



SAN FRANCISCO PLANNING DEPARTMENT

MEMO

APPEAL OF EIR CERTIFICATION 75 Howard Street Project

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DATE: November 9, 2015

TO: Angela Calvillo, Clerk of the Board of Supervisors

FROM: Sarah B. Jones, Environmental Review Officer – (415) 575-9034
Don Lewis, Environmental Planner – (415) 575-9168

RE: File No. 151015, Planning Department Case No. 2011.1122E, Appeal of the Final Environmental Impact Report for the 75 Howard Street Project

HEARING DATE: November 17, 2015

ATTACHMENTS: Exhibit A: Appeal Letter from David Osgood, Rincon Point Neighbors Association, Dated October 5, 2015

PROJECT SPONSOR: RDF 75 Howard LP

APPELLANT: David Osgood, Rincon Point Neighbors Association

INTRODUCTION

This memorandum, and the attached documents, comprise a response to the letter of appeal to the Board of Supervisors (the Board) regarding the issuance of a Final Environmental Impact Report (“FEIR”) under the California Environmental Quality Act (CEQA) for the 75 Howard Street Project (the “proposed project”). The FEIR was certified by the Planning Commission (“the Commission”) on September 3, 2015. The appeal to the Board was filed on October 5, 2015 by David Osgood on behalf of Rincon Point Neighbors Association (“the appellant”). This letter of appeal is included as Exhibit A of this Appeal Response. The FEIR consists of the Draft Environmental Impact Report (“DEIR”) and the Responses to Comments (“RTC”) document, which were provided to the Clerk of the Board for distribution to the Board of Supervisors under separate cover on July 31, 2013 and July 8, 2015, respectively. The environmental documents issued for this project are also available online at the Planning Department’s website <http://tinyurl.com/sfceqadocs> under case file number 2011.1122E.

The decision before the Board is whether to uphold the Planning Commission’s decision to certify the FEIR and deny the appeal, or to overturn the Commission’s decision to certify the

FEIR, and return the proposed project to the Planning Department for staff to conduct additional environmental review.

ENVIRONMENTAL REVIEW PROCESS FOR THE PROJECT:

The project sponsor, RDF 75 Howard LP, submitted an Environmental Evaluation Application to the Planning Department on June 15, 2010. The Planning Department issued a Notice of Preparation/Initial Study on February 1, 2011, analyzing the potential environmental impacts of the proposed project. Based on the analysis in the Initial Study, as well as detailed analyses and reports prepared in support of the analysis, a Draft EIR was issued on July 31, 2013. Written public comment was received during the public comment period between August 1, 2013 and September 23, 2013, and a public hearing before the Planning Commission was held on the Draft EIR on July 31, 2013, at which time public testimony was received. The Planning Department then prepared the RTC document to address environmental issues raised by comments received during the public comment period and at the public hearing for the Draft EIR. The RTC document contained additional analysis and reports that verified and expanded upon the EIR contents. The Planning Department prepared revisions to the text of the EIR in response to comments received or based on additional information that became available during the public review period, and corrected errors in the EIR. The Final EIR was certified by the Planning Commission on September 3, 2015.

PROJECT DESCRIPTION

The project site is located on the south side of Howard Street at the intersection of Howard and Steuart streets, in San Francisco's Financial District, and within the *Transit Center District Plan* area. The project site consists of two lots and a portion of street right-of-way: Assessor's Block 3741/Lot 31, which is currently developed with the existing 75 Howard Garage, a 540-space, 91-foot-tall, eight-level commercial parking garage structure built in 1976; and a small triangular portion of Assessor's Block 3741/Lot 35 (known as Parcel 3), which is owned by the Gap, Inc.

The proposed project considered in the Draft EIR, published on July 31, 2013, consisted of the demolition of the existing 75 Howard Garage and construction, in its place, of an approximately 31-story, 348-foot-tall, 432,253-gross-square-foot (gsf) residential, high-rise tower containing 186 market rate units and approximately 5,658 gsf of retail use. The proposed project included 175 parking spaces in a 26,701-gsf parking garage located on two below-grade levels accessed from Howard Street.

