

From: [Carlos Bocanegra](#)
To: [BOS Legislation, \(BOS\)](#)
Subject: Fwd: Additional Document for Appeal of CEQA Community Plan Evaluation - Proposed 2300 Harrison Street Project - Appeal Hearing on August 18, 2019
Date: Friday, August 7, 2020 4:37:57 PM
Attachments: [Documentation for CEQA Appeal of 2300 Harrison.pdf](#)

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Hello,

Forwarding this message to this address as well to ensure the document attached is received. Please reply with confirmation.

Thank you.

Best Regards,
Carlos Bocanegra

----- Forwarded message -----

From: **Carlos Bocanegra** <cebocanegra@dons.usfca.edu>
Date: Fri, Aug 7, 2020 at 4:31 PM
Subject: Additional Document for Appeal of CEQA Community Plan Evaluation - Proposed 2300 Harrison Street Project - Appeal Hearing on August 18, 2019
To: <Board.of.Supervisors@sfgov.org>
Cc: <brent.jalipa@sfgov.org>

To Whom it May Concern,

Please find attached an additional document I am sending for the Board of Supervisors' review and for inclusion into the record.

Thank you.

Carlos Bocanegra



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August 7, 2020

Hon. Norman Yee, President
San Francisco Board of Supervisors
#1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102

**Re: Case No. 2016-010589 ENX 2300 Harrison Street
Appeal of the December 12, 2019 Planning Commission Decision**

Dear President Yee and Members of the Board of Supervisors:

Please accept this submission appealing the decision of the Planning Commission made on December 12, 2019 regarding the proposed project at 2300 Harrison Street (hereafter “proposed project”).

The current proposed project will build an additional 27,017 square feet of office, and *connect* these office floors with the existing building. In essence, it will create 95,555 square feet of unified office space. The proposed project is inconsistent with both the General Plan and Mission Area Plan policies and therefore does not qualify for review pursuant to CEQA Guideline Section 15183.

The project directly conflicts with core guidelines of the Mission Area Plan and General Plan policies. Including our Mission Area Plan policies which precisely prescribe protecting a diverse economic base and protecting the Mission’s industrial service sectors from displacement by commercial office development, and creating resident opportunities for employment and ownership. It is also in direct conflict with the General Plan Priority Policy of maintaining a diverse economic base by protecting our industrial service sectors from displacement due to commercial office development, and that future opportunities for resident and employment and ownership in these sectors be enhanced.

The project is also demonstrably inconsistent with the Mission Area Plan Objectives. This is a project with minimal housing and an extremely high concentration of office use which does nothing to either preserve and protect PDR space or limit office space as prescribed in Objectives Mission Area Plan. The overabundance of office use also fails to protect a diverse array of jobs as prescribed within the plan.

With an abundance of evidence that this project is fully inconsistent with these Area Plans, Policies, and Objectives, this project's adoptions of its Community Plan Exemption and Initial Study are invalidated under CEQA Guidelines Section 15183.

Summary

The project sponsor proposes to construct a 75-foot tall, 77,365 square foot vertical addition to an existing 3-story, 42-foot tall, 68,538 square foot office building, resulting in a mixed-use building with 24 dwelling units, 27,017 square feet of additional office space, 2,483 square feet of ground floor retail, and 1,117 square feet of ground floor arts activities/retail space within the UMU (Urban Mixed Use) Zoning District, and 68-X Height and Bulk District.. Notably, it is also adjacent to the campus of John O'Connell Technical High School whose mission is to *maintain an equitable community* for its school. The only environmental review for the project consisted of a Community Plan Evaluation Certificate of Evaluation¹ (hereafter "CPE") and Initial Study that tiered off the 2008 Eastern Neighborhoods Plan Environmental Impact Report (PEIR)². The project would accompany and conjoin an existing tech office space of 67,000 sq. ft. of industrial space that was illegally converted to office space before being legalized in 2011.

Standard of Review

The Board must use the following standard of review under CEQA:

The proposed project incorporated the Eastern Neighborhoods PEIR through CEQA Guideline 15183 and the assertion that the proposed project is consistent with and encompassed within the analysis in the Eastern Neighborhoods PEIR, including its consistency with the Mission Area Plan and General Plan.

