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September 11, 2020

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**VIA E-MAIL (BOARD.OF.SUPERVISORS@SFGOV.ORG)**

President Yee and Members of the Board of  
Supervisors of the City and County of San  
Francisco  
Clerk of the Board of Supervisors  
1 Dr. Carlton B. Goodlett Place,  
City Hall, Room 244,  
San Francisco, CA 94102-4689

Re: 178 Seacliff Ave. Appeal Response to Applicant's Comments

Dear President Yee and Members of the Board of Supervisors:

We have received the Project Sponsor’s response letter, dated September 4, 2020, (the “Response Letter”) and the Planning Department’s memorandum, dated September 8, 2020, (the “Planning Department Memorandum”) addressing Mountain Lake Properties, LLC’s appeal of the Planning Commission’s action to approve the proposed Project at 178 Seacliff Avenue (the “Property”) (a contributing structure to the Sea Cliff Historic District). The Planning Department Memorandum and the Response Letter improperly mischaracterize the decision before the Board of Supervisors at your meeting on Tuesday regarding the 178 Seacliff Avenue Project.

The Project Sponsor proposes to demolish the existing residence located on the Property and construct a new, three-story modern structure in its place (the “Project”). Mountain Lake Properties has appealed the Planning Commission’s decision to deny the discretionary review appeal because the City’s approval of the Project does not comply with the City’s own residential design guidelines as applied to other projects in Sea Cliff. Moreover, the Planning Department has not complied with the California Environmental Quality Act (“CEQA”) with respect to the Project’s potential significant adverse impacts on the Sea Cliff Historic District.

**The Planning Department has not Overcome a Fair Argument that the Project May Result in a Significant Impact to a Historic Resource.**

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Without discussing any exceptions to the categorical exemptions, the Project Sponsor and Planning Department misconstrue CEQA's requirements for determining the significance of a project's impacts. The Planning Department relied on a Class 3 categorical exemption since the project involves new construction of a small structure. Before determining if a Project may proceed in reliance on the categorical exemption, the Planning Department first must determine if the Project may have a significant environmental impact to historic resources among other environmental considerations. Here, the Planning Commission improperly determined that the Project is categorically exempt from CEQA despite the potential significant adverse impacts to the Sea Cliff Historic District.

There are at least two exceptions to the exemptions that apply to this Project. Categorical exemptions are impermissible "when the **cumulative impact of successive projects** of the same type in the same place, over time is significant" or for projects that "may cause a substantial **adverse change in the significance of a historical resource.**" (CEQA Guidelines, § 15300.2(b), (f) (emphasis added).) A cumulative impact occurs when "two or more effects which, when considered together, are considerable or which compound" other environmental impacts. (*Aptos Residents Assn. v. County of Santa Cruz* (2018) 20 Cal.App.5th 1039, 1049.

There is no dispute that the Sea Cliff neighborhood is eligible for listing on the California Register as the Sea Cliff Historic District according to the Planning Department and Project Sponsor's own documents. The Project Sponsor is proposing to demolish one of the first buildings representative of the original Bolles development in the Sea Cliff Area as discussed in the HRER. The Project involves a physical change to a historic resource under CEQA Guidelines Section 15064.5. The Planning Department and Project Sponsor however, claim that the Project will not cause a **substantial adverse** change in the significance of the historic district because the existing residence (that will be demolished) is not individually eligible for listing as a historic resource, and because the Sea Cliff Historic District will remain a historic district.

While the existing residence may not be individually eligible for inclusion in the California Register, the Planning Department confirmed the residence is a "contributor" to the historic district. (Historic Resource Evaluation Response ("HRER"), pt. I, p. 3.) The Sea Cliff Historic District is historic *because of* its contributing residences. The architectural themes and the "high level of architectural consistency" are the some of the defining aspects of the neighborhood. (*Id.* at p. 2.) In fact, all other residences, but one, that have been altered within the Sea Cliff Historic District, were altered in a manner to maintain compatibility with the existing structures in the Historic District. Moreover, the Planning Department's analysis confirms that no buildings have been demolished within the Sea Cliff Historic District after 2006. Here, the Planning Department and Project Sponsor claim that demolition of the 178 Sea Cliff Avenue residence will not cause a substantial adverse change in the Sea Cliff Historic District because demolishing one contributing structure would not significantly impact the eligibility of the Sea Cliff Neighborhood as a historic district. This is because the other building modifications have

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complied with the City's guidelines and maintained compatibility with the Historic District. In other words, the Project Sponsor and Planning Department claim that the physical change caused by this Project is not significant because everyone else complied with San Francisco's requirements to maintain compatibility with the very architectural features that characterize the Sea Cliff neighborhood as a Historic District. This rationale is inconsistent with the required review of whether or not *this* Project causes a substantial adverse change to a historic resource.

Further, the appropriate cumulative impacts analysis requires that the City evaluate whether the demolition of "two or more" contributing structures to the Sea Cliff Historic District "over time is significant." Because Sea Cliff's existing architecture is the defining aspect of the neighborhood, successive alterations and demolitions inherently impact the nature of the neighborhood, and thus extinguish any recognition of the historic district. For this very reason, "[s]ince identified as an eligible historic district in 2006, all but one project in the area has conformed with" the Secretary of the Interior's Standards for the Treatment of Historic Properties (the "Interior Secretary's Standards"). (HRER, pt. II, p. 4.) No demolitions have occurred since Sea Cliff was recognized as an eligible historic district. This Project cannot be allowed to defy neighborhood norms while conformance has been required of all other projects.