After publication of the Draft EIR, the project sponsor indicated that the proposed project, as described in the DEIR, was no longer the preferred project. The preferred project, which is consistent with the Code Compliant Alternative that was analyzed under the Draft EIR and approved by the Planning Commission as revised, involved the construction of an approximately 20-story, 220-foot-tall, 333,864-gsf residential, high-rise tower containing 133 units and approximately 5,824 gsf of retail use with 102 off-street parking spaces in a two-level underground garage accessed from Howard Street. Compared to the project as originally

proposed, the revised Code Compliant Alternative would have a shorter tower (11 stories and 128 feet shorter), fewer residential units (133 compared to 186), slightly more retail use space (5,824 gsf compared to 5,658 gsf), and fewer parking spaces (102 compared to 142).

APPELLANT ISSUES AND PLANNING DEPARTMENT RESPONSES

Summary of Issues Appellant Raises in the Appeal Letter

Appellant's Claim

1. **Significant changes were made to the proposed project during the two years that elapsed between the public comment period on the Draft EIR and the decision to approve the project.** The EIR should have been recirculated for public comment and another public hearing should have been held.

Planning Department Response

The project did not undergo significant changes and recirculation of the EIR is not required as the approved project was adequately analyzed under the Code Compliant Alternative.

Pursuant to CEQA, the CEQA Guidelines, and Chapter 31 of the San Francisco Administrative Code, there is no time limit or legislated length of time within which an EIR must be certified and action taken on a project following the public comment period on a Draft EIR. The project preferred by the project sponsor and approved by the Planning Commission – the revised Code Compliant Alternative – is thoroughly described and analyzed in the certified Final EIR in Chapter 6, on pp. 6.12-6.31, as modified in Chapter 2 of the RTC document on pp. 2-20-2-43. The revised Code Compliant Alternative reduced the number of residential units compared to the Code Compliant Alternative as originally analyzed in the Draft EIR from 169 to 133, reduced the number of parking spaces from 146 to 102, and increased the number of bicycle parking spaces from 55 to 123. The building height for the revised Code Compliant Alternative was increased from 200 feet to 220 feet, as authorized in Planning Code Section 263.9, because the site is zoned 200-S, which permits a 10 percent upper tower extension if the Planning Commission grants an exception as set forth in the Planning Code. Overall, the revised Code Compliant Alternative has less physical environmental impact than the original Code Compliant Alternative analyzed in the Draft EIR, and substantially less impact than the originally proposed project, which had 186 residential units and 142 parking spaces and was proposed to be 348 feet tall. While the revised Code Compliant Alternative is approximately 20 feet taller than the Code Compliant Alternative analyzed in the Draft EIR, both the original alternative and the revised alternative were found to have significant project-level shadow impact on Rincon Park, albeit substantially reduced compared to the impacts of the proposed project. All other impacts of the revised Code Compliant Alternative are the same as or less than those of the original Code Compliant Alternative and all are less than those identified for the proposed project in the Draft EIR. Thus, the modifications resulted in no new significant

impacts compared to those identified in the Draft EIR for the proposed project or the Code Compliant Alternative.

The appellant states that the EIR should be recirculated due to new information that was incorporated into the Final EIR; however, the appellant does not identify specific issues nor submit new information that would trigger recirculation. Recirculation of the 75 Howard Street Project EIR is not required because the proposed changes to the Draft EIR analyzed in the RTC document do not present significant new information with respect to the proposed project which would result in any new significant environmental impacts or present new feasible alternatives or mitigation measures, and would not result in a substantial increase in the severity of any identified significant impact. The inclusion of new information in a Final EIR does not automatically require recirculation of the Draft EIR, as the CEQA process is premised on the idea that the Final EIR will, by definition, include new information. CEQA Guidelines Section 15088.5 requires recirculation of a Draft EIR when significant new information is added to the EIR “in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect...” New information is “significant” only when that information shows a new or substantially more severe significant environmental impact, or a feasible project alternative or mitigation measure considerably different from others previously analyzed, that will not be implemented. Recirculation is also required if the Draft EIR was “so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.” No new or substantially more severe environmental impact has been identified, nor has any new feasible project alternative or mitigation measure been identified that would substantially lessen significant environmental impacts of the project. In addition, throughout the topic sections, the EIR provides ample supporting evidence and explanation of the methodology used to accurately analyze impacts and to support its conclusions. The EIR provides analysis of the revised project as part of its Alternative analysis, as discussed above. Furthermore, the appellant does not identify specific issues nor provides new information that would result in the need for recirculation. Therefore, recirculation of the EIR is not required and the appellant does not provide any substantial evidence to the contrary.

