



SAN FRANCISCO PLANNING DEPARTMENT

Appeal of Community Plan Exemption 1515 South Van Ness Avenue Project

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DATE: November 7, 2016

TO: Angela Calvillo, Clerk of the Board of Supervisors

FROM: Lisa M. Gibson, Acting Environmental Review Officer – (415) 575-9032
Chris Kern, Senior Environmental Planner – (415) 575-9037
Melinda Hue, Environmental Coordinator – (415) 575-9041

RE: File No. 161001, Planning Department Case No. 2014.1020ENV – Appeal of the Community Plan Exemption for the 1515 South Van Ness Project. Block/Lot: 6571/008, 001, and 001A

PROJECT SPONSOR: Peter Schellinger, LMC San Francisco Holdings, LLC – (415) 975-4982

APPELLANT: J. Scott Weaver, Law Office of J. Scott Weaver, on behalf of the Calle 24 Latino Cultural District Community Council – (415) 317-0832

HEARING DATE: November 15, 2016

ATTACHMENTS: A – October 14, 2016 appeal letter from J. Scott Weaver

INTRODUCTION

This memorandum and the attached document is a response to the second letter submitted October 14, 2016, following the September 12, 2016 letter of appeal to the Board of Supervisors (the Board) regarding the Planning Department's (the "Department") issuance of a Community Plan Exemption (CPE) under the *Eastern Neighborhoods Rezoning and Area Plan Final Environmental Impact Report* ("Eastern

Neighborhoods PEIR or PEIR")¹ in compliance with the California Environmental Quality Act ("CEQA") for the 1515 South Van Ness Avenue Project (the "Project").

On September 12, 2016, an appeal of the CPE determination was filed by J. Scott Weaver, Law Office of J. Scott Weaver, on behalf of the Calle 24 Latino Cultural District Community Council (the Appellant). On October 17, 2016, a response to the September 12, 2016 appeal Letter was provided by the Planning Department. On October 14, 2016, a second letter was filed by the Appellant. The Appellant's October 14 letter (Attachment A to this appeal response) includes a previous letter that Mr. Weaver submitted to Planning Staff (June 3, 2016), which was also previously included as an attachment to the Appellant's September 12 appeal letter (pages 484 through 486), and a variety of studies and reports in support of the appeal. These attachments are included as "Appeal Ltr 101416.pdf" on the cd disk or online as part of Board of Supervisors File No. 161001.²

CONCERNS RAISED AND PLANNING DEPARTMENT RESPONSES:

The Appellant's October 14 letter restates three issues previously raised in the September 12, 2016 appeal Letter. As discussed below, the Planning Department addressed these issues in the October 17, 2016 appeal response.

Concern A: "The CEQA findings did not take into account the direct, indirect, and cumulative impacts that the proposed project and the other "market rate" projects would have on the businesses, residents, and non-profits in the LCD" (page 2 of October 14, 2016 appeal letter)

Response A: This contention is presented as Concern 1 and addressed in Response 1 in the October 17, 2016 appeal response (October 17 appeal response).

Project-level Environmental Review. As discussed in detail on page 9 of the October 17 appeal response, in accordance with CEQA Guidelines Section 15183, a project-level environmental review was undertaken as documented in the CPE Checklist to determine if the 1515 South Van Ness project would result in additional impacts specific to the project or the project site, and if the further environmental review is required. Impacts to the environment that might result with the Project were analyzed in the CPE Checklist and, consistent with CEQA Guidelines Section 15130, the CPE Checklist also includes analysis of the proposed project's potential cumulative impacts. The CPE Checklist determined that the proposed project would not have significant impacts that were not previously identified in the Eastern Neighborhoods PEIR and identified five Mitigation Measures from the Eastern Neighborhoods PEIR to

¹ The Eastern Neighborhoods Rezoning and Area Plan Final EIR (Planning Department Case No. 2004.0160E), State Clearinghouse No. 2005032048) was certified by the Planning Commission on August 7, 2008. The project site is within the Eastern Neighborhoods Rezoning and Area Plan project area.

² <https://sfgov.legistar.com/View.ashx?M=F&ID=4730514&GUID=544CE225-9B30-4C73-9770-41A00EB5DB1D>

be applied to the Project to avoid impacts previously identified in the PEIR with regard to archeological resources, noise, and hazardous materials.

Calle 24 Latino Cultural District. As discussed in detail starting on page 21 of the October 17 appeal response under “Calle 24 Latino Cultural District”, the CPE Checklist determined that the Project would not result in significant impacts on historic architectural resources. The purpose of the Calle 24 Latino Cultural District (Calle 24 LCD) is to recognize, promote, and preserve cultural assets of the LCD. However, the Calle 24 LCD does not qualify as a historic district eligible for listing on the California Register of Historic Resources and, as such, is not a historic resource as defined by CEQA. Unlike historic districts that are locally designated or listed on the National or State registers, the LCD was not established through a formal survey by a consultant or Planning Department staff member meeting the Secretary of the Interior’s Professional Standards. The Calle 24 LCD Report does not include a statement of significance addressing eligibility for listing on either the California or National Registers, nor was the LCD adopted as a historic district by the Historic Preservation Commission. While there may be properties within the LCD that may qualify as historic resources, either individually or as part of smaller potential historic districts, under CEQA the Calle 24 LCD is not a historic district under CEQA. The Appellant does not provide any basis to support a determination that the project site is located within a CEQA historic district, that the property is a contributor to a CEQA historic district, or that the Project would have a significant impact on a CEQA historic resource. Pages 21 to 23 of the October 17 appeal response provides a detailed discussion regarding the Calle 24 LCD.

