

Carroll, John (BOS)

From: Tom Lippe <lippelaw@sonic.net>
Sent: Monday, November 30, 2015 9:57 AM
To: BOS Legislation, (BOS)
Cc: Carroll, John (BOS); dkelly@warriors.com; CPC-WarriorsAdmin; Givner, Jon (CAT); Stacy, Kate (CAT); Malamut, John (CAT); Nuru, Mohammed (DPW); Sanguinetti, Jerry (DPW); Sweiss, Fuad (DPW); Storrs, Bruce (DPW); Sanchez, Scott (CPC); Jones, Sarah (CPC); Rodgers, AnMarie (CPC); Starr, Aaron (CPC); Pearson, Audrey (CAT); Rahaim, John (CPC); Bollinger, Brett (CPC); Ionin, Jonas (CPC); kaufhauser@warriors.com; CMiller@stradasf.com; BOS-Supervisors; BOS-Legislative Aides; Calvillo, Angela (BOS); Somera, Alisa (BOS); Patrick Soluri; Osha Meserve; Susan Brandt-Hawley
Subject: Mission Bay Alliance, Warriors EIR CEQA Appeal; Appellants' Partial Brief, 1st of 4 emails
Attachments: C020m SENT SEIR Appeal Open Brief to BOS.pdf; Exhs 1-4 SENT Appeal EIR Brf Exhs 1-4 compress.pdf
Categories: 150990

Dear Clerk of the Board of Supervisors

Attached, in .pdf format please find the above referenced appeal brief with exhibits.

Due to the size of the files, the brief and exhibits it will be transmitted in four (4) separate emails.

This email is the first of four. Attached are

- Appellant's Partial Brief Re: Public Comment, Air Quality, Transportation, Water Quality, Biological, and Noise
- Exhibits 1-4 of 15

Eighteen hard copies of same will be hand delivered to your office today by 12noon.

Thank you for your attention to this matter.

Tom Lippe
Law Offices of Thomas N. Lippe APC
201 Mission St., 12th Floor
San Francisco, CA 94105
Tel 415 777-5604 x 1
Fax 415 777-5606
e-mail: lippelaw@sonic.net
Web: www.lippelaw.com

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The Office of the Clerk of the Board has scheduled a hearing date for Special Order before the Board of Supervisors on **December 8, 2015, at 3:00 p.m.** Please find linked below a letter regarding the Final Subsequent Environmental Impact Report certification and Tentative Map appeals for the proposed Golden State Warriors Event Center Project, as well as direct links to the Office of Community Investment and Infrastructure's timely filing determination for the CEQA appeal.

[Clerk of the Board Letter Re: FSIER Appeal - November 23, 2015](#)

[OCII Memo Re: FSEIR Appeal - November 16, 2015](#)

[Clerk of the Board Letter Re: Tentative Map Appeal - November 23, 2015](#)

I invite you to review the entirety of both matters on our [Legislative Research Center](#) by following the links below.

[Board of Supervisors File No. 150990 - FSEIR Appeal](#)

[Board of Supervisors File No. 151204 - Tentative Map Appeal](#)

Thank you,

John Carroll

Legislative Clerk

Board of Supervisors

San Francisco City Hall, Room 244

San Francisco, CA 94102

(415)554-4445 - Direct | (415)554-5163 - Fax

john.carroll@sfgov.org | bos.legislation@sfgov.org



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Before the San Francisco Board of Supervisors

**Appeal of Subsequent Environmental Impact Report for the
Warriors Arena Project
Commission on Community Investment and Infrastructure
Resolutions 69-2015 and 70-2015**

Hearing Date: December 8, 2015

APPELLANTS' PARTIAL BRIEF

Re: Public Comment, Air Quality, Transportation,
Water Quality, Biological, and Noise

Submitted By:

Thomas N. Lippe, SBN 104640
Law Offices of THOMAS N. LIPPE, APC
201 Mission Street, 12th Floor
San Francisco, California 94105
Tel: 415-777-5604
Fax: 415-777-5606
Attorney for Appellant Mission Bay Alliance

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1. Paul Rosenfeld and Jessie Jaeger, letter to Thomas Lippe, November 20, 2015.
2. Excerpts from EIR for the 801 Brannan St - 1 Henry Adams St Project, June 22, 2011, pp. 1, 265-266, 278-285, cited in Exhibit 1.¹
3. Excerpts from EIR for 706 Mission Street- The Mexican Museum and Residential Tower Project, June 27, 2012, pp. 1, IV.G.20, IV.G.31 to IV.G.50, cited in Exhibit 1.²
4. San Francisco Department of Public Health description of Article 38 of the San Francisco Health Code.³
5. San Francisco Health Code, Article 38.
6. Preliminary Project Assessment, San Francisco Planning Department, July 29, 2015.⁴
7. South Coast Air Quality Management District, Final –Methodology to Calculate Particulate Matter (PM) 2.5 and PM 2.5 Significance Thresholds October 2006, cited in Exhibit 1, fn 10.
8. California Air Resources Board web page re Diesel And Health Research, cited in Exhibit 1, fn 11
9. Excerpt from Commission on Community Investment and Infrastructure Resolution No. 62 - 2015, Attachment A, FY 2015-16 Budget, Amended October 20, 2015.
10. November 6, 2015, Budget and Legislative Analyst Report to the Budget and Finance Committee (“Nov 6 Budget Analyst Report”).
11. November 17, 2015, letter report to Thomas Lippe authored by traffic engineer Dan Smith regarding Third St. LRT station.
12. November 28, 2015, letter report Thomas Lippe authored by traffic engineer Dan Smith regarding SEIR.

¹Available at <http://www.sfplanning.org/index.aspx?page=1828>

²available at <http://www.sf-planning.org/index.aspx?page=1828>.

³Available at:<https://www.sfdph.org/dph/EH/Air/Article38.asp>.

⁴available at: <http://www.sf-planning.org/ftp/files/notice/2015-004256PPA.pdf>.

13. Selected Walking Distance Maps to Arena Site.
14. Selected UCSF Emergency Access Routes.
15. Excerpts from San Francisco CEQA Documents for the following projects: 5M, 222 Second Street, 801 Brannan and One Henry, 222 Second St, 706 Mission Street, 850 Bryant, Academy of Art, Eastern District Rezoning, Moscone Center Expansion, SF Housing Element, Second Street Improvement, SF Museum of Modern Art Expansion, 255 7th St, Pier 70.