Appellant’s Claim

- 2. The project approved by the Planning Commission was not analyzed in the Draft EIR and does not comply with the Planning Code.**

Planning Department Response

The approved project was adequately analyzed in the EIR under the Code Compliant Alternative and complies with the Planning Code.

The Code Compliant Alternative described and analyzed in the Draft EIR did not require any amendments to the Planning Code and therefore is properly identified as “code compliant.” A request for an exception to the Planning Code under Section 309 to allow additional parking is

permitted by the Planning Code and is not considered to be inconsistent with the Planning Code. The parking requirements in the Code were amended during preparation of responses to public comments on the Draft EIR; therefore, revisions to the EIR text were made in the RTC document to explain the change in parking requirements and revise the approvals required for both the originally proposed project and alternatives in the EIR. Further, as explained in the Response #1, the 220-foot-tall building height for the revised Code Compliant Alternative is authorized in Planning Code Section 263.9, because the site is zoned 200-S, which permits a 10 percent upper tower extension if the Planning Commission grants an exception as set forth in the Planning Code.

As explained above in Response #1, the project approved by the Planning Commission was analyzed in the Final EIR (and described therein as the revised Code Compliant Alternative) as certified by the Commission prior to its action to approve the project. At 220-feet-tall, the project as approved is similar to the height of the Code Compliant Alternative analyzed in the Draft EIR. While the approved project is 20 feet taller than the Code Compliant Alternative in the Draft EIR, it has fewer residential units and parking spaces and therefore is somewhat smaller than and different from that alternative as analyzed in the Draft EIR. The differences in impacts between the Code Compliant Alternative in the Draft EIR and the revised Code Compliant Alternative in the Final EIR are all disclosed in the RTC document, as explained in Response #1 above. The number and range of alternatives analyzed in the EIR is adequate and complies with the CEQA Guidelines. The CEQA Guidelines do not require minimum or maximum number of alternatives that must be analyzed. Rather, they recognize that the range of conceivable alternatives to a proposed project, and variations thereto, is potentially vast. CEQA Guidelines Section 15126.6(a) requires only that an EIR consider a reasonable range of alternatives that will foster informed decision-making, and limits the range of alternatives to the “rule of reason.” The proposed project is within the range of heights that were analyzed in the EIR.

The environmental review process is intended to offer opportunities to reduce otherwise significant impacts when feasible, including revisions to the proposed project. The Code Compliant Alternative, as analyzed in the Final EIR and as approved by the Planning Commission, while it does not eliminate the significant environmental impacts of the EIR’s original proposed project, substantially reduces one of the two impacts. Further revisions to modify the Code Compliant Alternative in the Final EIR fully comply with the intent of CEQA to consider feasible revisions that further reduce significant impacts. There is no requirement under CEQA to “freeze” the proposed project and alternatives at the Draft EIR stage if there are feasible means to improve the project prior to final action by the decision maker.

Appellant’s Claim

3. **The EIR’s analysis of shadow impacts on Rincon Park is inadequate and provides no mitigation measures to address the significant shadow impact.** The appellant cites a memo, dated August 19, 2015, that summarizes the significant and unavoidable adverse

shadow impacts on Rincon Park that would result from the proposed project compared to that of the Code Compliant Alternative.

Planning Department Response

The EIR finds a significant shadow impact on Rincon Park and correctly concludes that there is no feasible mitigation measure that can reduce that impact to a less-than-significant level.

The EIR describes and analyzes impacts of the proposed project and its variants on the potentially affected outdoor recreation facilities and other public areas in the vicinity of the proposed project, including parks under the jurisdiction of the Recreation and Parks Department (“RPD”), such as Sue Bierman Park and Justin Herman Plaza, as well as other non-RPD parks including Rincon Park; the Embarcadero Promenade; existing privately owned, publicly accessible open space; proposed privately owned, publicly accessible open space within the project site; and public sidewalks (EIR pp. 4.H.13-4.H.30).

