

REUBEN, JUNIUS & ROSE, LLP

July 19, 2017

Delivered Via E-Mail

President London Breed and Supervisors
San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102
BOS.Legislation@sfgov.org

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CODE, SECTION 31.16(b)(5)**
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hearing will be included as part of the official file.)

**Re: 1726-1730 Mission Street
Opposition to Appeal of the Community Plan Exemption (“CPE”)
Planning Department Case No.: 2014-002026ENV
Hearing Date: July 25, 2017
Our File No.: 8584.01**

Dear President Breed and Supervisors:

This office represents Sustainable Living LLC (“**Project Sponsor**”), which proposes to replace a building located at 1726-1732 Mission Street (the “**Site**”) currently used for owner storage and office space with ground-floor PDR space and 40 mixed-income residential units above, half of which will feature two bedrooms (the “**Project**”). The Project proposes a six-story, 68-foot tall mixed use building on an infill site on Mission Street between 13th and 14th Streets within easy walking distance to numerous transit options. It will provide inclusionary units on-site and add much-needed PDR space to the Mission.

The Planning Department’s July 17, 2017 Appeal of Community Plan Evaluation for 1726-1730 Mission Street Project Memorandum (“**Planning Department Memorandum**”) comprehensively discusses why this Appeal is without merit under CEQA. The Planning Department Memorandum explains that CEQA Section 21083.3 mandates that projects that are consistent with the development density established by the existing zoning, community plan or general plan policies for which an Environmental Impact Report (“**EIR**”) was certified shall not require additional environmental review except as might be necessary to examine whether there are project-specific effects that are peculiar to the project or its site that were not disclosed as

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significant effects in the prior EIR. Decisions on the significance of environmental effects caused by a project must be based on “substantial evidence in the record.”

The careful environmental review conducted for this Project by Planning Department staff and technical experts over the course of almost two and a half years did not identify impacts peculiar to the Project or Project Site that were not disclosed in the Eastern Neighborhoods Programmatic Environmental Impact Report (“**EN PEIR**”), and a Community Plan Exemption (“**CPE**”) was properly issued on May 24, 2017. (Certificate of Determination, Case No. 2014-002026ENV.) Appellant has entirely failed to meet its burden to establish that environmental review and issuance of the CPE was not supported by substantial evidence in the record.

The Planning Commission has reviewed and approved the Project, and the appeal process is not intended to revisit an entitlement approval. However, by way of background, below are the benefits of the Project and a discussion of the danger to this and other similarly-sized projects of granting the current CEQA appeal.

A. THE CODE-COMPLIANT PROJECT PROVIDES MUCH-NEEDED HOUSING AND PDR SPACE IN THE MISSION

The Project provides numerous benefits to the Mission and the City at large, including the following:

1. **The Project proposes to provide a large PDR space for one or more tenants.** The Site does not currently house any PDR uses. Although 900 square feet of ground floor retail was originally contemplated, at the request of the Planning Department and neighborhood groups, the space be enlarged (with parking reduced) and converted to 2,250 square feet of PDR space. New construction PDR space is severely lacking throughout San Francisco and particularly in the Mission; the Project would address this shortage.
2. **The Project contributes housing to the City, including affordable units on-site.** The Project will comply with the inclusionary housing ordinance by providing on-site affordable ownership units. Based on current rates, 7 of its 40 total units will be affordable to low-income households. The Project proposes an even mix of one-bedroom and two-bedroom units, adding 20 family-friendly units to the City’s housing stock. The Project will also contribute significant impact fees to the City.
3. **The Project is completely Code-compliant.** Unlike the majority of projects approved by the Planning Commission—and in particular new ground-up projects on relatively small lots in dense parts of the city—the Project is completely Code compliant. A significant

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change was made when the Project expanded the previously-proposed 15-foot rear yard to a Code-complaint 25-foot rear yard. The Project has been carefully designed to minimize negative impacts on neighboring buildings.