Reference Abbreviations

Air Quality

- July 19 Gilbert July 19, 2015, letter from Greg Gilbert of Autumn Wind Associates at FSEIR, Vol.6, p. Com-96.
- July 20 SWAPE July 20, 2015, letter from Paul Rosenfeld and Jessie Jaeger of SWAPE at FSEIR, Vol.6, p. Com-104.
- July 26 Lippe July 26, 2015, letter from Thomas Lippe to OCII and Planning Department re Air Quality Impacts including all exhibits identified in and attached to said letter at FSEIR, Vol.6, p. Com-86.
- October 30 Gilbert October 30, 2015, letter from Greg Gilbert of Autumn Wind Associates, submitted to OCII on November 3, 2015.
- Nov 2 Lippe FSEIR November 2, 2015, letter from Thomas Lippe to OCII and Planning Department re: Comments on Final Subsequent Environmental Impact Report for the Warriors Arena Project Re Air Quality, Transportation, Hydrology, Water Quality, Biological, and Noise Impacts.
- Nov 2 Farrow FSEIR November 2, 2015, letter from John Farrow, attached as Exhibit A to Lippe Nov 2 FSEIR.
- Nov 2 SWAPE November 2, 2015, letter report from Paul Rosenfeld and Jessie Jaeger of SWAPE to Thomas Lippe, attached as Exhibit 1 to Nov 2 Farrow FSEIR.
- Nov 2 Farrow FSEIR, Exhibit 2
“Health Risk Assessments for Proposed Land Use Projects,” California Air Pollution Control Officers Association 2009, attached as.⁵
- Nov 2 Farrow FSEIR, Exhibit 3
CEQA Air Quality Handbook, A Guide for Assessing the Air Quality Impacts for Projects Subject to CEQA Review, San Luis Obispo Air Pollution Control District 2012, attached as .⁶

⁵http://www.capcoa.org/wpcontent/uploads/2012/03/CAPCOA_HRA_LU_Guidelines_8-6-09.pdf.

⁶http://www.slocleanair.org/images/cms/upload/files/CEQA_Handbook_2012_v2%20%28Updated%20Sept%202015%29.pdf.

- Nov 2 Farrow FSEIR, Exhibit 4
Mission Bay Land Use Plan, November 2005.⁷
- Nov 2 Farrow FSEIR, Exhibit 5
“Risk Assessment Guidelines: Guidance Manual for Preparation of Health Risk Assessment.” Office of Environmental Health Hazard Assessment, February 2015.⁸
- Nov 2 Farrow FSEIR, Exhibit 6
Adoption of the Revised Air Toxics Hot Spots Program Technical Support Document for Cancer Potency Factors, Office of Environmental Health Hazard Assessment, June 1, 2009.⁹
- Nov 2 Farrow FSEIR, Exhibit 7
Adoption of the Revised Air Toxics Hot Spots Program Risk Assessment Guidelines: Revised Technical Support Document for Exposure Assessment and Stochastic Analysis, Office of Environmental Health Hazard Assessment, August 27.¹⁰
- Nov 2 Farrow FSEIR, Exhibit 8
Technical Support Document for Exposure Assessment and Stochastic Analysis, Office of Environmental Health Hazard Assessment, August 2012.¹¹
- Nov 20 SWAPE November 20, 2015, letter report from Paul Rosenfeld and Jessie Jaeger of SWAPE to Thomas Lippe, attached as Exhibit 1 to this brief.

Transportation

- July 27 Lippe SEIR July 27, 2015, letter from Thomas Lippe to OCII and Planning Department re Transportation Impacts at F, Vol. 6, p. Com-117, including all exhibits listed on page 20 thereof, including:

⁷<http://sfocii.org/Modules/ShowDocument.aspx?documentid=783>.

⁸http://oehha.ca.gov/air/hot_spots/hotspots2015.html.

⁹http://www.oehha.ca.gov/air/hot_spots/tsd052909.html.

¹⁰http://www.oehha.ca.gov/air/hot_spots/tsd082712.html.

¹¹http://www.oehha.ca.gov/air/hot_spots/pdf/2012tsd/Chapter3_2012.pdf.

July 23 Smith Exhibit 1 thereto, July 23, 2015, letter to Tom Lippe from traffic engineer Dan Smith at FSEIR, Vol. 6, p. Com-127; and

July 21 Wymer Exhibit 2 thereto, July 21, 2015, letter to Tom Lippe from traffic engineer Larry Wymer at FSEIR, Vol. 6, p. Com-141.

Nov 2 Lippe FSEIR November 2, 2015, letter from Thomas Lippe to OCII and Planning Department re: Comments on Final Subsequent Environmental Impact Report for the Warriors Arena Project Re Air Quality, Transportation, Hydrology, Water Quality, Biological, and Noise Impacts.

Nov 2 Smith FSEIR November 2, 2015, letter from Dan Smith, Exhibit F to Nov 2 Lippe FSEIR;

Nov 2 Wymer FSEIR November 2, 2015, letter from Larry Wymer, Exhibit G to Nov 2 Lippe FSEIR;

Nov 10 Smith FSEIR Access
November 10, 2015, letter from Dan Smith to Tom Lippe re Emergency Access, which is attached hereto as Exhibit 4 to the Alliance's November 13, 2015, Notice of Appeal.

Nov 10 Smith FSEIR Port
November 10, 2015, letter from Dan Smith to Tom Lippe re Port Parking Facilities, which is attached hereto as Exhibit 5 to the Alliance's November 13, 2015, Notice of Appeal.

Nov 13 Smith FSEIR King
November 13, 2015, letter from Dan Smith to Tom Lippe re King Street Electrical Work, which is attached hereto as Exhibit 6 to the Alliance's November 13, 2015, Notice of Appeal.

Nov 17 Smith FSEIR 3rd St.
November 17, 2015, letter report to Thomas Lippe authored by traffic engineer Dan Smith regarding Third St. LRT station.

Nov 28 Smith FSEIR.
November 28, 2015, letter report Thomas Lippe authored by traffic engineer Dan Smith regarding SEIR.