CEQA Guideline 15064 guides Agency decisions as to the significance of the environmental effects caused by a project. CEQA Guideline 15064(a)(1) states, "if there is substantial evidence, in light of the whole record before a lead agency, that a project *may* have a significant effect on the environment, the agency shall prepare a draft EIR." (italics added)

Further, CEQA Guideline 15064(b) cautions, "the determination of whether a project may have a significant effect on the environment calls for *careful judgment* on the part of the public agency." (italics added)

¹ Exhibit A

² Exhibit B

Further, CEQA Guideline 15064(c) states, “[i]n determining whether an effect will be adverse or beneficial, the *Lead Agency shall consider the views held by members of the public* in all areas affected as expressed in the whole record before the agency.” (italics added)

In making this determination CEQA Guideline 15063(f) subsections (1) establishes: “(1).... if a lead agency is presented with a *fair argument* that a project *may* have a significant effect on the environment, the lead agency shall prepare an EIR *even though* it may also be presented with other substantial evidence that the project will not have a significant effect.” *No Oil, Inc. v. City of Los Angeles* (1974)13 Cal. 3d 988) (italics added)

As noted by the Supreme Court, “[i]f there is substantial evidence that the proposed project might have a significant environmental impact, evidence to the contrary is not sufficient to support a decision to dispense with preparation of an EIR and adopt a negative declaration, because it [can] be ‘fairly argued’ that the project *might* have a significant environmental impact.” *Berkeley Hillside Preservation v. City of Berkeley* 60 Cal.4th 1086, 1112 (2015).

Additionally, the Court affirmed, “we observed in *No Oil* that ‘the word ‘*may*’ connotes a ‘*reasonable possibility.*’” (italics added) *Id.* at 1115. One of the factors cited in reaching their conclusion was the Court’s determination that, “the Legislature intended that CEQA be interpreted to afford the fullest protection to the environment within the reasonable scope of the statutory language.” *Id.* at 1111.

Finally, the Court in *Gentry v. City of Murrieta* also established that an, “agency [will] not be allowed to hide behind its own failure to gather relevant data.... CEQA places the burden of environmental investigation on the government rather than the public. If the local agency has failed to study an area of possible environmental impact, a fair argument may be based *on the limited facts in the record.* Deficiencies in the record may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences.” 36 Cal.App. 4th 1359, 1379 (1995).

We trust that the Board will take these standards of review to heart in making their decision.

A. THE PROPOSED PROJECT IS INCONSISTENT WITH THE COMMUNITY PLAN, ZONING ACTION, AND GENERAL PLAN AND DOES NOT QUALIFY FOR REVIEW UNDER CEQA GUIDELINE 15183

CEQA Guideline 15183 creates, “a streamlined review for qualifying projects that are consistent with a general plan for which an EIR was certified.” *Wal-Mart Stores Inc. v. City of Turlock*, 138 Cal.App. 4th 273, 286 (2006).

More explicitly, CEQA Guideline 15183(d) states that the Section, “*shall only apply to projects* which meet the following conditions: (1) The project is consistent with: (A) A community plan

adopted as part of a general plan, (B) A zoning action which zoned or designated the parcel on which the project would be located to accommodate a particular density of development, or (C) A general plan of a local agency.” (italics added) The proposed project is inconsistent with these conditions and therefore did not qualify for review pursuant to CEQA Guideline Section 15183.

1. The Proposed Project is Inconsistent with the Mission Area Plan which was Incorporated as Part of the General Plan

As part of the condition that the proposed project qualify for review under CEQA Guideline 15183, *it must be consistent with the Mission Area Plan* which was adopted as part of the Eastern Neighborhoods Plan and incorporated into the General Plan.³

Before examining the inconsistencies of the project with the Mission Area Plan, it is useful to first delineate the community as it was identified in the Eastern Neighborhoods Environmental Impact Report (hereafter referred to as “EN EIR”) and Mission Area Plan. The EN EIR identified several unique characteristics for the communities living in the Eastern Neighborhoods and Mission, particularly, as well as the importance of PDR to these communities:

“At just under three persons per household, the average household in the Mission is 30 percent larger than the average household in San Francisco... Over 90 percent of the children in the plan area under the age of 18 live in the Mission and in Showplace Square/Potrero Hill... The Eastern Neighborhoods have a greater racial and ethnic mix that varies among neighborhoods... Almost 30 percent of the City’s Latino residents live in the Eastern Neighborhoods, almost all (90 percent) of them live in the Mission-- an established Latino cultural hub for San Franciscans and the entire Bay Area... [in] the Mission, 40-45 percent of the population are foreign-born... Non-citizens are concentrated in the Mission, where 65 percent of the foreign-born are not citizens... A high percentage (46 percent) of the people living in the Eastern Neighborhoods do not speak English at home... a relatively large segment of the adult population has not graduated from highschool... The percentage is highest in the Mission, where almost 30 percent do not have a high school diploma... The generally lower educational attainment for some residents of the Eastern Neighborhoods translates to a higher proportion of workers in lower-wage jobs that do not require college degree... A disproportionate share of the City’s residents holding occupations with lower skills requirement and lower wages lives in the Eastern Neighborhoods... The Mission is the only neighborhood where construction trades workers (occupations that garner mid-level wages) rank in the top ten... PDR businesses account for almost half (45 percent) of all jobs in the Eastern Neighborhoods... Just under one-half (45 percent) of all PDR employment in San Francisco is located in the Eastern Neighborhoods... Wage levels in production distribution, and repair occupations are consistently higher than wage levels in

³ <https://generalplan.sfplanning.org/Mission.htm>

sales and service occupations... Furthermore, these type of jobs have historically relied upon the immigrant labor pool.”⁴

It is also important to note that the EN EIR identified that the “density of the business activity also influences sensitivity to space costs... PDR businesses that require large floor areas for vehicles, equipment, inventory, or production processes can afford relatively low rent on a per square basis and are vulnerable to competition from higher-rent paying uses.”⁵

Finally, in describing the Mission community and importance of blue-collar space (PDR) to the Mission, the Mission area plan states,

“The Mission is a neighborhood of strong character and sense of community developed over decades. This area is home to almost 60,000 people, with Latinos comprising over half the population... many in households substantially larger and poorer than those found elsewhere in the City... the *mix* of uses makes it possible for many residents to live and work in the same general area... PDR businesses, concentrated in the *Northeast Mission*, provide jobs for about 12,000 people, making PDR businesses the largest employers in the Mission... the following *community-driven* goals were developed specifically for the Mission, over the course of many public workshops: Preserve diversity and vitality of the Mission... Preserve and enhance the existing Production, Distribution, and Repair businesses.”⁶ (italics added)

We would respectfully ask the Supervisors to keep these unique characteristics of the Mission community and importance of PDR in maintaining both *economic and cultural diversity* within the district in mind while determining this proposed project’s inconsistency with the Mission Area Plan.

a. The proposed project is inconsistent with Objective 1 of the Mission Area Plan

Objective 1 of the Mission Area Plan, “presents the vision for the use of land in the Mission. It identifies activities that are important to protect or encourage and establishes their pattern in the neighborhood. This pattern is based on the need to increase opportunities for new housing development, *particularly affordable housing, retain space for production distribution and repair (PDR) activities...*”⁷ (italics added)

This objective was established to,

⁴ https://archives.sfplanning.org/documents/4001-EN_Final-EIR_Part-6_PopHousEmploy.pdf

⁵ https://archives.sfplanning.org/documents/4001-EN_Final-EIR_Part-6_PopHousEmploy.pdf

⁶ <https://generalplan.sfplanning.org/Mission.htm>

⁷ <https://generalplan.sfplanning.org/Mission.htm>

“ensure the Mission remains a center for immigrants, artists, and innovation, the established land use pattern should be reinforced. This means protecting established areas of *residential, commercial, and PDR*, and ensuring that areas have become *mixed-use* over time to develop in such a way that they *contribute positively* to the neighborhood. A place for living and working also means a place where... a *diverse array of jobs is protected*, and where goods and services are oriented to *serve the needs of the community*. For the Mission to continue to function this way, land *must be designated for such uses and controlled in a more careful fashion*”⁸ (italics added)

Objective 1.1 identifies the, “challenge in the Mission is to strengthen the neighborhood’s mixed-use character, while taking clear steps to *protect and preserve* PDR businesses, which provide jobs and services essential for this city[,]”⁹ maintaining the neighborhood as a place to live and work for our immigrant families and families of color. The Plan’s approach to land use controls established two key elements for the former Northeast Mission Industrial Zone (hereinafter referred to as “NEMIZ”) both of which included, “establishing new controls that would limit new office and retail development.”¹⁰

Policy 1.1.2 called for the creation of a mixed-use zone within the NEMIZ that would allow, “mixed income housing as a principle use, as well as *limited* amounts of retail, *office*, and research and development uses, while protecting against the wholesale displacement of PDR uses.” (italics added)

In these objectives and policies there is a clear directive *to protect PDR and limit new office*. This project proposal is clearly inconsistent with these objectives and policies.