Housing Prices, Changing Economic Conditions and Displacement. As discussed in detail starting on page 16 of the October 17 appeal response under “Housing Prices, Changing Economic Conditions and Displacement”, while studies included with the appeal relating to gentrification and displacement in the Mission District present a discussion of whether or not displacement is occurring, the appeal does not establish a link between displacement and either the 1515 South Van Ness Avenue Project or the Eastern Neighborhoods Rezoning and Area Plans, nor does the appeal demonstrate that gentrification or displacement have resulted in new or substantially more significant impacts on the physical environment than were disclosed in the Eastern Neighborhoods PEIR. Pursuant to CEQA Guidelines 15131 and 15064(e), economic and social effects such as gentrification and displacement are only considered under CEQA where these effects would cause substantial adverse physical impacts on the environment (see pages 16 to 19 of the October 17 appeal response). Only where economic or social effects have resulted in adverse physical changes in the environment, such as “blight” or “urban decay” have courts upheld environmental analysis that consider such effects. But without such a connection to an adverse physical change, consideration of social or economic impacts “shall not be considered a significant effect” per CEQA Guidelines 15382.

CEQA Findings. In regards to the CEQA findings themselves, this is presented in Concern 3 and addressed in Response 3 in the October 17 appeal response. As stated in the October 17, 2016 appeal response, the Appellant’s contention regarding CEQA findings is not a valid ground for an appeal of the CPE. Page 27 of the October 17 appeal response provides a detailed discussion regarding CEQA findings.

Concern B: "The Community Plan Exemption reliance on the PEIR was improper because 1) The PEIR contemplated production of no more than 2,054 units with an approved preferred project of 1,696 units for the Mission Area. As of February, 2016 there were 2,451 units either completed or under environmental review. And 2) Substantial new information renders the PEIR out of date. These changes cumulatively impact areas of land use, consistency with area plans and policies, recreation and open space, traffic and circulation, transit and transportation." (page 2 of October 14, 2016 appeal letter)

"The Planning Department and Planning Commission have engaged in a pattern and practice of approving projects relying on an out-of-date Plan EIR and without regard to the direct and indirect cumulative impacts that these projects have on the environment." (page 2 of October 14, 2016 appeal letter)

Response B: This is presented in Concern 1 and addressed in Response 1 in the October 17 appeal response.

Eastern Neighborhoods PEIR. The Appellant's claims regarding growth projections reiterate issues raised in the September 12 appeal letter and are addressed in the Department's October 17 appeal response. As discussed in detail starting on page 7 of the October 17 appeal response under "Eastern Neighborhoods PEIR and Project CPE" section, CEQA Guidelines Section 15162(c) establishes that once a project, in this case the Eastern Neighborhoods Rezoning and Area Plans, is approved:

"[T]he lead agency's role in that approval is completed unless further discretionary approval on that project is required. Information appearing after an approval does not require reopening of that approval. If after the project is approved, any of the conditions described in subdivision (a) occurs, a subsequent EIR or negative declaration shall only be prepared by the public agency which grants the next discretionary approval for the project, if any." [Emphasis added.]

Thus, even if the Appellant's unsubstantiated claims that the build-out of development consistent with the adopted rezoning and area plans somehow constituted new information or changed circumstances resulting in new or more severe impacts on the physical environment than previously disclosed (i.e., the conditions described in subdivision (a) of CEQA Guidelines section 15162), the Eastern Neighborhoods PEIR would remain valid under CEQA. Simply stated, unless and until the Eastern Neighborhoods Rezoning and Area Plans themselves are amended or revised, the reopening of the Eastern Neighborhoods PEIR is neither warranted nor required under CEQA. CEQA Section 21083.3 and CEQA Guidelines Section 15183 mandate that projects, like the 1515 South Van Ness Avenue project, that are consistent with the development density established under existing zoning, community plans, or general plan policies for which an EIR was certified, shall not require additional environmental review except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site.

Impacts to the environment that might result with implementation of the Project were analyzed in the Eastern Neighborhoods PEIR and the CPE Checklist according to the project's potential impacts upon the specific setting for each environmental topic, clearly stated significance criteria, and substantial evidence

in the form of topic-specific analyses. Consistent with CEQA Guidelines Section 15130, the CPE Checklist also includes analysis of the proposed project's potential cumulative impacts for each environmental topic. The CPE Checklist determined that the proposed project would not have a significant impact that was not previously identified in the Eastern Neighborhoods PEIR and identified five Mitigation Measures from the Eastern Neighborhoods PEIR to be applied to the Project to avoid impacts previously identified in the PEIR with regard to archeological resources, noise, and hazardous materials.