The EIR concludes that the 348-foot-tall proposed project would cause a significant shadow impact on Rincon Park, due to the location and timing of net new project shadow, which would fall on sunlit areas of the park where many park users prefer to sit in the afternoon. For these reasons, the EIR finds that net new shadow on Rincon Park under the proposed project would be substantial and would adversely affect the enjoyment and use of the park.

Based upon our experience in reviewing shadow analyses and preparing EIRs, the Planning Department has consistently found that shadow impacts have no feasible mitigation. The EIR also concludes that no feasible mitigation for the proposed project’s shadow impact is available because any theoretical mitigation would fundamentally alter the basic design and programming parameters of the proposed project. The EIR notes that any development that is approximately 100 feet or taller on the project site would also create afternoon shadow on Rincon Park. Further, construction of a building on the site equal to or lower than the height of the existing 91-foot-tall parking garage would result in a substantially reduced development program that would not meet the project sponsor’s objectives nor provide sufficient economic viability to warrant construction of such a building. Thus, the EIR concludes that there is no feasible mitigation to reduce this impact to a less-than-significant level and therefore the proposed project’s impact on Rincon Park would be significant and unavoidable.

Substantial reductions in the proposed building height to reduce the significant shadow impact identified for the proposed project were appropriately considered in the EIR as alternatives to the proposed project, rather than as mitigation measures. As noted above on p. 2, after publication of the Draft EIR, the project sponsor selected the Code Compliant Alternative, with revisions, as the preferred project. The Code Compliant Alternative, as described in the Final EIR (RTC pp. 2.24-2.28), is a 220-foot-tall tower (a reduction of 128 feet from the height of the proposed project analyzed in the EIR). The Final EIR concludes that the Code Compliant Alternative (now the preferred project) would create about 35.4 percent less annual net new shadow than that of the proposed project. However, like the proposed project, the Code

Compliant Alternative would still result in a significant and unavoidable impact on Rincon Park, due to the large numbers of people who sit in sunlit areas of the park in the afternoon.

This conclusion about the Code Compliant Alternative in the Final EIR is further documented in the August 19, 2015 background shadow memo that the appellant cites in apparent concurrence with the memo's conclusion that the Code Compliant Alternative would adversely affect the use of Rincon Park, despite the decrease in net new shadow compared to that of the originally proposed project in the Draft EIR. However, the memo does not support the appellant's contention that the EIR is inadequate for not providing mitigation to address the significant shadow impact. As with the proposed project, the Final EIR concludes that the Code Compliant Alternative would result in a significant and unavoidable shadow impact on Rincon Park, as no feasible mitigation is available.

Consistent with the intent of CEQA, the Code Compliant Alternative in the Final EIR feasibly reduces the amount of annual shadow on Rincon Park by 35.4 percent. ("CEQA establishes a duty for public agencies to avoid or minimize environmental damage where feasible." CEQA Guidelines Section 15012(a)). As a feasible alternative under CEQA Guidelines Section 15021(b), this alternative was available to the Planning Commission for approval.

The appellant's characterization of the CEQA consultant (Turnstone Consulting/SWCA) as "the developer's own consultant" calls for clarification. Sections 2.2.3 and 2.4.1 of the Planning Department's *Environmental Review Guidelines*¹ (pp. 2-2-2-5) require that a sponsor of a private project requiring an EIR retain a CEQA consultant and that the CEQA consultant be selected from a pre-qualified consultant pool established by the Environmental Planning (EP) division of the Planning Department. Section 2.3.8 (p. 2-5) specifies that "The role of the consultant is to act as an extension of EP staff, working under the direction of EP staff." Section 2.4.3 (p. 2-6) requires that the consultant "remain neutral and provide only objective, unbiased material and services" and shall not "engage in discussions with the project sponsor regarding material changes to the analysis or conclusions of the environmental document without the participation or consent of the [Planning Department's] environmental coordinator." Adherence with these requirements ensures that the EIR "reflects the lead agency's independent judgment and analysis" as called for under CEQA (CEQA Guidelines Section 15090).

The EIR correctly analyzes and discloses the proposed project's shadow impacts, and there is no feasible mitigation measure that would reduce the shadow impacts to a less-than-significant level. The appellant's claim does not provide any substantial evidence to the contrary, and no further analysis is required.

