basis "studies find that both market-rate and affordable housing development help to suppress price appreciation and reduce displacement"⁵¹ and that "**housing production does not result in increased costs of the existing housing base, but rather helps suppress existing home prices and rents.**"⁵² This finding is consistent with the September 2016 San Francisco Controller's report.⁵³

As for the relationship between gentrification and displacement, ALH found that based on the literature reviewed, changes to a neighborhood do not trigger displacement of existing residents. ALH found that "[i]n general, leading experts in the field appear to coalesce around the understanding that there is weak causation between gentrification and displacement, with some experts concluding

⁴⁸ See 1515 South Van Ness board packet [Board File No. 161001] included under separate cover and added to the administrative record for this Project.

⁴⁹ ALH, "Socioeconomic Effects of Market Rate Development on the Calle 24 Latino Cultural District, San Francisco CA" March 2017. p. 1

⁵⁰ See, "Median Market Rents Tumble 9 Percent Since 2016" S.F. Curbed, March 1, 2017 <http://sf.curbed.com/2017/3/1/14779370/san-francisco-average-rent-march-2017> and "San Francisco Rent Growth Slows Following New Supply Output, Inman October 11, 2016 <http://www.inman.com/2016/10/11/san-francisco-rent-growth-slows-following-new-supply-output/>

⁵¹ ALH, "Socioeconomic Effects of Market Rate Development on the Calle 24 Latino Cultural District, San Francisco CA" March 2017. p. 2.

⁵² ALH, "Socioeconomic Effects of Market Rate Development on the Calle 24 Latino Cultural District, San Francisco CA" March 2017. p. 2.

⁵³ San Francisco Controller, "Inclusionary Housing Working Group Preliminary Report September 2016." p. 17.

that the ability for residents to relocate or move (i.e., mobility rates) are not distinguishable between neighborhoods experiencing gentrification and neighborhoods not experiencing gentrification.”⁵⁴

ALH’s findings are even supported in the report cited by the Appellant.⁵⁵ According to ALH, the Zuk and Chappelle report, “appears to conclude that at the local level in San Francisco, the relationship between gentrification and displacement is indeterminate.”⁵⁶ The ALH analysis and literature review does not downplay the reality of displacement in San Francisco. Instead, it provides insight into the causes of displacement, which are more general in nature and driven by macro-economic forces not neighborhood level market-rate residential development.

C. The Socio-Economic Issues of Gentrification And Displacement Do Not Meet The Level Of Physical Impacts Required Under CEQA.

Appellant’s socio-economic concerns are not CEQA issues as evidenced by the detailed and extensive substantial evidence in the record. ALH analyzed this issue specifically, in its report which addressed whether socio-economic issues of displacement and gentrification in the Latino Cultural District and the Mission District were properly studied in the context of CEQA. Citing CEQA Guidelines, case law and City’s position summarized in this letter above, ALH confirms that CEQA is limited to impacts that result in significant physical environmental impacts. Displacement and gentrification in the Latino Cultural District and the Mission District “does not demonstrate the significant physical impact required under CEQA to warrant further review [based on] [t]he evidence cited [by the Appellants] as well as research and literature review conducted by ALH Economics, supports this conclusion.”⁵⁷ ALH noted that there are very few instances where physical changes in the environment have been linked to social or economic effects and that questions of community character are not CEQA issues.⁵⁸

“Changes in the types of businesses, cost of housing or demographics in a project area are not considered physical environmental impacts under CEQA. These are examples of social and economic effects, not physical environmental impacts.”⁵⁹

The law is firmly established that CEQA does not include economic or social effects such as changes to community character.⁶⁰ No evidence has been provided by the Appellant to meet the legal threshold noted above to establish those effects as physical impacts on the environment subject to CEQA review. Moreover, the City has on numerous occasions found that infill housing, like what is

⁵⁴ ALH, “Socioeconomic Effects of Market Rate Development on the Calle 24 Latino Cultural District, San Francisco CA” March 2017. p. 24.