Pages 6 to 23 of the October 17 appeal response provides a detailed discussion regarding concerns regarding the Eastern Neighborhoods PEIR.

Population and Housing. As discussed in detail starting on page 11 of the October 17 appeal response under "Population and Housing", nowhere in the Eastern Neighborhoods PEIR is it stated or implied that the projections were intended as a cap or limit to growth within the areas that would be subject to the Eastern Neighborhoods Plans. The growth projections were used as analytical tool in the PEIR to contextualize the potential environmental impacts of the Eastern Neighborhoods Area Plans. The PEIR assumed a total amount of development resulting from the Eastern Neighborhoods Area Plans consisting of all development types (residential, commercial, etc.) and analyzed impacts based on this total development amount. The Eastern Neighborhoods PEIR impact analyses were not based on any anticipated pace or phasing of growth. Although the number of foreseeable dwelling units in the Mission Plan Area may exceed the range of residential development anticipated by the Eastern Neighborhoods PEIR by approximately 350 dwelling units (should all proposed projects be approved and constructed), the total amount of foreseeable non-residential space is well below the maximum evaluated in the Eastern Neighborhoods PEIR, as is the overall population increase. Therefore, while more residential development may occur than projected, it also appears that less non-residential development will occur, and that the population increase assumed in the PEIR will not be exceeded. Pages 11 to 14 of the October 17 appeal response provides a detailed discussion regarding population and housing.

Community Benefits. In regards to the community benefits, this is presented in Concern 2 and addressed in Response 2 in the October 17 appeal response. Concerns regarding community benefits are not valid grounds for an appeal of the CPE because they do not demonstrate that the Project would result in significant effects which are peculiar to the project or its site that were not disclosed in the Eastern Neighborhoods PEIR. The Eastern Neighborhoods PEIR did not rely on the implementation of community benefits in the determination of the impacts resulting from the Eastern Neighborhoods Area Plans. See Page 24 to 27 of the October 17 appeal response.

CONCLUSION:

The Appellant's October 14 letter restates three issues previously raised in the September 12, 2016 appeal Letter which the Planning Department addressed these issues in the October 17, 2016 appeal response.

ATTACHMENT A

J. Scott Weaver

Appeal Letter

October 14, 2016

West Bay Law
Law Office of J. Scott Weaver

October 14, 2016

President London Breed and San Francisco Board of Supervisors
San Francisco City Hall
1 Dr Carlton B Goodlett Pl #244
San Francisco, CA 94102

Re: 1515 South Van Ness Avenue Project. 2014.1020CUA

Dear Supervisor Breed,

Please accept this submission on behalf of the Calle 24 Latino Cultural District Council with respect to the proposed project at 1515 South Van Ness Avenue.

I. Factual Background

The proposed project is a five to six story building at the corner of South Van Ness Avenue and 26th Street, and within the boundaries of the Calle 24 Latino Cultural District. It replaces the 35,000 square feet of PDR use with a project consisting of approximately 4,167 square feet of trade shops, 1,074 square feet of retail and 157 housing units of various sizes. Originally 88% of those units were to be “market rate”. Shortly before the hearing the project sponsor proposed 75% market rate, 15% affordable to those earning 55% AMI and 10% affordable to those earning 100% AMI.

- A. On October 23, 2015 Appellant Calle 24 Latino Cultural District Council (“Council”) wrote to the Planning Department requesting that any environmental analysis of the proposed project at 1515 South Van Ness Avenue (“proposed project”) include an evaluation of the cumulative impacts of the proposed project along with other market rate projects affecting the Calle 24 Latino Cultural District (LCD), and to fashion mitigations for any negative impacts. The letter also noted that substantial new information rendered the Eastern Neighborhoods Plan EIR (“PEIR”) out of date. (See Exhibits, Pages 484 - 486)
- B. On June 3, 2016 Appellant Council wrote to the Planning Department objecting to a Draft Certificate of Exemption prepared by the Planning Department, reiterating the need for an analysis of the impacts on the LCD, stating the basis for such an analysis, and requesting that adequate mitigations be put in place. The letter provided specific areas of inquiry that would assist in this evaluation. The letter also reiterated the substantial new information rendered the PEIR out of date and no longer a basis for issuing a Certificate of Exemption. (Exhibits, Pages 590-596, 588-89)

- C. On July 12, 2016 the Planning Department issued a Certificate of Exemption from Environmental Review. (Exhibits, Pages 577-587)
- D. On August 3, 2016 Appellant Council wrote Planning Commissioners expressing its concerns regarding the proposed project, including the failure of the Department to evaluate cumulative impacts of increased gentrification on the LCD and that the PEIR was no longer a viable basis for issuing a Certification of Exemption. (Exhibits, Pages 46-57)
- E. On August 3, 2016 Supervisor David Campos wrote to the Planning Commission requesting that impacts of the projects affecting the LCD be evaluated and adequate mitigations be put in place prior to the approval of any project. (Exhibits, Page 597, 598)
- F. On August 11, 2016, the Planning Commission approved the proposed project, including approval of the Community Plan Exemption (Exhibits, Pages 2-40).
- G. Appellant timely filed this appeal on September 12, 2016.