Hydrology, Water Quality, and Biological

- July 24 Lippe July 24, 2015, letter from Thomas Lippe to OCII and Planning Department re Impacts on Hydrology, Water Quality, and Biological Resources at FSEIR, Vol. 6, p. Com-147, including:
- July 21 Hageman July 21, 2015, letter to Thomas Lippe from Matt Hageman at FSEIR, Vol. 6, p. Com-155.
- July 21 Ringelberg July 21, 2015, letter to Thomas Lippe from Erik Ringelberg and Kurt Balasek at FSEIR, Vol. 6, p. Com-159.
- July 22 Cline July 22, 2015, letter report by geotechnical engineer Martin Cline and Kurt Balasek, regarding Hazardous Materials at FSEIR, Vol. 6, p. Com-70 (attached as Exhibit B to July 26, 2015 Soluri Meserve letter to OCII re DSEIR at FSEIR, Vol. 6, p. Com-48.).
- Nov 2 Lippe FSEIR November 2, 2015, letter from Thomas Lippe to OCII and Planning Department re: Comments on Final Subsequent Environmental Impact Report for the Warriors Arena Project Re Air Quality, Transportation, Hydrology, Water Quality, Biological, and Noise Impacts.
- Nov 2 Hageman November 2, 2015, letter to Thomas Lippe from Matt Hageman, Exhibit H to Nov 2 Lippe FSEIR.
- Nov 2 BSK November 2, 2015, letter from Erik Ringelberg and Kurt Balasek of BSK Associates, Exhibit I to Nov 2 Lippe FSEIR.
- Nov 2 Ringelberg November 2, 2015, letter from Erik Ringelberg, Exhibit J to Nov 2 Lippe FSEIR.
- July 16 BSK Wetland July 16, 2015, BSK Technical Memorandum Regarding the Proposed Warrior Arena Wetland Features by Erik Ringelberg and Kevin Grove, Exhibit K to Nov 2 Lippe FSEIR.
- Oct 29 BSK Wetland October 29, 2015, Draft Waters and Wetland Delineation Report Proposed Mission Bay Development, Blocks 29-32 San Francisco, California, by Erik Ringelberg and Kevin Grove of BSK Associates, Exhibit L to Nov 2 Lippe FSEIR.

Oct 7, SM Law, CWA 404

October 7, 2015, Letter to the San Francisco Planning Department regarding Supplemental Comments on Environmental Review for Warriors Event Center and Mixed-Use Development at Mission Bay Blocks 29-32 – Clean Water Act 404 and CZMA Consistency

Noise

- July 25 Lippe July 25, 2015, letter from Thomas Lippe to OCII and Planning Department re Noise Impacts, at FSEIR, Vol. 6, p. Com-109, including all the exhibits attached thereto.
- July 24 Hubach July 24, 2015, letter to Thomas Lippe from acoustic engineer Frank Hubach at FSEIR, Vol. 6, p. Com-113,
- Nov 2 Lippe FSEIR November 2, 2015, letter from Thomas Lippe to OCII and Planning Department re: Comments on Final Subsequent Environmental Impact Report for the Warriors Arena Project Re Air Quality, Transportation, Hydrology, Water Quality, Biological, and Noise Impacts.
- Nov 2 Hubach November 2, 2015, letter to Thomas Lippe from acoustic engineer Frank Hubach, Exhibit S to Nov 2 Lippe FSEIR..

I. INTRODUCTION

This office represents the Mission Bay Alliance (“Alliance”), an organization dedicated to preserving the environment in the Mission Bay area of San Francisco, regarding the project known as the Event Center and Mixed Use Development at Mission Bay Blocks 29-32 (“Warriors Arena Project” or “Project”).

The Mission Bay Alliance submits this brief in support of its appeal of Commission on Community Investment and Infrastructure Resolution 69-2015, certifying the Final Subsequent Environmental Impact Report for the Warriors Arena Project, and Resolution 70-2015, adopting CEQA Findings for the Warriors Arena Project, both approved on November 3, 2015.

The grounds for this appeal are set forth in this brief and the two companion briefs submitted by my co-counsel, Susan Brandt-Hawley and Soluri Meserve; in the Alliance’s November 13, 2015, Notice of Appeal; and in all previously submitted Alliance comment letters and their exhibits.¹² This brief discusses certain of these grounds in more detail.

This brief discusses several categories of legal defects in the SEIR. First, the DSEIR omitted a large number of resource topics from its scope based on an erroneous use of CEQA “tiering.” This issue is generally discussed in its own section in the brief submitted by Soluri Meserve, and also in the sections relating to specific resources where the evidence requires including of the resource in the SEIR.

Second, regarding resource topics included in the SEIR, the Draft SEIR’s informational deficiencies are described in sections relating to each resource. Where new information, changed circumstances, or changes in the Project coming to light after close of comment on the DSEIR require recirculation of a revised DSEIR, this is also discussed in each section relating to each resource topic.

Third, where the Final SEIR’s responses to substantive comments on the Draft SEIR are inadequate, this is described in relation to the Draft SEIR’s informational deficiencies for each resource topic.¹³

¹²References to previous comment letters are abbreviated. See “Reference Abbreviations.”

¹³Where comments seek omitted facts or analysis essential to a draft EIR’s conclusions, the failure to correct those omissions “renders the EIR defective as an informational document.” (*California Oak Foundation v. City of Santa Clarita* (2005) 133 Cal.App.4th 1219, 1244.) The Final SEIR’s responses to substantive comments on the Draft SEIR must contain fact-based analysis. (*People v. County of Kern* (1974) 39 Cal.App.3d 830, 841-842 (duty to provide “good faith, reasoned analysis in response”; Guidelines, § 15088(c) [“Conclusory statements unsupported by factual information will not suffice”]; *Cleary v. County of Stanislaus* (1981) 118 Cal.App.3d 348, 359; see also, *Santa Clarita Organization for Planning the Environment v. County of Los Angeles* (“SCOPE”) (2003) 106 Cal.App.4th 715, 723 [“Problems raised by the public and responsible experts require a good faith reasoned analysis in response. [Citation.] The

II. DISCUSSION

Preliminarily, the Alliance notes this Board's role and jurisdiction in this proceeding is not limited by Commission on Community Investment and Infrastructure Resolution No. 33-2015. Under both the Dissolution Law (Health and Safety Code § 34170 et seq) and Ordinance No. 215-12, this Board is the legislative authority governing the Successor Agency. Therefore, this appeal is authorized and governed by CEQA sections 21151(c) and 21177.

Also, the City's role in the permit process to date demonstrates the City is no mere responsible agency under CEQA. The City is the lead agency, because OCII is a department of the City. Alternatively, the City is a co-lead agency with OCII. The facts supporting this conclusion are manifold, including:

- The Commission on Community Investment and Infrastructure consists of five members appointed by the Mayor, subject to confirmation by a majority of the Board of Supervisors.
- OCII's budget must be approved by the Board of Supervisors.
- The SEIR preparers include only three people from OCII, but seven from the Planning Department, one from the City Attorneys office, two from the Mayor's Office of Economic Workforce and Development, and two from the City's Municipal Transportation Agency. (SEIR, Vol 3, pp. 9-1, 2.)
- The Notice of Availability of the DSEIR instructed that comments were to be submitted to "Ms Tiffany Bohee, OCII Executive Director, c/o Mr. Brett Bollinger, San Francisco Planning Department."
- The Mayor has been an outspoken advocate of bringing the Warriors to San Francisco and of building this Project in this location since the Warriors's first proposed it. (See news articles attached to November 30, 2015, Appeal Brief submitted by Susan Brandt-Hawley as Exhibit 1.)
- Of the 29 salaried employee positions at OCII, 21 work for the City, but on OCII projects. (See Commission on Community Investment and Infrastructure Resolution No. 62 - 2015, Attachment A, FY 2015-16 Budget, Amended October 20, 2015, attached hereto as Exhibit 1, p. 9.)
- The City is treating this Project like a City-sponsored public works project for which it would be the lead agency. The Transportation Management Plan ("TMP") and Transit Service Plan ("TSP"), which are defined as components of the Project, rely for their implementation on purely voluntary services by various City departments. See Section C.9 below. The Transportation Management Plan necessitates ongoing implementation by the SFMTA, the San Francisco Police

requirement of a detailed analysis in response ensures that stubborn problems or serious criticism are not "swept under the rug.".]