¹ City and County of San Francisco Planning Department, *Environmental Review Guidelines*, October 5, 2012.

Appellant's Claim

- 4. The EIR does not provide adequate analyses of traffic, hazardous materials, archaeology, or historic architectural resources, and fails to identify adequate mitigation measures for these impacts.**

Planning Department Response

The EIR is adequate and complete with respect to its analysis and conclusions regarding traffic, hazardous materials, archaeology, and historic architectural resources.

The appellant's allegations are not supported with any evidence or explanation of what the deficiencies are in the EIR's analyses or what additional mitigation measures should have been identified in the EIR. Substantial evidence would need to be submitted to prove why the EIR's analysis is inadequate, which the appellant has not done. At the EIR certification hearing, the Planning Commission considered the adequacy and accuracy of the Draft EIR, based on the administrative record as a whole (including all comments submitted on the Draft EIR and responses to them). The Final EIR was certified by the Planning Commission as meeting all of the requirements of CEQA. The EIR presents a detailed discussion of transportation impacts in Section 4.E, Transportation and Circulation. Archaeological resources are discussed in EIR Section 4.D, Cultural and Paleontological Resources. The Initial Study (EIR Appendix A) discusses historic architectural resources (Cultural Resources section, pp. 53-54) and hazardous materials (Hazards and Hazardous Materials section, pp. 134-142). Mitigation measures are identified for each of these topics where appropriate; the analysis of historic architectural resources found no significant impacts and therefore no mitigation measures were needed. Since the appellant does not provide substantial evidence or any explanation to support the assertion that the EIR is inadequate in regards to traffic, hazardous materials, archaeology, or historic architectural resources, no further response is required.

Appellant's Claim

- 5. The Final EIR does not adequately address the failure to adhere to the policy to have buildings step down towards the waterfront or the lack of significant setbacks similar to other nearby buildings on the waterfront.**

Planning Department Response

The EIR adequately identifies conflicts between the proposed project and applicable plans and policies, and to the extent that physical environmental impacts may result from such potential conflicts, these impacts are fully disclosed in the EIR.

The EIR discusses policies calling for stepping down from the Transit Tower in the Transit Center District toward the waterfront on p. 3-5, and acknowledges that the original proposed project, which would have been 148 feet taller than the 200-foot height limit, would have

conflicted with some of the objectives and policies in the Urban Design Element and the *Downtown Area Plan* related to height and form (EIR pp. 3.4-3.5 and 4.B.7). The revised Code Compliant Alternative, at a height of 220 feet (240 feet including the mechanical equipment screening), “would be more consistent with certain objectives and policies of the *General Plan’s* Urban Design Element, *Downtown Area Plan*, and *Transit Center District Plan* (“TCDP”), because it would comply with the existing height limit for the project site” (EIR pp. 6-15 and 6-16, RTC p. 2-28). As concluded in the EIR, the Code Compliant Alternative would be more consistent with policies calling for Downtown building heights to respect the prevailing scale of development and to step down to the waterfront (EIR p. 6-15). Further, as the Code Compliant Alternative would be shorter than the buildings immediately adjacent to the project site, this alternative would reinforce the existing pattern discernible at the southeast edge of Downtown of buildings stepping down to the water’s edge, which would be continued and reinforced with new development under the *General Plan*. Thus, this issue is addressed in the EIR. See also Response PP-1 on RTC pp. 4.B.3-4.B.6 and Response LU-2 on RTC pp. 4.C.11-4.C.13, which address consistency with the TCDP’s objectives and policies. The proposed project analyzed in the EIR would conform to requirements in the Planning Code, and would provide setbacks in addition to the bulk requirements of the Code (see RTC p. 4.C.13).