II. Reasons for Appeal

- A. The CEQA findings did not take into account the direct, indirect, and cumulative impacts that the proposed project and other “market rate” projects would have on the businesses, residents, and non-profits in the LCD.
- B. The Community Plan Exemption reliance on the PEIR was improper because 1) The PEIR contemplated production of no more than 2,054 units with an approved preferred project of 1,696 units for the Mission Area. As of February, 2016 there were 2,451 units either completed or under environmental review. and 2) Substantial new information renders the PEIR out of date. These changes cumulatively impact areas of land use, consistency with area plans and policies, recreation and open space, traffic and circulation, transit and transportation
- C. The Planning Department and Planning Commission have engaged in a pattern and practice of approving projects relying on an out-of-date Plan EIR and without regard to the direct and indirect cumulative impacts that these projects have on the environment.

III. The CEQA Findings Did Not Take into Account the Cumulative Impacts of the Proposed Project on the Calle 24 Latino Cultural District.

A. Background of the LCD and Existing Threats.

The businesses and nonprofits in the LCD have been recognized by resolution of the Board of Supervisors as an important cultural, historical and commercial resource for the City. (Resolution Creating LCD is attached as Exhibit 1) The Ordinance creating the LCD noted that “The Calle 24 Latino Cultural District memorializes a place whose richness of culture, history and entrepreneurship is unrivaled in San Francisco.” The District was established “to stabilize the displacement of Latino Businesses, and residents, preserve Calle 24 as the center of Latino culture and commerce, enhance the unique nature of Calle 24 as a special place for San Francisco’s residents and tourists, . . .” and that its contribution will provide “cultural visibility, vibrancy, and economic opportunity for Latinos in the City and County of San Francisco.” (See Exhibits Pages 170-178)

The Calle 24 Latino Cultural District Community Council (“the Council”), a nonprofit consisting of community stakeholders in the LCD, has stated as its mission: “To preserve, enhance, and advocate for Latino cultural continuity, vitality, and community in San Francisco’s touchstone Latino Cultural District and the greater Mission community”. (Exhibits Page 183) With funding from the Mayor’s Office of Economic and Workforce Development and technical support from the Gato Group, the Council engaged in an extensive planning process that included numerous stakeholder interviews, four focus groups, a study session with expert consultants, and four community meetings. At the conclusion, the Council prepared a report on its community planning process. (Exhibits Page 186, 187) Among the Council’s initiatives are the creation of a Special Use District and a Cultural Benefits Campaign district. These initiatives are currently in process.

The report noted that “there were major concerns among all stakeholders about the **lack of affordable housing** and about the gentrification and recent eviction and displacement of long-time residents. A related theme was the **rapid transformation** underway with some saying they wanted to prevent another ‘Valencia’ (referring to the way Valencia lost much of its Latino culture in the 1990s and 2000s)”. (Emphasis original) (Exhibits Page 191)

Unfortunately, we are beginning to see the Valenciazation of the LCD. Small mom and pop businesses are being replaced by upscale corporate-owned businesses. Non-profits such as the 40-year-old Galaria de la Raza, on month-to-month tenancies are extremely vulnerable. They are also seeing a diminution of their customer base due to gentrification and the resulting displacement.

While it is true that “gentrification” is already occurring in the area, with little market rate development, the sudden influx of over 650 households earning 200% AMI will pour gasoline on the fire. (See “cumulative impacts” below)

Development has already demonstrated the potential physical impacts of continued market rate development. For instance, at a proposed project on 24th and York, the owner plans to build 12 condo townhomes which will cover a mural that has been on there over 30 years and is part of the Precita eyes mural tours. The famous Carlos Santana mural on 22nd and South Van Ness was completely covered when the lot in front built housing. In Balmy Alley new owners of a property wanted to remodel and add a second unit which faced balmy ally, covering a 40 year-old mural.

More disturbing has been complaints by newcomers against neighboring Latino owned businesses from the owner and residents of the Vida on Mission Street. A group of new residents on Harrison St. calling themselves “the gang of five” said they would sue to stop Carnival. During Sunday Streets on 24th a group of neighbors did not want the low riders on Harrison Street, saying that they were intimidated by them. Additionally, neighbors have complained about “Mexican” music on 24th Street. Without sufficient mitigation and community benefits, problems such as these will only get worse with the influx of hundreds more “gentrifiers”, all to the detriment of the residents, businesses, and nonprofits that the City said it wanted to protect when it created the LCD. As we have seen on Valencia Street we can foresee gentrifiers requesting the police to move Latino youths, and adults, off “their” street corners.

B. Cumulative Impacts Must Be Examined.

Under Public Resources Code Section 21083 subdivision (b)(2).) "The possible effects of a project are individually limited but cumulatively considerable. As used in this paragraph ‘cumulatively considerable’ means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects." Stated otherwise, a lead agency shall require an EIR be prepared for a project when the record contains substantial evidence that the "project has possible environmental effects that are individually limited but cumulatively considerable." (Guidelines section 15065 subdivision (a) (3).)