Department, and Public Works. (See Exhibit 10, attached hereto.) Funding for both the TMP and TSP are by the City's voluntary appropriation of General Fund revenues, which are within the discretion of every future Board of Supervisors in perpetuity. (Exhibit 10, pp. 6-7.)

Consequently, the Board of Supervisors must decide whether to certify the SEIR and whether it can make the findings required by CEQA Guideline section 15090(a) based on its consideration and determination of all of the issues presented; and the Board must do so using its independent judgment.

A. PUBLIC COMMENT.

1. The OCII Thwarted Public Comment on the SEIR.¹⁴

The October 23, 2015, notice of publication of the Response to Comments informed the public they would have no further opportunity to comment on the FSEIR/RTC, stating:

The Commission will consider certification of the Final SEIR on this project on November 3, 2015. ¶ The Commission does not conduct a hearing to receive comments on the Responses to Comments document, and no such hearing is required by the California Environmental Quality Act. The public review period on the Draft SEIR ended on July 27, 2015.

(FSEIR, Vol. 4.) But the OCII hearing agenda for November 3, 2015, published on October 29, 2015, suggested that public comment on the FSEIR/RTC would be heard at the hearing, stating:

Special Meeting Agenda Given the Potential for a Large Number of Public Comments, the Commission May Limit the Time Allocated for Each Individual Speaker to Two Minutes or Less. It Is Strongly Recommended That Members of the Public Who Wish to Address the Commission Should Fill out a "Speaker Card" and Submit the Completed Card to the Commission Secretary.

(Items 5(a), 5(b), 5(c) 5(d) and 5(e) related to Golden State Warriors Event Center and Mixed-Use Development on Blocks 29-32 *will be heard together*, but acted on separately)

(November 3, 2015, OCII Hearing Agenda, p. 2 (italics added).) Item 5(a) was Resolution 69-2015 certifying the SEIR, and Items 5(a), 5(b), 5(c) 5(d) and 5(e) were the only items on the agenda for hearing.

The October 23, 2015, notice of publication is inconsistent with CEQA section 21177(a), which contemplates public comment on EIRs up to the end of the hearing at which the project is

¹⁴Nov. 2 Lippe FSEIR, p. 1.

approved. Therefore, the October 23, 2015, notice of publication frustrated the ability of the public to comment. The Board should remedy this misstep by recirculating the FSEIR with full disclosure that the public may comment on the FSEIR/RTC.

B. THE SEIR IS NOT SUFFICIENT AS AN INFORMATIONAL DOCUMENT WITH RESPECT TO AIR QUALITY IMPACTS.

1. The City Cannot Use the SEIR's Thresholds of Significance for Criteria Air Pollutants until it Formally Adopts Them in a Rule-making Procedure.

The DSEIR's thresholds of significance are:

For the impacts analyzed in this section, the project would have a significant impact related to air quality if it were to:

- Conflict with or obstruct implementation of the applicable air quality plan;
- Violate any air quality standard or contribute substantially to an existing or projected air quality violation;
- Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is in nonattainment under an applicable federal or state ambient air quality standard (including releasing emissions that exceed quantitative thresholds for ozone precursors);
- Expose sensitive receptors to substantial pollutant concentrations; or
- Result in a cumulative air quality impact in combination with past, present and reasonably foreseeable future projects in the vicinity.

(DSEIR 5.4-23.)

For criteria pollutants, the DSEIR uses numerical thresholds of significance borrowed from the Bay Area Air Quality Management District ("BAAQMD") for ROG (54 lbs/day); NOx (54 lbs/day); Exhaust PM10 (82 lbs/day); Exhaust PM2.5 (54 lbs/day).

The potential for a project to result in a cumulatively considerable net increase in criteria air pollutants that may contribute to an existing or projected air quality violation is based on the State and federal Clean Air Acts emissions limits for stationary sources. To ensure that new stationary sources do not cause or contribute to a violation of an air quality standard, BAAQMD Regulation 2, Rule 2 requires that any new source that emits criteria air pollutants above a specified emissions limit must offset those emissions. For ozone precursors ROG and NOx, the offset emissions level is an annual average of 10 tons per year (or 54 pounds (lbs.) per day). These levels represent emissions below which new sources are not anticipated to contribute to an air quality violation or result in a considerable net increase in criteria air pollutants that could result in increased health effects.

(DSEIR p. 5.4-25; see also p. 5.4-31.)

The City uses these numerical thresholds of significance for virtually all land use development projects in the city that require CEQA review. This is shown by excerpts from recent Environmental Impacts Reports and Negative Declarations attached to the July 26 Lippe letter as Exhibits 4 through 16. All of them use the BAAQMD numbers as the thresholds of significance for these pollutants. Therefore, the City is required to undertake its own rule-making proceeding to adopt these thresholds as its own and determine in a public process that they are supported by substantial evidence.

(b) Thresholds of significance to be adopted for general use as part of the lead agency's environmental review process must be adopted by ordinance, resolution, rule, or regulation, and developed through a public review process and be supported by substantial evidence.

(c) When adopting thresholds of significance, a lead agency may consider thresholds of significance previously adopted or recommended by other public agencies or recommended by experts, provided the decision of the lead agency to adopt such thresholds is supported by substantial evidence.

(CEQA Guideline, § 15064.7.) Since the City has not formally adopted the air quality significance thresholds in a public process supported by substantial evidence, but continues to consistently use these thresholds on virtually all CEQA Projects in the City, it cannot use these thresholds in this EIR. (See July 26 Lippe, p. 3; July 19 Gilbert, p. 14.)

The Alliance made these comments on the DSEIR. (See July 26 Lippe, p. 3; July 19 Gilbert, p. 14.) The RTC mostly ignores the comment, and takes the position that it can use the BAAQMD's thresholds on as many projects as it wants without formally adopting them. (FSEIR, Vol. 5, p. 13.3-5.) This position directly contradicts CEQA Guideline 15064.7.