4. **The Project maximizes transportation by bike and public transit.** The Project is within easy walking distance to both the 16th and Mission Bart Station and the Van Ness Muni stop. It is also on the 14 and 49 bus routes and near numerous other bus routes. In recognition of the transit rich nature of the area and in response to concerns about increased traffic, proposed parking for the Project was reduced from 34 to 22 spaces and bike parking was increased from 40 spaces to 70 spaces. Additional Transportation Demand Management (“TDM”) measures include a bike repair station, package delivery, family amenity car seat storage, and real time transportation information displays to promote car-free living.
5. **The Project is carefully designed to be compatible with the area.** As was found by the Planning Commission, the Project, designed by Stanley Saitowitz, is both compatible with the existing buildings on the block and of our time. The strong vertical rhythm of the front façade, provided through deep recesses that are framed by extruded aluminum louvers, uses the same design language as the adjacent buildings with their vertical residential bays. The louvers provide sun shading and acoustic baffling from the nearby freeway and offer privacy in the units from the busy street below by blocking angle of sight from the curb. Furthermore, the louvers visually break up the glass windows into smaller sections, a scale that is in keeping with the character of the neighborhood. The façade is further modulated by a strong horizontal break that matches several of the adjacent parapets and acknowledges the presence of these smaller scale buildings. Within the larger bays there is a finer grain of modulation and materiality. A metal mesh provides both fall protection and a shift in grid scale while a narrower horizontal louver at balustrade height reinforces the human scale. The glass along the ground floor will provide a connection between the new life provided by the building and the streetfront. The Project Sponsor continues to explore how to maximize connections between the PDR and the streetfront, so that the PDR use is truly a neighborhood space.
6. **The Project has undergone significant neighbor and community vetting.** The Project Sponsor has been committed to neighborhood engagement since the outset of the entitlement process. It has conducted numerous community meetings and follow-up discussions with interested parties, including neighbors along Woodward Street and community representatives. In addition to increasing the size of the rear yard, the Project Sponsor is partnering with Friends of the Urban Forest to sponsor new greening along Woodward Street and is adding a green wall to the rear of the building. Based on these

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measures, the Project Sponsor is proud to have received a support letter from the adjacent neighbors on Woodward Street (**Exhibit A**). It also has the support of the San Francisco Housing Action Coalition (**Exhibit B**) and the operator of the nearby Brick and Mortar and Crafty Fox (**Exhibit C**). The Project also has the support of the Mission Dolores Neighborhood Association, with an endorsement letter to follow. To ensure that the PDR space will be feasible for future makers, the Project Sponsor has met with SF Made and neighborhood groups to discuss its programming and design. The Project team continues to work with neighborhood groups to look for a PDR tenant which will be compatible with the residential use and serve the neighborhood and City at large.

B. APPELLANT HAS NOT PROVEN THAT THE CPE FAILS TO CONFORM TO THE REQUIREMENTS OF CEQA

Appellant has incorrectly claimed that the EN PEIR is out of date; that community benefits outlined in the EN PEIR have not been fully implemented and should not be relied on; that the CEQA findings for the Project are inadequate; and that development under the EN PEIR has exceeded what was analyzed. In other words, the gist of Appellant's argument is that the EN PEIR is out of date and that individual projects should no longer rely on it.

The Planning Department Memorandum responds to each of Appellant's claims in detail, and the Department's response is hereby incorporated.

Pursuant to CEQA Section 21166, a Supplemental or Subsequent EIR is only required if one or more of the following events occurs:

- a. Substantial changes are proposed 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 PEIR¹; 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 and indicates that a project will have significant effects not previously considered or that significant effects previously examined will be more severe than previously shown.²

¹ 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).

² New CEQA analysis cannot be required if the new information presented could have been known at the time the original EIR was prepared. See *Citizens for a MegaplexFree Alameda v. City of Alameda* (2007) 149 CA4th 91, 113

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None of these three statutory standards have been met. The Planning Department Memorandum explains that the EN PEIR did consider potential cumulative impacts related to land use, transportation, and cultural resources and mitigation measures were adopted to address those impacts.

Review on appeal of a CPE is “limited to whether the project conforms to the requirements of CEQA for an exemption.” (Admin. Code § 31.16(e)(3).) As stated previously, CEQA requires that a project which is consistent “with the development density established by existing zoning, community plan, or general plan policies for which an EIR was certified” shall be eligible for a CPE. Additional environmental review should only be conducted for such projects if there are project-specific impacts that were not evaluated in the community plan EIR, and if those impacts cannot be mitigated “by the imposition of uniformly applied development policies or standards.” (CEQA Guidelines § 15183(a)-(c).)

The Project is fully Code-compliant with the UMU zoning controls and provides the mix of PDR and residential uses contemplated by that zoning designation. Further, and as discussed in the Planning Department Memorandum, environmental review was undertaken in order to evaluate the potential for significant environmental impacts that could result from the Project. This review included transportation, noise, geology, and hazardous materials studies. In the CPE, the Planning Department identified and updated five mitigation measures from the EN PEIR related to archeological resources, noise, air quality, and hazardous materials. “With implementation of these mitigation measures the proposed project would not result in significant impacts beyond those analyzed in the Eastern Neighborhoods PEIR.” (See CPE, at page 9.)