The EIR acknowledges that existing buildings in the project vicinity vary in setbacks and heights, as some buildings are sculpted while other buildings include little to no sculpting. The buildings that include similar setbacks were approved and constructed under the regulations of the *Rincon Point South Beach Redevelopment Plan* (“*RPSB Redevelopment Plan*”). With the exception of the 337-square-foot Parcel 3, located at the southeast corner of the proposed building site, the 75 Howard building site is outside of the area covered by the *RPSB Redevelopment Plan*.² The proposed project is code compliant, and subject to the provisions of the 200-S Height and Bulk District in which it is located. Therefore, through compliance with the height and bulk district, it would be consistent with policies that implement a “step down” design. The height and bulk controls of the *RPSB Redevelopment Plan* differ from the height and bulk controls of the 200-S Height and Bulk District, and these differences account for the design differences between the proposed project and some neighboring buildings. The proposed project is not required to provide setbacks similar to those found on some neighboring buildings.

Appellant’s Claim

- 6. The FEIR ignores the potential for a catastrophic sewage spill near the Bay from rupture of an aging, high-pressure, and possibly brick sewer line near the project site.** The emergency repair and replacement work on the sewer line has caused the sidewalk to settle, which could potentially result in rupture of the line.

² On September 3, 2015, the Planning Commission found that the proposed improvements that are on Parcel 3 are consistent with the Redevelopment Requirements of the *RPSB Redevelopment Plan*.

Planning Department Response

The FEIR accurately concludes that the proposed project's impacts with respect to utilities and service systems would be less than significant.

The appellant's assertion is inaccurate. The sewer repair work that is nearing completion at the intersection of Howard and Steuart streets is not an "emergency" repair job, but a planned replacement of the North Shore to Channel force main between Jackson Street north of Market Street and the intersection adjacent to the 75 Howard Street project site. This sewer work is described in the EIR on pp. 4.I.3-4.I.4 and 4.I.11-4.I.12. A Mitigated Negative Declaration was prepared for that project in 2012 (see footnote 5 on EIR p. 4.I.4). A force main is a sewer pipe that carries wastewater pumped under pressure rather than flowing by gravity (see RTC p. 4.J.4). A force main is never constructed of brick, and the repair and replacement work being done on the North Shore to Channel force main is not to replace a brick sewer. This project is discussed in detail in the RTC document on pp. 4.J.4-4.J.6. As explained on RTC p. 4.J.5, even if the force main were to fail, it would not result in a "catastrophe" because the flow can be shut off and redirected while repairs are made. The project's impacts with respect to utilities and service systems would be less than significant, and the EIR provides sufficient supporting evidence to substantiate this conclusion.

Appellant's Claim

7. The technical studies are not included in appendices to the Draft EIR.

Planning Department Response

There is no requirement that technical background studies be included in the appendix to an EIR.

As explained in Response AD-2 on p. 4.X.6 of the RTC document, the CEQA Guidelines state that technical background material should not be included in an EIR, but should be cited in the EIR. The citations to these technical reports include a statement that the reports can be reviewed at the San Francisco Planning Department. All supporting background documents are included in the project's Administrative Record, and all are available for review upon request.

Appellant's Claim

8. The FEIR underestimates the catastrophic damage that would be caused by flooding from tsunami or sea level rise.

Planning Department Response

The EIR accurately discloses the best available science-based projections for tsunami and sea level rise and correctly finds the project's impact to be less than significant.

The appellant does not provide any information on how flooding of the project site would result in catastrophic damage of the proposed building. The Final EIR comprehensively discusses and analyzes flooding risks regarding the proposed project, including EIR pp. 4.K.2-4.K.26 and RTC pp. 4.L.4-4.L.29. The proposed project was addressed in a manner that is consistent with other projects reviewed in the same flood zone, and the appellant does not provide any evidence of why this would not be adequate in this situation.

The RTC document discusses factors contributing to coastal flooding, including storm surge, tides, sea level rise (pp. 4.L.13-4.L.14), and tsunamis (RTC pp. 4.L.5, 4.L.23; also EIR pp. 4.K.23-4.K.24). The RTC document presents flood elevation and sea level rise estimates and their implications regarding the proposed project (pp. 4.L.14-4.L.19). RTC pp. 4.L.21-4.L.23 explain the City's approach to analyzing these flooding risks. The analysis considers whether people or structures on the project site could be exposed to a significant risk of loss, injury or death involving flooding resulting from sea level rise in combination with storm surge and extreme tides. "The impact is less than significant if the project would not be inundated during a 100-year coastal flood within the life of the project, or if the project would conform to flood resistant building standards and be capable of adapting to future flood hazard conditions." The project site is not within the 100-year flood area ("V zone") on the Federal Emergency Management Agency's preliminary Flood Insurance Rate Maps, nor within any special hazard flood area on the City's 2008 interim floodplain map, and the Final EIR concludes that the risk of inundation by seiche, tsunami, or mudflow is less than significant. San Francisco's *Emergency Response Plan* identifies a maximum, worse case, 100-year tsunami run-up at the project site of about 8 feet. This run-up would flood the first floor of the proposed building (which would be non-residential) and the underground parking levels (RTC p. 4.L.23, EIR p. 4.K.23).