For this reason, a categorical exemption is not permissible here. Instead, if the Project is not modified to be compatible with the existing buildings in the Sea Cliff Historic District, an environmental impact report ("EIR") is required under CEQA. An EIR would disclose the Project's compatibility with the district, assess adequacy of proposed mitigation measures, discuss alternative designs, and assess their feasibility within the context of the existing setting. (*Protect Niles v. City of Fremont* (2018) 25 Cal.App.5th 1129, 1149.)

### **The Project Sponsor misunderstands the importance of the Secretary of the Interior's Standards for the Treatment of Historic Properties.**

Frederic Knapp of Knapp Architects evaluated the incompatibility between the proposed Project and its immediate surroundings within the Historic District (the "Knapp Memorandum"). There is no dispute according to the Planning Department's own analysis that the new house is incompatible with the other residences in the Sea Cliff Historic District. The Knapp Memorandum included in our appeal letter specifically identified the points of incompatibility and analyzed the Project's impact to the historic resources of the Sea Cliff Historic District. Additionally, Mr. Knapp detailed the applicability, usefulness, and importance of the Interior Secretary's Standards in determining how a future residence could be designed to be compatible. Mr. Knapp concluded that the Project may cause a significant impact because it is incompatible with certain of the Secretary of Interior's Standards for the Treatment of Historic Properties.

According to the Project Sponsor, however, compatibility with the Secretary's Standards is not the applicable legal standard. By contrast, Mr. Knapp explained that they are the "foremost

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guide in the United States for the appropriate treatment of the buildings, landscapes, structures, and districts that are important historically.” (Knapp Memorandum, p. 6.) The Knapp Memorandum notes that “in assessing a proposal for new construction in a historic district, the Standards for Rehabilitation would apply.” (*Id.*)

In our appeal, we explained that projects which may otherwise qualify for a categorical exemption cannot invoke the exemption when the project “may cause a substantial adverse change in the significance of a historical resource.” (CEQA Guidelines, § 15300.2(f).) A project that “may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment.” (Pub. Res. Code, § 21084.1.) A substantial adverse change to a historic resource includes “physical demolition” or “destruction” of that resource. (CEQA Guidelines, § 15064.5(b)(1).)

The CEQA Guidelines do, however, allow projects that generally conform to the Interior Secretary’s Standards to “be considered as mitigated to a level of less than a significant impact on the historical resource.” (*Id.*, § 15064.5(b)(3).) We referenced the Secretary’s Standards in our appeal letter and in the Knapp Memorandum to show how the Project’s significant impacts to the historic district could be mitigated to a less than significant level. Mitigation by conforming to these standards has been required of “all but one project” since Sea Cliff was identified as an eligible historic district in 2006. (HRER, pt. II, p. 4.) Again, the City should require of this Project the same levels of compliance it has required of other renovation projects in Sea Cliff in accordance with its own Residential Design Guidelines and standards.

### **The Project Sponsor confuses historic resources impacts with aesthetic impacts.**

The Project Sponsor states that CEQA expressly provides that infill residential projects in transit priority areas cannot have significant aesthetics impacts, but this is not an infill site in a transit priority area.

*Protect Niles v. City of Fremont* (2018) and *Georgetown Preservation Society v. County of El Dorado* (2018) evaluated project impacts on the surrounding historic district. For the purposes of impacts to the historic resources in those cases, a review of aesthetics is critical. “A project’s visual **impact on a surrounding** officially-designated **historical district** is appropriate aesthetic impact review under CEQA.” (*Protect Niles v. City of Fremont* (2018) 25 Cal.App.5th 1129, 1145 (emphasis added).) In *Georgetown*, the Court of Appeal determined that an EIR was appropriate where project aesthetics “in *this* location *might* significantly impair the central district’s unique and treasured Gold Rush character.” (*Georgetown Preservation Society v. County of El Dorado* (2018) 30 Cal.App.5th 358, 376 (emphasis in original).) Those situations are no different than the circumstance here. The Project Sponsor argues that, the size of the developments in *Protect Niles* and *Georgetown* makes them inapplicable to the Project here. Instead, the Project Sponsor incorrectly argues that *McCorkle* controls, but *McCorkle* is not

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controlling because this Project must be excepted from the cited Class 3 exemption because of its “substantial adverse change in the significance of a historical resource.” (CEQA Guidelines, § 15300.2(f).) – a situation not considered in *McCorkle*. The *McCorkle* case never evaluated the impact of a demolition of a contributing structure to a historic district. If anything, because of the unique impacts here, and the potential for significant cumulative impacts, this Project should receive greater scrutiny than the projects evaluated in *McCorkle*, *Protect Niles*, and *Georgetown*.

Additionally, the Project Sponsor misapplies Section 21099(d) of the Public Resources Code. While the citation is correct, the Project Sponsor neglects to quote the remaining text of subdivision (d), which states that:

- This subdivision does not affect, change, or modify *the authority of a lead agency to consider aesthetic impacts pursuant to local design review ordinances or other discretionary powers* provided by other laws or policies. (Pub. Res. Code, § 21099(d)(2)(A).)
- For the purposes of this subdivision, aesthetic impacts ***do not include impacts on historical or cultural resources.*** (*Id.*, § 21099(d)(2)(B).)

The City, therefore, *does* retain the authority to review the Project’s design under its discretionary powers. Our appeal respectfully requests that the Board of Supervisors apply the same rules to projects moving forward with modifications and demolition of contributing structures to the Sea Cliff Historic District. To exempt one project from complying with the rules because everyone else complied turns CEQA on its head.

Regards,

BUCHALTER  
A Professional Corporation



By

Alicia Guerra  
Shareholder

cc: Angela Calvillo, Clerk of the Board of Supervisors  
Kate Stacey  
Mayor London Breed  
Lance Geersten  
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