Since the Mission Action Plan 2020 (hereinafter referred to as “MAP 2020”) process first began, this City has been tracking the net loss and gain of PDR and office within the Mission. In its most recent 2019 report, MAP 2020 reported that since 2011, the Mission has gained **235,840** square feet of office space while losing a staggering **481,988** square feet of PDR.¹¹

Rather than promote development that protects or strengthens PDR and mixed-uses the City has up until this point allowed predatory market forces intent on maximizing their profits to become the guiding principles of the vision of development. That must end. Both the General Plan and the Mission Area Plan demand this equitable change.

The current proposed project will build an additional 27,017 square feet of office, and connect these office floors with the existing building. In essence, it will create 95,555 square feet of

⁸ <https://generalplan.sfplanning.org/Mission.htm>

⁹ <https://generalplan.sfplanning.org/Mission.htm>

¹⁰ <https://generalplan.sfplanning.org/Mission.htm>

¹¹ https://default.sfplanning.org/Citywide/Mission2020/MAP2020_Status_Report_2019.pdf

unified office space. PDR uses are vulnerable to competition from higher-rent paying uses, and permitting over 95,000 square feet of high-end office space will substantially contribute to the alarming displacement of PDR businesses.

This is a project with minimal housing and an extremely high concentration of office use. The housing and PDR component of this project combined (21,052 sq. ft.) are not enough to overcome the overabundance of office that was permitted (27,017 sq. ft.). The City has acknowledged that PDR loss is a problem, so how does adding close to 100,000 square feet of unified high-end tech office, with potential “tenants [who] are willing to pay well over twice what PDR commands — creative tech space goes for \$70 a square foot in SoMa or the Inner Mission[–]”¹² this agency would be undermining the goals of objective 1.7 of the Mission Area Plan in, “retaining the Mission’s role as an important location for....(PDR) activities[,]” in affirming this proposed project’s consistency with the Mission Area Plan. A failure to uphold the objectives and policies of the Mission Area Plan will be one more nail in the coffin for the northeast Mission’s identity as an important center for PDR as well as assuring a diversity and availability of jobs across all economic sectors and, “providing a wide range of employment opportunities for San Francisco’s diverse population.”¹³

The objectives and policies listed above are the guiding principles that should inform agency decision-making. The northeast Mission is a delicate ecosystem with a diverse population, many of whom are immigrants and without college education, who depend on City officials to ensure that projects moving toward entitlement are consistent with the objectives and policies of the Mission Area Plan. This proposed project is anything but consistent with the objectives and policies of the Mission Area Plan. Community Plans are vitally important to a city, yet they can only meaningfully create the co-created vision of Community and City insofar as you empower the words of the Mission Area Plan to hold any meaning.

The area in which this project is proposed is one of urban mixed-use, not urban homogenous-use. The citizens and residents of the Mission have entrusted the Board of Supervisors as caretakers of the Mission ecosystem (from housing, to commerce, to transit) and guardians of their needs and the needs of the area. The proposed project is inconsistent with the Mission Area Plan. Office is incompatible in this area because an overabundance of it, 68,538 sq. ft., already exists on site. To permit any additional office will only exacerbate the pattern of inflated commercial prices, displacement of PDR from UMU, and further inconsistency with the Mission Area Plan. This proposed project is inconsistent with this Community Plan and therefore does not qualify for the review process established in CEQA Guideline 15183.

¹² <https://www.sfchronicle.com/bayarea/article/Offices-intruding-on-SF-space-zoned-for-6889809.php>

¹³ <https://generalplan.sfplanning.org/Mission.htm>

b. The proposed project is inconsistent with the general plan, the section 101.1(b) priorities in particular, and therefore does not qualify for review pursuant to CEQA Guideline 15183

The General Plan is, “intended to be an integrated, internally consistent and compatible statement of objectives and policies and its objectives and policies are to be construed in a manner which achieves that intent.”¹⁴ Priority Policies guide the General Plan and are prescribed as , “they shall be included in the preamble to the General Plan and *shall be the basis upon which inconsistencies in the General Plan are resolved.*” (italics added) In particular, the proposed project is inconsistent with the following:

The proposed project is inconsistent with Priority Policy 5 which states that, “a diverse economic base be maintained by protecting our industrial service sectors from displacement due to commercial office development, and that future opportunities for resident and employment and ownership in these sectors be enhanced.”¹⁵

It was also acknowledged in the EN PEIR, “density of the business activity also influences sensitivity to space costs... PDR businesses that require large floor areas for vehicles, equipment, inventory, or production processes can afford relatively low rent on a per square basis and are vulnerable to competition from higher-rent paying uses.”¹⁶

Permitting 95,555 square feet of high-end office in one location will undoubtedly influence sensitivity to space costs and displace vulnerable PDR businesses who will be unable to compete with the higher-rents that will result. This outcome is inconsistent with this Priority Policy.