2. The DSEIR's Numerical Thresholds of Significance for Criteria Pollutants (Ozone Precursors, PM10, PM2.5) Borrowed from the BAAQMD Are Invalid.

As noted above, for its impact assessment and mitigation strategy for criteria pollutants, the DSEIR uses numerical thresholds of significance borrowed from the BAAQMD. But the DSEIR cannot merely reference a project's compliance with another agency's regulations. Lead agencies must conduct their own fact-based analysis of project impacts, regardless of whether the project complies with other regulatory standards.

The result of using these thresholds is a deeply misleading impact assessment and mitigation strategy because using these invalid thresholds allows the DSEIR to avoid finding impacts are significant, and it allows the DSEIR to understate the severity of impacts deemed "significant" because it implies that most of the quantity of emissions below the thresholds are not "significant." Also, using these invalid thresholds underestimates the degree of mitigation

required to reduce significant impacts to less than significant, and therefore, the DSEIR curtails its consideration of the feasibility of additional mitigation measures that could further substantially reduce emissions.

The numerical thresholds borrowed from the BAAQMD are logically and legally invalid, and they are not supported by substantial evidence. The thresholds are contained in the BAAQMD's "CEQA Air Quality Guidelines."¹⁵ But neither the DSEIR or the BAAQMD CEQA Air Quality Guidelines describe any evidence that might support the use of these thresholds. The same is true of BAAQMD's other publications relating to these thresholds, i.e., Appendix D of the BAAQMD CEQA Air Quality Guidelines, BAAQMD's Revised Draft Options and Justification Report, (October 2009), and the Bay Area AQMD Proposed Air Quality CEQA Thresholds of Significance, published May 3, 2010.

While these BAAQMD publications purport to include substantial evidence supporting the use of these thresholds for all criteria air pollutants for which the Bay Area is in non-attainment, they do not. Instead, the BAAQMD CEQA Air Quality Guidelines merely provide policy rationales for why it is a good idea to have thresholds of significance. Nowhere does the document actually provide evidence for why any number of pounds per day below, for example, 54 for NOx or ROG, is not "cumulatively considerable."

The BAAQMD's Revised Draft Options and Justification Report (October 2009) states the thresholds "are based on the trigger levels for the federal New Source Review (NSR) Program and BAAQMD's Regulation 2, Rule 2 for new or modified sources." (See page 2.) These New Source Review Program rules provides that any new source that will emit pollutants above the levels stated in the left hand column of Table 4 (e.g., 10 lbs/day of NOx and ROG) must impose "Best Available Control Technology ("BACT")." (Id. pp. 16-17.) These rules also provide that any new source emitting pollutants above the levels stated in the right hand column of Table 4 (e.g., 54 lbs/day of NOx and ROG) must offset all emissions. (Id. pp. 16-17.)

In addition to the inherent flaws in the NSR rules described above, it is inappropriate to base the EIR's significance determination for purposes of CEQA on the Air District's "triggers" for an entirely different regulatory program, i.e., New Source Review under the Clean Air Act ("CAA").¹⁶ One of CEQA key purposes is to require "disclosure" of significant impact, and it allows agencies to approve projects where emissions exceed its thresholds of significance after feasible mitigations are first adopted and as long as the project's benefits outweigh the

¹⁵The BAAQMD CEQA Air Quality Guidelines were published May 2010, and updated May 3, 2011.

¹⁶The CAA establishes health-based ambient air quality standards and ranks air districts nationwide based on their level of attainment of those standards. The CAA also establishes a timetable for air districts to reach attainment, and authorizes specific penalties where a deadline is not met. CEQA, on the other hand, requires lead agencies to analyze and discuss significant impacts on air quality, and to continue to mitigate those impacts so long as they remain significant or no additional mitigation is feasible.

environmental harm. The CAA, in contrast, is not primarily concerned with public disclosure, and it provides absolute limits on emissions (i.e., the offset triggers in Table 4) that cannot be exceeded under any circumstances. A standard that shuts down economic activity (i.e., the CAA offset standard) is necessarily and appropriately different than a standard (i.e. a CEQA threshold of significance) that requires disclosure of the impact to the public and the adoption of feasible mitigation measures.

Indeed, if it is possible to borrow any CAA NSR standard for use as a CEQA threshold of significance, it would be the BACT triggers in Table 4 (i.e., when ROG or NO_x emissions exceed only 10 lbs/day), because those standards force the adoption of feasible mitigation measures, similar to CEQA's thresholds of significance.

NSR Regulation 2, Rule 2 for new or modified sources requires that if ozone precursor emissions exceed 54 lbs per day (i.e., 10 tpy), the polluter must offset *all* emissions. In contrast, the DSEIR Mitigation Measure M-AQ-2b only requires offsetting emissions above 54 lbs per day (i.e., 10 tpy). This BACT standard is much lower than the NSR offset standard and the DSEIR's threshold of significance of 54 lbs/day. But, there is no parallel requirement in the DSEIR for imposing anything like BACT to this Project's construction or operational emissions that exceed 10 lbs/day.

Regarding NSR Regulation 2, Rule 2's offset standards (i.e., 54 lbs/day for ROG or NO_x), the BAAQMD's Revised Draft Options and Justification Report (October 2009) observes: "These levels represent a cumulatively considerable contribution."¹⁷ But there is no evidence that emissions below these thresholds are not also "cumulatively considerable."

Moreover, regardless of any evidence included in these other BAAQMD documents, no such evidence can overcome a fundamental logical and legal flaw in the EIR's assumption that these thresholds are appropriate for the purpose for which the DSEIR uses them. Using the DSEIR's logic, if the City finds that one project will add 53 lbs/day of ozone precursors, it is considered a less-than-significant impact, but if that project will add 55 lbs/day of ozone precursors, it is considered significant. Yet, if the City approved two new large projects in the area in the same 2- or 3-year period, or where operational impacts cause increased emissions, each emitting 53 lbs/day of ozone precursors, it is considered a less-than-significant impact even though the total of the two added together equals 106 lbs/day of ozone precursors!

This scenario is not hypothetical; it is unfolding in San Francisco, and in the Mission Bay area now. (See July 21 Wymer, Table 3, for a list of project undergoing or about to undergo construction in this area of San Francisco.)¹⁸ As a result, the thresholds violate a fundamental CEQA principal that regardless of whether projects' incremental impacts are deemed

¹⁷July 26 Lippe, Exhibit 4, p. 2.

¹⁸July 27 Lippe, Exhibit 2.

insignificant in isolation, they may be cumulatively significant.