C. GRANTING CEQA APPEALS WILL KILL SMALL TO MEDIUM-SIZE INFILL PROJECTS

It is illustrative that the recent CEQA challenges to other entitled development projects in the Mission make generally identical arguments regardless of the specifics of the project being opposed. Therefore, the goal of these challenges appears to be a blanket blockade of new market-rate housing production rather than an analysis of project-specific environmental impacts.

The Project contains 40 dwelling units that are affordable by design, with only 27,145 square-foot of residential space and 22 parking spaces. It involves demolition of a rundown building that

(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).

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has not been used for PDR since 2002, and has never been used for residential dwelling units. There is no displacement of any type of tenant. The Project is situated in an area lacking in active street life and is outside of the Calle 24 Latino Cultural Heritage District. The argument that the Project would have specific significant adverse environmental impacts requiring further environmental review is entirely without merit and unsupported by Appellant's Memorandum.

If this Project is distinguishable from other small to medium-size mixed-use projects in the Eastern Neighborhoods Plan area, it is because it even more clearly does not cause environmental impacts beyond those identified in the PEIR – it is Code-complaint, does not involve tenant displacement, provides both PDR space and on-site affordable housing units, and is on a small-footprint lot on a block in need of additional street life. Requiring further environmental review to be conducted for the Project is unnecessary and unsupported by the law, and it would discourage both this beneficial infill development and similar small to medium-size projects, further exacerbating the shortage of housing in San Francisco.

Appellant has not provided substantial evidence to meet its burden to overturn the City's decision to issue a CPE for the Project. Therefore, we respectfully request that you deny the appeal.

Very truly yours,

REUBEN, JUNIUS & ROSE, LLP



Jody Knight

Enclosures: Exhibits

cc: Supervisor Sandra Lee Fewer
Supervisor Mark Farrell
Supervisor Aaron Peskin
Supervisor Katy Tang
Supervisor Jane Kim
Supervisor Norman Yee
Supervisor Jeff Sheehy

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Supervisor Hillary Ronen
Supervisor Malia Cohen
Supervisor Ahsha Safai
Angelia Cavillo, Clerk of the Board
Brent Jalipa, Legislative Clerk
Lisa Lew, Legislative Clerk
Michael Li, Environmental Planner, Planning Department
Lisa Gibson, Environmental Review Officer, Planning Department

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Exhibit List

- Exhibit A - 19-29 Woodward Street Residents Support Letter
- Exhibit B - San Francisco Housing Coalition Support Letter
- Exhibit C - Brick and Mortar and Crafty Fox Support Letter

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EXHIBIT A

May 26, 2017

San Francisco Planning Commission
1650 Mission Street, Suite 400
San Francisco, CA 94103

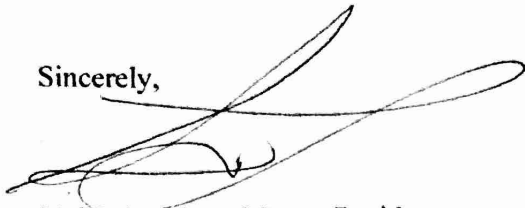
Dear President Hillis and Planning Commissioners,

On behalf of the property owners of 19-29 Woodward Street, we are pleased to submit our support for the proposed 1726 Mission Street project. The 19-29 Woodward Street rear property line abuts the rear property line of 1726 Mission Street. We had the opportunity to meet with the project team on several occasions to discuss our concerns and those concerns have been addressed by the following provisions of the project.

- The project sponsor has partnered with Friends of the Urban Forest to fund up to \$14,000 in beautification improvements on Woodward Street, including replacement and/or planting of new trees and new sidewalk landscaping;
- The project sponsor will fully enclose the car stackers and there will be no noise coming from their operation audible outside the development;
- The project sponsor will build, irrigate and maintain in perpetuity a 'living wall' at the rear of the property, facing our Woodward Street apartments;
- The project sponsor will landscape, irrigate (as needed) and maintain in perpetuity the open space over the car stacker and first story space between the living wall and the new building with an attractive garden, including some large trees and shrubs to give a little privacy as well as decorative plants and grasses with the intent of beautification as well as functionality;
- The project sponsor will set the enclosed space of the levels above the first story of the building back 25 feet from the living wall, preserving our access to sunlight;
- The project sponsor will have committed to no additional fencing at the property line that would raise the height of our backyard barrier;
- The project sponsor has committed to continuing to communicate and, upon approval by the City, work to minimize the time and impact of the building process on our neighborhood.