The impacts of the proposed project cannot be examined in isolation. The proposed project is not constructed inside a bubble. Both the project and its residents interact with the immediate community in multiple ways. Similarly, the environmental impacts of this project cannot be examined apart from other proposed projects currently in the pipeline. Including this project, there are approximately 666 luxury units currently in the pipeline that are located in or near the LCD. They are: 2675 Folsom Street (98 “market rate” units), 3314 Cesar Chavez (52 units), 2600 Harrison St. (20), 2799 24th St. (8), and 3357 26th St. (8). Proposed projects immediately adjacent to the LCD are: 1198 Valencia St. (52 units), 2918 Mission St. (38), 1298 Valencia St. (35), and 2600 Mission (20). Two blocks from the LCD is 2000-2070 Bryant Street (191 units), for a total of 662.(Exhibits, Page 58)

C. Cumulative Impacts of the Proposed Project and Other Market Rate Projects on the LCD are Subject to CEQA Review.

CEQA defines “environment” as “the physical conditions which exist within the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, and objects of historic or aesthetic significance.” 14 CCR Sec. 15131(a). See e.g. *Eureka Citizens for Responsible Government v City of Eureka* (2007) 147 Cal.App.4th 357, 363). The cumulative impacts of the proposed project on the LCD are subject to CEQA because (1) They have a potential adverse impact on the businesses and nonprofits in the LCD and therefore may impact the physical environment, and (2) LCD is “historic” as defined in the Public Resources Code and the CCR. These impacts to land use were not examined in the PEIR because the LCD did not exist at the time the PEIR was prepared.

1) The Market Rate Projects Have a Potential Adverse Impact on the Physical Environment.

As previously stated, the City has placed great importance on the long term viability of the LCD, by its creation, investment in the study by the Council (Exhibits, Pages 170-187), its inclusion in the MAP 2020 program, and by creation of a Legacy Business program along with other assistance to small businesses. Further, two of the primary objectives of the Mission Area Plan are to preserve the diversity of the Mission, and to “preserve and enhance the unique character of the Mission District Commercial Areas”. (Exhibits Page 500). It is a resource worth preserving.

The proposed project itself will result in the influx of approximately 141 households earning 200% AMI. In the pipeline are projects proposing more than 500 more households in or near the LCD. It is no leap of faith to anticipate that the proposed project will result in higher rents on properties within the LCD especially for businesses and non-profits which do not have rent control protections. High wage earners have much more disposable income than most residents of the area. According to 2009-2013 census estimates, the median income for residents in the census tract on which the proposed project site is situated was \$51,510 (or 50% Median Income for a family of four). In addition to having significantly more disposable incomes and ability to purchase higher priced goods and services, these newcomers are more likely to have different consumer preferences, affecting both price and the nature of the goods and services provided by businesses in the 24th Street corridor. We might ask “how can the City provide economic opportunities for Latinos if its policies price Latinos out of the market?” We only need look at Valencia Street to see how the influx of higher wage earners with only modest market rate development can impact a commercial corridor, substituting for mom and pop businesses with high end restaurants and clothing stores. Envisioning a similar result along 24th Street is a far cry from “speculative,” it is reasonably foreseeable.

Significant effect on the environment" is defined as "a substantial, or potentially substantial, *adverse change in any of the physical conditions within the area affected by the project* including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. An economic or social change by itself shall not be considered a significant effect on the environment. A social or economic change related to a physical change may be considered in determining whether the physical change is significant." (Guidelines, § 15382, italics added.)

The Court's decision in *Bakersfield Citizens for Local Control v City of Bakersfield* (2004) 124 Cal.App. 4th 1184 is highly instructive on this issue and analogous to the matter currently before the Board. In *Bakersfield*, the city refused to consider the impacts of two proposed shopping centers on downtown businesses and the potential to cause urban decay. The Court held that the businesses were part of the physical environment for which an EIR was required. Noting that under Guidelines 15131(a) "(I)f forecasted economic or social effects of a proposed project directly or indirectly will lead to adverse physical changes in the environment, then CEQA requires disclosure and analysis of these resulting physical impacts. (Citations) subdivision (e) of Guidelines section 15064 provides that when economic or social effects of a project cause a physical change, this is to be regarded as a significant effect in the same manner as any other physical change resulting from the project."

Noting that this concept is not limited to the issue of urban decay, the Court referenced *El Dorado Union High School Dist. v City of Placerville* (1983) 144 Cal. App.3d, 123, 131, where the city was required to evaluate whether a proposed apartment house development would necessitate the need to construct a new high school. In *Christward Ministry v. Superior Court* (1986) 184 Cal.App.3d 180, 197, the Court required a study as to whether the physical impacts associated with a new waste management facility under CEQA would disturb worship in an environmental retreat center.

Here, the cumulative impacts of the proposed project and other projects poses the risk of accelerated Valenciazation of the LCD. Here, mom and pop Latino owned and operated concerns are at risk being replaced by high end restaurants, clothing and accessory stores, and personal trainer gyms and yoga studios. This is a change in the physical environment that defies the City's designation of the district, the MAP 2020 process, and which the City has, at least by its words, sought to avoid.