The RTC implies that because ozone pollution is getting better, the BAAQMD thresholds are validated. Air Quality specialist Greg Gilbert's October 30, 2015, comments on the OCII's responses are essential reading. The following excerpt provides a flavor of the evidence showing why the response is unfounded and unsupported:

In our comments submitted previously on the DSEIR, we noted that the BAAQMD's CEQA thresholds of significance, applied by the Lead Agency to evaluate the Event Center project's emission impacts, were developed non-scientifically from NSR values that were designed to counterbalance anticipated growth in stationary source facility emissions under the jurisdiction of the BAAQMD. An inherent problem with using NSR emission thresholds for constructing CEQA thresholds is that the 9-county air basin's stationary sources represent no more than a small percentage of the total emissions inventory.

Vehicle emissions within the basin, by contrast, represent the lion's share of criteria pollutants and are chiefly responsible for the basin's ozone nonattainment designations that stretch back decades. Similarly, the region's nonattainment of particulate standards has been heavily influenced by vehicle emissions. To exemplify, fully 84% of NO_x (ozone precursor) emissions in the Bay Area air basin are emitted by vehicles, and not by stationary sources. The region has been designated nonattainment for PM_{2.5}; fine particulate is generated almost entirely by combustion (including internal combustion occurring in vehicle engines), and monitored values in the region continue to climb annually; 28% of the total inventory is attributed to vehicles. Importantly, population (people) regionally continues its historical growth in lockstep with numbers of vehicles and vehicle-miles-traveled; despite substantial advances in technical on-vehicle controls and reductions in tailpipe emissions of both NO_x and particulates over the years, the region continues to exceed federal and state air quality standards.

As we noted previously, establishing CEQA thresholds of significance levels using NSR levels is to automatically undercut emission reductions that should be obtained from each new "indirect source" (such as the Event Center that will attract new vehicle trips and related emissions) subject to CEQA review. By using outdated, non-scientifically designed NSR values, CEQA thresholds adopted by BAAQMD and borrowed for use by OCII will automatically underrepresent air emission significance, particularly when evaluated against past nonattainment designations and PM_{2.5} ambient air monitoring values that, despite recession effects, continue to reflect a slowly worsening trend line.

(Oct 30 Gilbert, pp. 2-3.)

The significance of a cumulative impact depends on the environmental setting in which it occurs, especially the severity of existing environmental harm. (*Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 120 (“CBE”) [“[T]he relevant question”... is not how the effect of the project at issue compares to the preexisting cumulative effect, but whether “any additional amount” of effect should be considered significant in the context of the existing cumulative effect. [footnote omitted] In the end, the greater the existing environmental problems are, the lower the threshold should be for treating a project’s contribution to cumulative impacts as significant. [footnote omitted]”]; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 720-721.)

This area is in “non-attainment” status under federal and state clean air laws for these criteria pollutants; and this project, along with many others, will substantially contribute to that existing significant adverse impact. There is no evidence to the contrary. The City’s untenable position is that public agencies in the Air Basin can approve project after project, each emitting (in the case of ozone precursors) up to 54 lbs/day of new and additional ozone precursors, without ever causing a cumulatively considerable increase in air pollution. This approach runs counter to the reason for conducting cumulative impact analysis. If the City (and other agencies in the Air Basin) continues to find that projects that make air quality worse - when it is already significantly degraded - do not have a significant adverse cumulative impact on air quality, then the City will have no legal obligation to adopt feasible mitigation measures to reduce the significant cumulative impact.

Here, the BAAQMD CEQA Guidelines present ample evidence that the Bay Area’s air quality is degraded and has been for a very long time. Therefore, the idea that agencies can forever approve multiple projects that each add 53 lbs of ROG and NOx to the air every day and never be deemed cumulatively considerable is absurd. Rather than explain why this is not true, the BAAQMD documents simply ignore the issue.

The DSEIR’s use of the BAAQMD thresholds of significance is erroneous as a matter of law for several other reasons.¹⁹ The DSEIR cannot merely reference a project’s compliance with another agency’s regulations. Lead agencies must conduct their own fact-based analysis of project impacts, regardless of whether the project complies with other regulatory standards. The DSEIR uses BAAQMD’s thresholds of significance uncritically, without any factual analysis of its own, in violation of CEQA.²⁰ This uncritical application of the BAAQMD’s thresholds of

¹⁹ *Endangered Habitats League v. County of Orange* (2005) 131 Cal.App.4th 777, 793 (“The use of an erroneous legal standard [for the threshold of significance in an EIR] is a failure to proceed in the manner required by law that requires reversal.”).

²⁰ *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1109 [underscore emphasis added], citing *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 114 (“CBE”); accord *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 342 [“A threshold of significance is not conclusive...and does not relieve a public agency of the duty to consider the evidence under the fair argument standard.”].)

significance represents a failure of the City to exercise its independent judgment in preparing the DSEIR.²¹ Just as disagreement from another agency does not deprive a lead agency of discretion under CEQA to judge whether substantial evidence supports its conclusions,²² agreement from another agency does not relieve a lead agency of separately discharging its obligations under CEQA. The BAAQMD CEQA Guidelines do not provide any factual explanation as to why the 54 lbs. per day standard represents an appropriate threshold for judging the significance of project-level ozone pollution impacts. More importantly, the DSEIR also fails to include any such explanation, and is therefore inadequate as a matter of law.²³ It is well-settled that compliance with other regulatory standards cannot be used under CEQA as a basis for finding that a project's effects are insignificant, nor can it substitute for a fact-based analysis of those effects.²⁴

Also, the DSEIR's reliance on information not contained in the DSEIR for purposes of showing these thresholds are supported by substantial evidence violates CEQA's informational requirements. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 405 ["whatever is required to be considered in an EIR must be in that formal report; what any official might have known from other writings or oral presentations cannot supply what is lacking in the report"]; *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 442 ["[I]nformation 'scattered here and there in EIR appendices' or a report 'buried in an appendix,' is not a substitute for 'a good faith reasoned analysis'"], 443 ["The audience to whom an EIR must communicate is not the reviewing court but the public and the government officials deciding on the project. That a party's briefs to the court may explain or supplement matters that are obscure or incomplete in the EIR, for example,

²¹ *Friends of La Vina v. County of Los Angeles* (1991) 232 Cal.App.3d 1446.

²² *California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 626.

²³ *Santiago County Water Dist. v. County of Orange, supra*, 118 Cal.App.3d 818.