• Based on this, we urge the Planning Commission to approve the proposed 1726 Mission Street project.

Sincerely,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

19-29 Woodward Street Residents

EXHIBIT B

Project Address: 1726 Mission Street

Project Sponsor: Sustainable Living, LLC

Date of SFHAC Review: June 22, 2016

Grading Scale

1= Fails to meet project review guideline criteria

2= Meets some project review guideline criteria

3= Meets basic project review guideline criteria

4 = Exceeds basic project review guideline criteria

5 = Goes far beyond what is required

Criteria for SFHAC Endorsement

1. The development must have been presented to the SFHAC Project Review Committee
2. The Project must score a minimum of 3/5 on any given guideline

<i>Guideline</i>	<i>Comments</i>	<i>Grade</i>
Land Use	The building that currently occupies the site is abandoned, making it highly underutilized. Housing is a significantly better use, particularly given its proximity to transit, jobs and neighborhood amenities.	4
Affordability	The project sponsor has stated that the below-market-rate units will most likely be located on-site. It is expected 16 or 17 percent of the homes will be subsidized. We would support any efforts that could be made to increase those percentages.	3
Density	Our members believe the project sponsor has utilized the building envelope effectively. It is unlikely more well-designed homes could be accommodated in the building unless they were on the ground floor.	4
Community Input	It is our members' impression that the project sponsor has done an adequate job of reaching out to neighbors, particularly those within the immediate vicinity of the site. We encourage additional community outreach, however.	3
Urban Design	We appreciate how the architect has designed the light courts and are especially supportive that the project has achieved a 25 percent rear yard setback, which is usually very difficult to do at most sites in San Francisco. Some of our members said that that they would prefer the building to be a bit more contextual with the surrounding neighborhood, but there was no consensus on this.	4
Parking & Alternative Transportation	We would prefer more bike parking and less car parking in the building. Typically, we encourage one bike parking space per bedroom. Given the site's proximity to the 16th Street BART Station and neighborhood amenities, the car parking count should be reduced.	3

Environmental Features	The project sponsor has stated they will meet the City's Green Point Rating System. We encourage the project sponsor to incorporate additional features to green the building, especially water conservation and recycling.	3
Preservation	There are no structures of significant cultural or historic merit on or near the site that would be impacted by the proposed project.	N/A
Additional Comments	There are no comments to add.	N/A
Final Comments	The San Francisco Housing Action Coalition endorses the proposed project at 1726 Mission Street, with the minor reservation above regarding excessive parking.	3.4/5

EXHIBIT C

PARISH ENTERTAINMENT GROUP

THE ROCK STEADY
THEROCK-STEADY.COM

PLACE PIGALLE
PLACEPIGALLESF.COM

The Crafty Fox
ALE HOUSE
CRAFTYFOXSF.COM

SIERRA VALLEY
LODGE
SIERRAVALLEYLODGE.NET

THE SPEAKER BOX
CAFE
THESPEAKERBOXCAFE.COM

THE NEW PARISH
THENEWPARISH.COM

LEO'S
CLUBLEOS.COM

BRICK & MORTAR
MUSIC HALL
BRICKANDMORTARMUSIC.COM

May 31, 2017

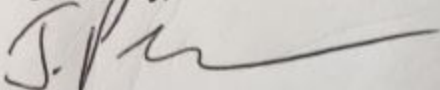
San Francisco Planning Commission
1650 Mission Street, 4th Floor
San Francisco, CA 94103

Dear President Hillis and Planning Commissioners:

I operate Brick & Mortar Music Hall at 1710 Mission Street and the Crafty Fox at 1700 Mission, on the same block as the proposed development at 1726-1732 Mission as well as own the building at 1700 Mission and 11 Duboce. I write to express my full support of this proposed Project. The addition of 40 dwelling units to an underutilized Site will benefit retail uses in the area, including Brick & Mortar and the Crafty Fox by increasing the vibrancy and street life of the area. I am also encouraged by the commitment to the nightlife aspect of the neighborhood by the developers.

The Project also proposes to improve the block by adding street trees and bicycle parking and removing one of the existing curb cuts. The owners have agreed to make disclosures to purchasers of the residential units about the urban nature of the location, including the presence of a music venue on the street, in order to minimize any conflicts between the land uses. With that disclosure, I believe that the proposed Project and Brick & Mortar and the Crafty Fox will be mutually beneficial, with the Project providing additional customers, and the businesses providing food, drink and entertainment to new residents. Therefore, I urge you to approve the Project.

Sincerely,



Jason Perkins
Managing Partner
Parish Entertainment Group