⁵⁵ Miriam Zuk, Karen Chapple, “Housing Production, Filtering and Displacement: Untangling the Relationships,” University of California, Berkeley, Institute of Governmental Studies Research Brief (May 2016) www.urbandisplacement.org/sites/default/files/images/udp_research_brief_052316.pdf

⁵⁶ ALH, “Socioeconomic Effects of Market Rate Development on the Calle 24 Latino Cultural District, San Francisco CA” March 2017.

⁵⁷ ALH, “Socioeconomic Effects of Market Rate Development on the Calle 24 Latino Cultural District, San Francisco CA” March 2017. p. 27.

⁵⁸ ALH, “Socioeconomic Effects of Market Rate Development on the Calle 24 Latino Cultural District, San Francisco CA” March 2017. p. 26.

⁵⁹ Staff Report Page 8.

⁶⁰ Pub Res Code §21060.5, 14 Cal. Code Regs. §§ 15141, subd. (a); 15360; *Preserve Poway v. City of Poway* (2016) 245 Cal. App. 4th 560, 581; *Cathay Mortuary, Inc. v. San Francisco Planning Com.* (1989) 207 Cal.App.3d 275, 280.

being proposed by the Project, actually assists in *avoiding and mitigating* impacts on traffic and air emissions.⁶¹

IV. THE NECESSARY FINDINGS CANNOT BE MADE UNDER CEQA FOR FURTHER CEQA REVIEW

Given the “strong presumption” against further CEQA review when a previous EIR has already been certified, the Board would need to make a series of mandatory findings to legally order further CEQA review. Those findings cannot be a “post hoc rationalization.”⁶² The draft motion before the Board granting the appeal of the CPE, directs staff to prepare findings to support that determination. Before taking that motion and legally ordering further CEQA review, the Board must first determine that the mandatory prerequisites for further CEQA review have been met. In this case, based on the evidence presented, those findings simply be made.

The Appellants have not met the high burden for a new CEQA analysis. To meet that burden there needs to be substantial evidence of *all* of the following: (1) displacement caused by the Project (2) that causes physical impacts on the environment (3) that could not have been known at the time of the EN PEIR or which would require “substantial revision” of the EN PEIR, and (4) impacts that are “peculiar” to this project or its location.

As noted throughout this letter, there is not substantial evidence of *any* of the above, much less *all* of the above. Without substantial evidence in the record before the Board to justify ordering further CEQA review, the high evidentiary bar for further CEQA analysis cannot be cleared and the CPE must be upheld.

* * * * *

In sum, the law is clear as to what is required to overturn the CPE determination. The Appellant has not met that burden nor is there substantial evidence in the record to support not preparing a CPE. The robust administrative record and significant substantial evidence within it, all support the preparation of a CPE. To overturn that decision the Board of Supervisors must make findings that legally cannot be made based on the evidence before it.

For all these reasons, we respectfully request that you reject the appeal and uphold the CPE.

Very truly yours,



Alexis M. Pelosi

⁶¹ See, e.g., San Francisco 2004 and 2009 Housing Element EIR (http://sfmea.sfplanning.org/2007.1275E_CR.pdf), 5M EIR (http://sfmea.sfplanning.org/2011.0409E_RTC-Final.pdf); SF Greenhouse Gas Reduction Strategy, pp. V-13 & 16, available online at http://sfmea.sfplanning.org/GHG_Reduction_Strategy.pdf); Eastern Neighborhoods Rezoning and Area Plans EIR, pp. 361-362, available online at http://sf-planning.org/sites/default/files/FileCenter/Documents/4003-EN_Final-EIR_Part-7_Trans-Noise-AQ.pdf

⁶² *T-Mobile South, LLC v. City of Roswell, Ga.* (U.S. 2015) 135 S.Ct. 808, 816, n. 3; see also *Topanga Assn. for a Scenic Cmty. v. Cty. of Los Angeles*, 11 Cal. 3d 506, 514 (1974).