²⁴ See, e.g., *Californians for Alternatives to Toxics v. Department of Food & Agriculture* (2005) 136 Cal.App.4th 1, 16 (lead agencies must review the site-specific impacts of pesticide applications under their jurisdiction, because "DPR's [Department of Pesticide Regulation] registration does not and cannot account for specific uses of pesticides..., such as the specific chemicals used, their amounts and frequency of use, specific sensitive areas targeted for application, and the like"); *Citizens for Non-Toxic Pest Control v. Department of Food & Agriculture* (1986) 187 Cal.App.3d 1575, 1587-1588 (state agency applying pesticides cannot rely on pesticide registration status to avoid further environmental review under CEQA); *Oro Fino Gold Mining Corporation v. County of El Dorado* (1990) 225 Cal.App.3d 872, 881-882 (rejects contention that project noise level would be insignificant simply by being consistent with general plan standards for the zone in question). See also *City of Antioch v. City Council of the City of Pittsburg* (1986) 187 Cal.App.3d 1325, 1331-1332 (EIR required for construction of road and sewer lines even though these were shown on city general plan); *Kings County Farm Bureau v. City of Hanford, supra*, 221 Cal.App.3d at pp. 712-718 (agency erred by "wrongly assum[ing] that, simply because the smokestack emissions would comply with applicable regulations from other agencies regulating air quality, the overall project would not cause significant effects to air quality.").

is irrelevant ... The question is therefore not whether the project's significant environmental effects *can* be clearly explained, but whether they *were*"] (emphasis in original.)

(a) The DSEIR's impact assessments for construction related criteria pollutants (ozone precursors, PM10, PM2.5) and TAC emissions are invalid.

DSEIR Table 5.4-8 shows construction-related daily emissions of the ozone precursor ROG at 47 lbs/day (mitigated by Tier 2 and NOx VDECS engines) or 49 lbs/day (mitigated by Tier 4 engines) and of the ozone precursor NOx at 144 lbs/day (mitigated by Tier 2 and NOx VDECS engines) or 73 lbs/day (mitigated by Tier 4 engines).

The DSEIR's impact assessments for construction-related ozone precursor emissions are invalid because the DSEIR uses the invalid thresholds of significance discussed above.

Because NOx construction-related emissions are reported as higher than the applicable (but invalid) threshold of significance for ROG (i.e., 54 lbs/day), the DSEIR concludes the Project's impact on ozone pollution is significant. While this conclusion is correct, it is also misleading because it understates the severity of the impact deemed "significant." The DSEIR implies that the only fraction of the Project's NOx emissions that are "significant" is the fraction above 54 lbs/day. But as discussed above, this threshold of significance is invalid. Using this invalid threshold implies that most of the quantity of emissions below the threshold are not "significant." (*Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 831 ["The conclusion that one of the unavoidable adverse impacts of the project will be the 'increased demand upon water available from the Santiago County Water District' is only stating the obvious. What is needed is some information about how adverse the adverse impact will be"].)

The DSEIR assumes that adoption of Mitigation Measure M-AQ-1, requiring use of off-road equipment with engines meeting Tier 2 or Tier 4 standards, will reduce construction-related ROG emissions to 47 or 49 pounds per day, respectively, which are both below the applicable (but invalid) threshold of significance for ROG (i.e., 54 lbs/day). (DSEIR, p. 5.4-33, Table 5.4-8.) But equipment meeting Tier 2 or Tier 4 standards are not sufficiently available to meet either requirement. (See July 26 Lippe, Exhibit 2.) Therefore, the impact assessment must be recalculated to more realistically estimate the percentage of construction equipment that will meet Tier 2 or 4 standards.

Also, the DSEIR incorrectly utilizes a default hauling trip length of 20-miles, provided by the California Emissions Estimator Model ("CalEEMod"), to determine the on-road hauling emissions that would occur during construction. Using this default value, rather than a site-specific trip length to the actual haul destination, results in an underestimation of the Project's construction emissions. Therefore, the impact assessment must be recalculated to realistically account for the actual haul destination of the excavation spoils. (See July 26 Lippe, p. 10; July 20 SWAPE, 2-6.)

(1) Mitigation Measure M-AQ-1 does not comply with CEQA’s legal requirements.

Mitigation Measure M-AQ-1 (at DSEIR, p. 5.4-35) does not comply with CEQA’s legal requirements. As discussed above, the requirement that off-road equipment meet Tier 2 standards is illusory, and therefore ineffective, because the Project Sponsor will not be able to obtain enough equipment meeting this standard. (July 26 Lippe, p. 9; July 20 SWAPE, 6-8; October 30 Gilbert, pp. 10-14.)

M-AQ-1 includes a limit on idling time of two minutes, and provides exceptions to this limit as provided in state law (DSEIR, p. 5.4-36), but utterly fails to describe what these exceptions are. The DSEIR must fully describe this measure in order for the public and City decision makers to assess its effectiveness. (See July 26 Lippe, p. 10.)

M-AQ-1 requires the Project Sponsor prepare a Construction Emissions Minimization Plan, and the Project Sponsor must certify compliance with the Plan. (DSEIR, p. 5.4-36.) This is asking the fox to guard the henhouse. (See July 26 Lippe, p. 10; July 19 Gilbert, pp. 7-10; October 30 Gilbert, pp. 14-16.)

a. The Response to Comment AQ-6a is Inadequate.²⁵

Mitigation Measure M-AQ-1 requires the use of Tier 2 or better engines for all off-road equipment. The “step-downs” from Tier 4 to Tier 3 to Tier 2, or from Tier 3 to Tier 2, are allowed when Tier 4 (or Tier 3) is not “commercially available.” But step-downs from Tier 2 are not available under any scenario.

Mr. Gilbert’s July 19, 2015, letter commented that this mitigation is not feasible because there are not enough Tier 2 or better equipment available for the Project Sponsor to use. The response to this comment states that “in 2014 approximately 59 percent of all off-road equipment in the state were operating with Tier 2 engines or better” and, therefore, it appears the measure is feasible. (RTC, p. 13.13-53.)

But the response does not specify whether the diesel off-road equipment sampled included equipment in private or government fleets that are not potentially available to the Project Sponsor to use, or alternatively, whether it consisted only of equipment that is potentially available to the Project Sponsor to use. If the former is true, then the 59% sampling result is meaningless, because the relevant population to sample is equipment that is potentially available to the Project Sponsor to use. A review of Figure 4 in the document cited in footnote 20 on RTC page 13.13-53 appears to indicate that the population of equipment sampled is all equipment, including equipment that is not potentially available to the Project Sponsor to use. Therefore, the 59% sampling result appears to be meaningless.

²⁵July 26 Lippe, p. 9; July 20 SWAPE, 6-8; October 30 Gilbert, pp. 10-14.

Moreover, even if the population of equipment sampled is equipment that is potentially available for the Project Sponsor to use, the idea that the Project Sponsor will be able to acquire 100% of its equipment at Tier 2 or better when only 59% of the potentially available equipment is Tier 2 or higher is illogical. It is more plausible that the Project Sponsor will be able to acquire only about 59% of its equipment at Tier 2 or better.