The Council's repeated requests for evaluation of impacts and development of mitigation measures is supported by a recent report by The Institute for Government Studies. It concluded that: 1) on a regional level, creation of market rate housing will relieve displacement pressures, 2) the creation of affordable housing will have double the impact of relieving such pressures, and 3) "on a block

group level in San Francisco, neither market-rate nor subsidized housing production has the protective power they do at a regional scale, likely due to the mismatch between demand and supply. (Exhibits, page 341) The report further concluded that further analysis was needed “to clarify the complex relationship between development, affordability, and displacement at the local scale, . . . (and) also investing in the preservation of housing affordability and stabilizing vulnerable communities.”

2) The Calle 24 Latino Cultural District Council has Made a Fair Argument that the Department Should Have Evaluated Cumulative Impacts on the LCD.

Finally, the Board should be mindful of the burdens of both the City and Appellant to provide “substantial evidence” to support their position. “[A]rgument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous, or evidence of social or economic impacts which do not contribute to, or are not caused by, physical impacts on the environment is not substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.” (Pub. Res. Code § 21082.2(c); Guidelines, § 15384.)

The Court in *Stanislaus Audubon Society v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 151, stressed the “low threshold” vis-à-vis the presence of a fair argument, noting that a lead agency should not give an “unreasonable definition” to the term substantial evidence, “equating it with overwhelming or overpowering evidence. CEQA does not impose such a monumental burden” on those seeking to raise a fair argument of impacts. Whether the administrative record contains a fair argument sufficient to trigger preparation of an EIR is a question of law, not a question of fact. Under this unique test “deference to the agency’s determination is not appropriate and its decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.”

In *Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714 lay testimony held sufficient to support fair argument. “Relevant personal observations of area residents on nontechnical subjects may qualify as substantial evidence.” *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 928. “For example, an adjacent property owner may testify to traffic conditions based upon personal knowledge.” (*Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3^d 151, 173.) Because substantial evidence includes “reasonable assumptions predicated upon facts” (Guidelines, § 15384, 17 subd. (b)) and “reasonable inferences” (id., subd. (a)) from the facts, factual testimony about existing environmental conditions can form the basis for substantial evidence.⁹ (Guidelines, § 15384; *Banker’s Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego* (2006) 139 Cal.App.4th 249, 274 (*Banker’s Hill*) [“local residents may testify to their observations regarding existing traffic conditions”]. “The question is not whether [citizen testimony] constitutes proof that [particular effects] will occur,” but whether it (or

reasonable inferences from it) “constitutes substantial, credible evidence that supports a fair argument that . . . [the project] may have a significant impact on the environment.” Emphasis supplied) *Rominger v. County of Colusa* (2014) 229 Cal.App.4th 690, 721

Here, the Department has provided no evidence to support its position. The PEIR does not mention the LCD (because the LCD did not exist at the time the PEIR was prepared) and the Department refused to consider the impacts when so requested.

By contrast Appellant Council has provided substantial evidence to support a fair argument that the cumulative direct and indirect impacts of this and other projects at or near the LCD could, directly or indirectly adversely affect the LCD – which is part of the physical environment. The Council has presented the resolution creating the geographic area constituting the LCD (Exhibits Page 170 - 178) the report concerning the threats to the LCD (Exhibits, Pages 179-205); the extent of market rate development proposed in or near the LCD (Exhibits, Page 58), letters describing the connection between “market rate” development and threats to LCD businesses and nonprofits. (Exhibits, Pages 592-593) the Budget Analyst report describing income levels in the Mission (Exhibits 441), and census information regarding income levels for residents living in or adjacent to the proposed site and within the LCD (<http://www.census.gov/censusexplorer/censusexplorer.html> - showing household AMI for the subject census tract at \$60,479 and across the street from the site, a household income at \$51,510)

Accordingly, the City failed to meet its informational obligations under CEQA. The Certification of Exemption from Environmental Review is therefore defective and cannot be relied on for approval of the proposed project. Before we can proceed with this and other projects, we need to understand their impacts on the LCD and potential mitigation measures that will lessen those impacts.

2. The LCD is an Historic Resource.

Notwithstanding the potential physical impacts described above, and in addition to those impacts LCD qualifies as an Historic Resource and the impacts on this resource must also be evaluated under CEQA against the CRHR criteria prior to making a finding as to a proposed project’s impacts to historical resources 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; Guidelines §15064.5).

A historical resource is defined as any object, building, structure, site, area, place, record, or manuscript that: a) Is historically or archaeologically significant, or is significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, or cultural annals of California; and b) Meets any of the following criteria: (1) Is associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage; (2) Is associated with the lives of persons important in our past; (3) Embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values; or (4) Has yielded, or may be likely to yield, information important in prehistory or history (14 CCR 15064.5(a)(3)). These businesses and nonprofits in the LCD have been recognized as an important cultural and commercial resource for the City whose "richness of culture, history and entrepreneurship is unrivaled in San Francisco."