Contrary to the appellant's claim, the Final EIR does not understate the damage that could be caused by tsunami or sea level rise (or by a combination of factors leading to flooding). As explained on RTC p. 4.L.4, even if a tsunami caused flooding at the first floor of the building and the underground parking levels, this would not necessarily mean that those parts of the building would be destroyed. On the contrary, the building would survive, and after cleanup, would be useable. The proposed building would be sturdy, with steel piles driven deep into the ground, reinforced concrete underground parking levels, reinforced concrete first floor, and steel building frame. Therefore, the building would be adequately anchored to prevent floatation, collapse, or lateral movement. Flooding may result in the need to replace sheetrock, paint, and perhaps wiring. Furniture on the first floor may need to be replaced. After repair, the building would be functional. As discussed on RTC pp. 4.L.5, 4.L.23, and 4.L.27, the tsunami warning system and Emergency Plan (Improvement Measure I-HY-A) would assist project residents in evacuating prior to a flooding event. The proposed building would be designed to be capable of withstanding direct and prolonged contact with temporary salt water flooding, without sustaining damage that requires more than cosmetic repair.

The same analysis applies to flooding of the first floor and parking levels caused by any other combination of flooding risk factors, including sea level rise. As discussed on RTC p. 4.L.15 and shown in figures on RTC pp. 4.L.16 and 4.L.17, the project site would not be inundated with

either 12 inches of sea level rise (forecasted for 2050), or 36 inches of sea level rise (forecasted for 2100). However, when the effects of a 100-year storm surge are combined with water level rises of 12 inches, the San Francisco Public Utilities Commission (SFPUC) inundation maps indicate that the project site would be partially inundated by 0 to 2 feet, and flooding would be limited to the eastern portion of the proposed building site (RTC Figure 4.K.1). The project site would be flooded to depths of between 0 and 4 feet when adding the 100-year storm surge to the projected 36-inch sea level rise in the year 2100 (RTC Figure 4.K.2). The inundation depth of 4 feet would flood the first floor and underground parking, and the analysis of damage described above in relation to tsunami risk applies to that scenario. Pages 4.L.24-4.L.29 of the RTC document thoroughly examine the sea level rise risks and provide substantial evidence as to why people or structures on the project site would not be exposed to significant risk of loss, injury, or death involving flooding as a result of sea level rise in combination with storm surface and extreme tide.

In sum, under either tsunami or sea level rise conditions, the damage to the proposed project would be limited to cosmetic damage and would not be catastrophic, as claimed by the appellant.

Appellant's Claim

9. The EIR should have included analysis of an alternative shorter than the Code Compliant Alternative.

Planning Department Response

The EIR presents a reasonable range of alternatives to the proposed project as required by CEQA.

The number and range of alternatives analyzed in the EIR is adequate and complies with CEQA and the CEQA Guidelines. The CEQA Guidelines do not require a minimum or maximum number of alternatives that must be analyzed. Rather, they recognize that the range of conceivable alternatives to a proposed project, and variations thereto, is potentially vast. CEQA Guidelines Section 15126.6(a) requires only that an EIR consider a reasonable range of alternatives that will foster informed decision-making, and limits the range of alternatives to the "rule of reason." Additionally, the range of potential alternatives should also include those that could feasibly attain most of the basic objectives of the proposed project.

