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July 23, 2018  
Re: 429 Beale Street, 430 Main Street  
o Appeal of the Community Plan Exemption ("CPE")  
Planning Department Case No. 2014.002033DNX 2014-0022033ENV  
File No. 180697

**RECEIVED AFTER THE ELEVEN-DAY  
DEADLINE, BY NOON, PURSUANT TO ADMIN.  
CODE, SECTION 31.16(b)(5)**  
(Note: Pursuant to California Government Code, Section  
85009(b)(2), information received at, or prior to, the public  
hearing will be included as part of the official file.)

The appeal of the environmental review for 430 Main/429 Beale does not hinge on substituting the opinion of one expert for another.

But "[i]f a lead agency is presented with a **fair argument** that a project may have a significant effect on the environment, [it] shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have significant effect  
- in [Chinn v. BOARD OF SUPERVISORS OF COUNTY OF MONTEREY, 2007](#)

The Planning Department was presented with substantial evidence from the Ramboll Environ report that other pollutants will increase because of the proposed design. Nowhere in the environmental review prepared by the Planning Department is there a discussion of other pollutants and the fact as reported by Ramboll that they will increase.

"Ramboll Environ modeled PM<sub>2.5</sub> exhaust from vehicles as a surrogate for other sources of air pollution from vehicles. If PM<sub>2.5</sub> concentrations from vehicles as a result of the Proposed Project change, then it is reasonable to assume that other pollutants from vehicle traffic will behave in the same manner."

The Ramboll Environ report shows that PM<sub>2.5</sub> will increase in Baycrest Courtyards as well as other nearby areas that will negatively impact the health of residents of Baycrest and Portside specifically. In several cases shown on various Ramboll exhibits the increases in PM<sub>2.5</sub> are 3, 4, and 5 times the Article 38 threshold.

"The foremost principle under **CEQA** is that the Legislature intended the act to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language" - in [County of Amador v. City of Plymouth, 2007](#)

Examining what that Trinity states with a fair mind it would seem that the Ramboll memo of 3/26/18 misstates the Trinity review. A fair reading of the Trinity review leads one to form the opinion that additional study is required.

The agency's decision not to require an EIR may be upheld "only when there is not credible evidence to the contrary  
- in [CITIZENS FOR CIVIC ACCOUNTABILITY v. Town of Danville, 2009](#)

## What the Trinity Report actually states with respect to their review of the Ramboll report

### 3.1 Building Downwash Modeling

"based on existing regulatory guidance, AERMOD is the accepted air dispersion model in California which is capable of estimating building downwash for different projects"

### 3.2 Offsite Impacts

"The Ramboll Report concluded that the incremental increase of PM<sub>2.5</sub> emissions from the Project is small in relative proportion of total post-project emissions. However, the cumulative PM<sub>2.5</sub> emissions are substantially higher than levels considered reasonable for residential projects as per local codes. Given the Project is located in an area which is already classified as a health hazard based on the high concentrations of TACs and PM<sub>2.5</sub>, CEQA may require a higher standard of review in such cases. Any additional amount of emissions could be considered a substantial health risk in the proposed project location for existing and new residential activities (or other sensitive receptors), and should be more thoroughly assessed and mitigated as required by Article 38 and applicable law."

### 3.3 Construction Impacts

Ramboll Report did not include a review nor evaluation of construction impacts, although the proposed project is located in an area which is locally classified as an APEZ due to high concentrations of air toxics and PM<sub>2.5</sub> concerns. Given the location of the project, proximity to other residential units and potentially extensive construction activities, an air quality impact analysis without such review of construction impacts would be incomplete.

### 3.4 Diesel Particulate Matter (DPM)

"While the surrogate approach may be generally accepted guidance for estimating *cancer risks* from exposure to diesel exhaust, there are also non-cancer risk impacts which require consideration, including, non-cancer acute and chronic health hazards. Fuel combustion releases at least forty (40) different toxic air contaminants, including, but not limited to, diesel particulate, benzene, formaldehyde, 1,3-butadiene and acetaldehyde. Levels of these pollutants are generally concentrated within 500 feet of freeways and very busy roadways.<sup>10</sup> For non-cancer acute impacts, Appendix D of the 2015 OEHHA guidelines recommends an evaluation of the acute health effects may be warranted in case of a multistory apartment building.<sup>11</sup> Since there is no acute REL that is currently associated with DPM, any potential acute health impacts (i.e., short term health hazards) from exposure to diesel exhaust were not determined by the Ramboll Report. As a consequence, it is likely this surrogate approach likely underestimates the overall health impacts associated with individual toxics from diesel combustion, specifically, any potential acute health hazards."

### 3.5 Project Traffic Impacts

"Further, note that within the APEZ, additional emissions would adversely affect populations that are already at a higher risk which CEQA may demand a higher standard of review. Therefore, a more refined analysis of traffic emissions and impacts with the most recent accepted emission factors would be warranted."

The California Supreme Court has "repeatedly recognized that the EIR is the `heart of **CEQA**.' [Citations.] `Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR "protects not only the environment but also informed self-government  
- in [Center for Sierra Nevada Conservation v. County of El Dorado, 2012](#)

"CEQA embodies our state's policy that `the long-term protection of the environment... shall be the guiding criterion in public decisions  
- in [SAVE OUR CARMEL RIVER v. MONTEREY PENINSULA WATER MANAGEMENT DISTRICT, 2006](#)

The record is clear on this matter and it is that the Planning Department has yet again failed to protect the health and safety of the public which is the stated purpose of the local planning code ordinance. The same arguments were made in 2009 where the project sponsor and the Planning Department swore up and down that they had properly executed their duties according to "Hoyle" when in fact they had not. In 2009 a report prepared by Trinity Consultants demonstrated that the exact same type of proposed project would have the exact same type of downwash effect as the current project does as reported in the recent Ramboll report. Pollution will increase because of downwash. This downwash effect will increase the health risks to residents up to and including death.

On its face the Ramboll report in black and white is what demands further study, not the mere opinion of a local resident. In my view it would be irresponsible to forgoe proper environmental study law based upon the opinion of a registered lobbyist. Since when has it become de riguer to place public health and safety at the bottom of the list of priorities? Since when is it unnecessary to protect health and safety? Further study is just that futher study and the outcome of it is most likely mitigation. Following the rules of the road is what allows us to live in harmony, in a social structure. The values we derive therefrom and enjoy far outweigh any momentary inconvenience of doing what we have to do protect each other. I suggest that we could have more and better and safer housing being built faster if the project sponsors and their registered lobbyists would spend their time trying to comprhend the rules of the road and following them as opposed to trying to gut the rules only for their convenience and profit. Please do the right thing and protect health and safety.

Sincerely Dane Ince

CC

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