The near and long term preservation and enhancement of the LCD is a stated goal of the City. This, of necessity, includes the physical presence of its residents, businesses, and nonprofits, which we submit are endangered by the extensive market rate development slated for the area.

IV. The Community Plan Exemption Reliance on the PEIR was Improper Because: 1) The PEIR Contemplated Production of no More than 2,054 Units with an Approved Preferred Project of 1,696 Units for the Mission Area: as of February, 2016 there were 2,451 Units Either Completed or Under Environmental Review; and 2) Other Substantial New Information Renders the PEIR Out of Date. These Changes Cumulatively Impact Areas of Land Use, Consistency with Area Plans and Policies, Recreation and Open Space, Traffic and Circulation, Transit and Transportation

The Department should not have issued a Certificate of Exemption under the Eastern Neighborhoods Plan EIR (PEIR) instead of a project EIR. The use of the PEIR in this way presupposes that it is sufficiently current to address all areas required under CEQA. The Mission Plan had as its goals *inter alia* to produce a substantial amount of affordable housing, preserve diversity and vitality of the Mission, preserve and enhance the distinct character of the Mission's distinct commercial areas, and preserve and enhance existing PDR businesses. (Exhibits, Page 500) The PEIR assumed these goals and presumably believed that they would be realized under the ENP. Now, eight years later, it has become painfully apparent that the Plan is falling short of its goals and that its implementation is out of balance with changing circumstances in the neighborhood. Of the 1855 units entitled or under review as of between 2011 and 12/31/15, only 12% were affordable. An additional 504 units were built during this period, however the monitoring report does not state how many were affordable. (Exhibits, Mission Monitoring Report – Pages 643, 645),

Likewise the Eastern Neighborhoods Plan Community Advisory Council had noted that many of the ENP outcomes have been skewed in the wrong direction. (Exhibits Pages, 599-609)

On September 13, this Board of Supervisors, when considering the project at 2000 to 2070 Bryant Street, expressed serious concerns about the efficacy of the Eastern Neighborhoods Plan in today's environment. (See http://sanfrancisco.granicus.com/MediaPlayer.php?view_id=10&clip_id=26119 beginning at 3:16).

At least part of the reason for the disconnect between the goals and the outcomes is that there have been numerous changes on the ground that have direct, indirect and cumulative impacts on the environment. These changes impact on the physical environment in terms of the physical character of the Mission, notably the character of commercial areas and the presence of PDR businesses, as well as recreation and open space, transportation infrastructure, and traffic and circulation. When substantial new information becomes available, CEQA Guidelines require comprehensive analysis of these issues. (CEQA Guidelines Sec. 15183). The situation on the ground has changed substantially since the PEIR was prepared in 2008 in the following ways.

- **An Unanticipated Rapid Pace of Development.** the PEIR was prepared in the midst of the “great recession” and did not project the steep increases in housing prices that we have witnessed during the past eight years. This has been especially exacerbated by the increase in high paying jobs that have come to the City. This has resulted in a construction explosion. As a result, the cumulative total of units built, approved, and under review in the pipeline (2,451 as of February 23, 2016), now exceeds the highest number of units contemplated in the Plan EIR for the Mission (2,056). The PEIR projected this production to take place over a much longer period of time - 2008 to 2025. Development has therefore accelerated at a pace higher than that anticipated in the PEIR. (Exhibits, Page 58) Because of the unexpectedly rapid pace of development, community benefits, including improvements to the Mission's traffic, transportation, open space, and recreation infrastructures have been unable to keep pace (ENCAC Response to Monitoring Report (603-608) - The report also noted that transportation impacts hurt businesses (at page 607). The PEIR clearly did not anticipate this pace of development.
- **Disproportionate Construction of Market Rate Units as compared with Affordable Units.** As previously stated, only 12% of the units under construction, entitled, or under review are affordable units. This is worse than the deplorable City-wide totals. There, the number of market rate units have exceeded the RHNA

Allocations while the number of units affordable to low and moderate income San Franciscans is well below the 60% RHNA allocation. (Exhibits, Page 67, 68). (see also Housing Balance Report at Page 69 *et. seq.* Again, the PEIR could not have anticipated such poor performance in terms of affordability. This will have substantial traffic and transportation (see below) impacts as well as impacts on types of businesses in our neighborhoods (as previously discussed).