The appellant suggests that a 100-foot alternative should have been analyzed since it would not cause shadow impacts on Rincon Park. The EIR explains that even a new building 100 feet tall would cast net new shadow on Rincon Park (see EIR p. 4.H.32) and therefore would still likely result in a significant shadow impact, albeit less than either the proposed project or the preferred Code Compliant Alternative. The EIR further explains that an alternative that is shorter than the Code Compliant Alternative would not be considered economically viable and would not meet any of the project sponsor's objectives (RTC p. 4.N.19). An EIR may identify alternatives rejected from consideration for reasons of feasibility and/or failure to attain the

project sponsor's objectives. The EIR includes a sufficient range of alternatives to fully examine approaches to reducing significant environmental impacts in addition to the impacts reduced by mitigation measures.

CONCLUSION

For all of the reasons provided in this appeal response, the Planning Department believes that the Final EIR complies with the requirements of CEQA, the CEQA Guidelines, and Chapter 31 of the Administrative Code, and provides an adequate, accurate, and objective analysis of the potential impacts of the proposed project. Therefore, the Planning Department respectfully recommends that the Board uphold the Planning Commission's certification of the Final EIR.

October 5, 2015

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

Re: Appeal of 75 Howard Street FEIR (2011.1122E)

Via email and hand delivery on 10-5-15

Dear Ms. Calvillo:

On September 3, 2015 the SF Planning Commission certified the Final EIR for the project currently proposed for 75 Howard Street. I submitted written and oral comments to the commission on the draft EIR and hereby appeal the commission's decision.

This decision was made nearly two years after the public comment period on the draft EIR ended (9-23-13). Very significant changes were made to the project during that two-year period, and a hearing on the latest version should have been held. The DEIR should have been re-circulated. The version of the project approved by the commission was not covered in the DEIR. There were "preferred project" and "code compliant" versions analyzed in the DEIR, but neither matches the approved project. The developer withdrew the preferred project, and the version that was approved was not code compliant.

The EIR was inadequate in analyzing the serious shadow impacts on the neighborhood. The developer's own consultant summarized these impacts as recently as August 19, 2015:

"As described on EIR p. 4.H.24, the proposed project would cast net new shadow on the lawn, seating areas and pedestrian paths in the northern and central portions of Rincon Park in the afternoon on most days throughout the year, where many park users prefer to sit. Similar conditions are identified for the revised Code Compliant Alternative (EIR pp. 6.26-6.27). Given the number of people who sit in the sunlit areas of Rincon Park in the afternoon, the net new shadows from both the proposed project and revised Code Compliant Alternative are determined in the EIR to adversely affect the use of these areas, and therefore result in significant and unavoidable shadow impacts on Rincon Park. The results

presented in the July 2015 shadow study show similar conditions in Rincon Park for the preferred project, and would not alter any conclusions presented in the EIR.” – 8-19-15 Turnstone Consulting memo to SF Planning Dept
Nothing or little is suggested to mitigate these shadow impacts that would be present “on most days throughout the year.”

The FEIR is also inadequate in analyzing and mitigating traffic impacts, hazardous materials, archeology, historic preservation, the lack of significant setbacks, and the policy that buildings be low on – and step down towards – the waterfront. The FEIR is also inadequate in addressing the violation of the neighborhood pattern since all nearby buildings on the waterfront have significant setbacks around the 6th or 7th floor level.

The FEIR ignores the potential for a catastrophic sewage spill near the Bay because a large, aging and high-pressure (and possibly brick) sewer line runs adjacent to the site under Steuart Street. It is currently undergoing emergency repair and replacement work nearby. This replacement work has caused sidewalk damage and movement on Spear Street this year. This kind of movement could cause the aging sewer line to rupture. The shoring below Rincon Center (across the street) also failed during construction due to the unstable condition of fill soils in the area.

As noted in the comments on the DEIR, the city did not include technical studies in the appendices to the EIR that it relied on. The FEIR recognizes the possibility of flooding from a tsunami or sea level rise but underestimates the catastrophic damage that would be caused.

Furthermore, an analysis should have been done on an alternative shorter than the project currently proposed. It is acknowledged that a 100-foot high building would not cause shadow impacts on Rincon Park. An analysis on a structure that high might accurately be labeled “code compliant” unlike the 200-foot analysis in the EIR. Planning dismissed a shorter building as not being economically feasible but did not justify that conclusion.

We will submit a detailed brief at a later date.

Sincerely,



David Osgood

Cc: Environmental Review Officer, Planning Dept.