Further, Priority Policy 1 states, “That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in ownership of such businesses be served.”¹⁷

The proposed project is one that would not provide opportunities for resident employment. As mentioned above, the Mission is characterized as an area with a community that is primarily of latinx and/or of immigrant origin. Many of whom are either monolingual or have not obtained a college degree. With 95,555 sq. ft. of high-end office, and the lucrative nature of office space, it is a reasonable possibility that the proposed project and its adjacent building will be occupied by one or more tech firms. A former occupant and master tenant of the existing office area was Lyft. This tech company is indicative of the lack of opportunity that will exist for resident

¹⁴ <https://generalplan.sfplanning.org/>

¹⁵ <https://generalplan.sfplanning.org/>

¹⁶ <https://generalplan.sfplanning.org/>

¹⁷ <https://generalplan.sfplanning.org/>

employment (as defined by the EN PEIR). In 2019, their inclusion and diversity report showed that Latinx individuals were only 5.2% of their tech operations and a dismal 3.3% of their tech leadership. (Exhibit C, p.9). Considering the existing residents of the Mission as described by the EN PEIR, a high-end tech office will not provide any future opportunities for Mission resident employment for both immigrants and people of color. The proposed addition of office is inconsistent with this policy.

Finally, Priority Policy 2 states, “That existing housing and neighborhood character *be conserved and protected* in order to preserve the cultural and economic diversity of our neighborhoods.”¹⁸

A unified 95,555 square feet of office space can be expected to have harmful impacts on the existing neighborhood character, its most vulnerable residents, and will only contribute to increasing displacement of PDR, while only adding a trivial 1,117 square feet of arts activities and 2,483 square feet of retail. In this regard, the proposed building cannot be looked at in isolation of the existing building as both the 2nd and 3rd stories of the proposed and existing building will be connected. This leads to the conclusion that the building as proposed will have only 3,600 square feet of arts activities/ retail while retaining 95,555 square feet of reasonably foreseeable high-end office. This imbalance will only exacerbate the growing income inequality that exists in this part of the Mission, contribute to further displacement of PDR, and is therefore inconsistent with this Priority Policy.

Further as noted above, tech companies like Lyft have extremely low Latinx employment and , therefore, do not serve to preserve a diverse array of jobs for our Latinx community and other communities of color. Rather, it further destabilizes it in a way that is inconsistent with the Mission Area Plan. The Mission Area Plan specifically acknowledges that the area has an overriding Latino identity, and this office space will not enhance either their future opportunity or employment.

Due to this project’s inconsistency with the General Plan, as detailed in numerous clear examples above, this project is disqualified from the review process of CEQA Guideline 15183, should be denied by this Board, and mandate a detailed and meaningful EIR to ensure consistency with the General Plan and proper environmental review.

Conclusion

In conclusion, this project is inconsistent with the Community Plan, General Plan, and Zoning action which zoned or designated the parcel on which the project is located. As such, it was ineligible for environmental review through CEQA Guideline 15183 as was attempted by the Lead Agency. CEQA Guideline 15183 is inapplicable to this proposed project and it’s EIR

¹⁸ <https://generalplan.sfplanning.org/>

should be denied for further meaningful review. Failure to conduct this environmental review and ensure the proposed project's consistency with the General and Mission Area Plans requires that the proposed project go back until it is made consistent with the General Plan and Mission Area Plan, particularly through a racial and social equity analysis for the communities of colors and immigrant communities established in the Mission Area Plan. This action also finds itself in alignment with the recent Race and Social Equity Resolution made by the Planning Commission.¹⁹

Respectfully,

Carlos Bocanegra

¹⁹ https://sfplanning.org/sites/default/files/documents/admin/R-20738_Centering_Planning_on_Racial_and_Social_Equity.pdf