- **Disappearance of Redevelopment Money.** In 2012, Redevelopment Agencies throughout the State were dismantled and with that about \$1 billion per year for affordable housing. Now Cities have to struggle to meet affordable housing needs.
- **State of Advanced Gentrification in the Mission.** The glut of high income earners in the Mission has created an “advanced gentrification” that was not anticipated at the time of the PEIR. <http://missionlocal.org/2015/09/sf-mission-gentrification-advanced/> With this gentrification, small Latino “mom and pop” businesses and non-profits have been replaced with high end restaurants, clothing and accessory stores, and other businesses that cater to high earners. Additional high income earners who will occupy the proposed market rate units will further exacerbate these problems. (*Case Studies on Gentrification and Displacement in the San Francisco Bay Area* (Begins at Page 298.) The San Francisco Analyst has reported that the Mission has lost 27% of its Latinos and 26% of its families with children since 2000. One would hope that if the 2008 EIR was able to envision this advanced state that it would have advocated for more protective measures.
- **Gentrification Has Caused Unanticipated Increases in Traffic and Automobile Ownership.** The unanticipated influx of high earners in the Mission has resulted, and will result, in a substantial increase in the rate of automobile ownership in the Mission. Between 2000 to 2013, the number of households with automobiles increased from 37% to 64% - or 9,172 automobiles in 2000 to 16,435 in 2013. At the same time AMI increased from \$50,676 to \$75,269. (Exhibits, Pages 241, 242) It is now well recognized that high earners are twice as likely to own an automobile than their low income counterparts – even in transit rich areas such as the Mission. (Exhibits, Pages 225, *et. seq.*) The displacement of Mission residents has resulted in, and will result in, long reverse commutes to places of employment, children’s schools, and social services that are not available in outlying areas. These reverse commutes further exacerbate traffic congestion and create greenhouse gas emissions not contemplated in the PEIR. A recent report by the Eviction Defense Collaborative following up on a sampling of 566 displaced clients found that nearly 39% were forced to move moved outside San Francisco. (Exhibits, Page 614)

- **Tech Shuttle Gentrification and Displacement Impacts.** The PEIR did not anticipate the impact of tech shuttles from a traffic standpoint, nor from that of the demand for housing. The specter of living within a few blocks of a free ride to work has caused many tech employees to move to areas where the shuttles stop – predominantly in the Mission. As such, we have high-earning employees exacerbating the already high demand for housing. The anti-eviction mapping project has documented the connection between shuttle stops and higher incidences of no-fault evictions. (Exhibits, Page 616)
<http://www.antievictionmappingproject.net/techbusevictions.html>
- **MTA Traffic Changes Will Directly Impact the Proposed Project.** The recent traffic changes along Mission Street by the SFMTA forces mandatory right turns onto Cesar Chavez from Mission, and prohibits through traffic on Mission, which has added increased traffic on the surrounding residential streets. Much of the right turn traffic will then turn left at South Van Ness to This project will add 140 more households and significantly increase the traffic on Mission Street.
- **Luxury Housing Has Exacerbated the Demand for Affordable Housing.** A 2007 Nexus Study, commissioned by the Planning Department, (Exhibits, Page 108) concluded that the production of 100 market rate rental units generates a demand of 19.44 lower income households through goods and services demanded by the market rate tenants. [These conclusions were made in 2007, well before housing prices began their steep upward trajectory. Today, new “market rate” two bedroom apartments rented in the Mission begin at about \$6,000 per month – requiring an annual household income of \$240,000.] At the time, the PEIR anticipated a 15% inclusionary rate. The current Nexus study waiting to be released is expected to show a demand of 28 affordable units for every 100 built. With a 12% inclusionary rate, there is a need for 16 additional affordable units per hundred market rate units produced. (28 minus 12 = 16) This was not anticipated in the PEIR.

These changed circumstances render the current PEIR obsolete. A Community Plan Exemption is therefore not appropriate for this project and should not have been issued, due to new conditions that were not contemplated in the 2008 EN EIR, and the overbuilding of market rate units in the Mission, which have exceeded the unit count contemplated in the EN EIR.

V. The Department has Engaged in a Pattern and Practice of Allowing Community Plan Exemptions Despite the Fact that it is No Longer an Accurate Informational Tool to Evaluate the Environmental Impacts of a Project.

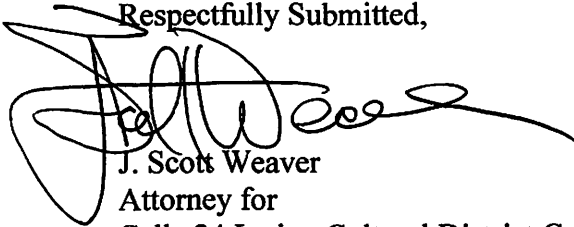
The improper grant of a Community Plan Exemption is part of a pattern and practice used by the City to approve residential development projects. The facts stated above demonstrate that this practice is improper as applied to proposed projects within both the Mission Area Plan and

the LCD. This is in violation of the mandates of CEQA and applicable state and local land use policies and regulations.

Employment of the community plan exemption routinely relies on an out of date Plan EIR that fails to account and/or provide adequate mitigation for significant direct, indirect, and cumulative environmental impacts. The City's policy to approve projects based upon a community plan exemption rather than conduct project level review forms a pattern of actions and/or is embedded in routine practices that are implemented despite the public's request to implement corrective measures and are a detriment to the environment. See *Californians For Native Salmon etc. v. Department of Forestry* (1990) 221 Cal.App.3d 1419, 1426-1430.

As such, the Board of Supervisors Should instruct the Department to refrain from using Community Plan Exemptions for projects within the boundaries of the mission Area Plan, including the LCD.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "J. Scott Weaver", written over the typed name.

J. Scott Weaver
Attorney for
Calle 24 Latino Cultural District Council