As stated in the Nov 2 Gilbert report:

Further, the statistic provided by the Lead Agency does not say that 59% of all construction equipment vehicles in CA will meet Tier 2 or better status – rather, it says that all **off-road** vehicles do (as of 2014). All off-road vehicles are not all construction vehicles; in fact, construction vehicles are a small subset of all off-road vehicles. Moreover, the rate of compliance for construction vehicles, particularly large, expensive, long-lived ones (scrapers, excavators, pile drivers, etc.) will be far lower than the average for all off-road vehicles that include such non-construction equipment as ground support vehicles at airports, agricultural forklifts, and myriad other off-road, nonconstruction equipment types. Because the statistic represents all off-road vehicles in CA and not construction vehicles, it cannot be used to even roughly determine the proportion of construction vehicles supposedly available to the project with Tier 2 engines, VDECs, and 40% NOx control; hence, the statistic is irrelevant to the Events Center project environmental review and does nothing to refute our concerns expressed clearly at the SDEIR review stage.

(November 2 Gilbert, p. 11.)

b. The Response to Comment AQ-6e is Inadequate.²⁶

Mr Gilbert’s July 19, 2015, letter commented that:

Further, M-AQ-1 specifies numerous sub-part requirements (A 1 through 5) to be included in the Construction Emissions Mitigation Plan, and in each case compliance with those sub-parts is left to the “project sponsor.” So, too, is compliance with the Measure’s additional duties required under M-AQ-1 items B and C. This is not appropriate when considering the extent, complexity, and costs that will be incurred for effective mitigation measure compliance across the 26-month construction period; permitting the project sponsor to create, implement, report, and determine compliance with the Measure is akin to having the fox guard the henhouse and must not be allowed. As written, the measure is not enforceable due to the subjective, undefined nature of “Air Quality Specialist” who will approve the project sponsor’s Construction Emissions Mitigation Plan.

²⁶July 26 Lippe, p. 10; July 19 Gilbert, pp. 7-10; October 30 Gilbert, pp. 14-16.

Further, it is unacceptable that the Measure will permit the project sponsor to determine compliance with each of the measure's components, record and report information signifying compliance, and then, under part C certify their own compliance with the Plan and its various requirements. We have inspected construction project sites, under air district contract, to determine compliance with air district-imposed construction equipment mitigations and have found uniformly poor compliance; to exemplify, at one residential subdivision project in south Sacramento County we determined that only one off-road construction vehicle out of nearly twenty were actually compliant with the mitigation requirements that had been imposed on the project by the Lead Agency. This is because there has traditionally been very little, if any, post- EIR follow-through to verify mitigation compliance by Lead Agencies or by the local air district after the CEQA project has been approved for development and construction has started. Knowing this, construction and development firms commonly let air quality mitigations go unmet, although records purporting to show compliance can be easily formulated and submitted post hoc in order to fulfill a paper requirement. Without an independent, qualified 3rd party contractor onsite each day to track, verify, and record emissions- and activity-related information on construction vehicles used at the project site to ensure the EIR's mitigations are implemented effectively, the project is very unlikely to produce more than a token of the emission reductions claimed in the DSEIR.

The Responses to Comments (RTC) codes this comment as "AQ-6e." (Volume 5, p. 13.13-60.) The response to comment AQ-6e states:

The City and OCII have successfully monitored implementation of emissions minimization requirements on numerous construction projects over the past several years. Examples of past and ongoing projects with CEMP emissions minimization requirements include Candlestick Point-Hunters Point Shipyard Phase II Development Project, which requires staged increases in the percentage of Tier 4 equipment; the Seismic Upgrade of BDPL Nos. 3 & 4 at Hayward Fault Project, which had one year of tiered engine requirements for on-road spoils hauling trucks and off-road construction equipment; and the Pacific Rod and Gun Club Upland Soil Remedial Action Project, which also had tiered engine requirements for off-road construction equipment.

(Volume 5, p. 13.13-60.)

The RTC's assertion is made without any evidentiary support. Well before the Response to Comments issued, the Alliance attempted to discover if the City or the OCII have any evidence to support the DSEIR's assumption that the Project's compliance with adopted air quality mitigation measures will be effectively monitored. In this regard, on August 13, 2015, I submitted a request to the City and OCII for:

All records relating to monitoring or enforcement of compliance with mitigation measures adopted to reduce potentially significant air quality impacts of development projects approved by the City, the Redevelopment Agency of the City and County of San Francisco, or the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, including any records reflecting audits of such compliance.

(See Nov 2 Lippe FSEIR, Exhibit D attached thereto). In my email to the OCII and City dated September 30, 2015, I provided further definition to this request, stating:

With respect to all construction projects in these areas for which the EIR identified significant air quality impacts from construction activities that could not be entirely avoided, the City, Redevelopment Agency, or the Successor Agency would have adopted mitigation measures to reduce the projects' significant air quality impacts and would have adopted a Mitigation Monitoring and Reporting Plan ("MMRP"). These MMRPs should have resulted in the generation of reports documenting the project's compliance, or lack thereof, with these adopted air quality impact mitigation measures. I want to obtain these reports."

(See Nov 2 Lippe FSEIR, Exhibit E attached thereto [email exchanges between this author and OCII and City dated September 11 through September 30 of 2015].)

Despite these requests, neither OCII nor the City have produced a single record showing they have either themselves conducted monitoring of CEQA required air quality mitigation measures or have taken steps to ensure that Project Sponsors tasked with self-monitoring their own compliance have faithfully done so. The agencies' failure to produce any such records leads inescapably to the conclusion that Mr. Gilbert's observation applies to the OCII and the City, and no such records exist because no such monitoring has been done.

(b) The DSEIR's impact assessments for operational criteria pollutants (ozone precursors, PM10, PM2.5) and TAC emissions are invalid.

The operational impact assessments for ozone precursor, PM10, PM2.5 and TAC emissions is invalid for many reasons.

DSEIR Table 5.4-9 shows operational daily emissions of criteria pollutants as follows:

ROG:	79 lbs/day [14 tpy]
NOx:	124 lbs/day [23 tpy]
PM10:	80 lbs/day [14.6 tpy]
PM2.5:	25 lbs/day [4.5 tpy]

(DSEIR, p. 5.4-39.)

The DSEIR's impact assessments for these criteria pollutants emissions are invalid because they are based on the invalid thresholds of significance discussed above.

Because construction-related emissions of ROG and NOx are higher than the applicable (but invalid) threshold of significance for these pollutants, the DSEIR concludes the Project's impact on ozone pollution is significant. As discussed above, while correct, this conclusion is misleading because it understates the severity of the impact deemed "significant" by implying that the only fraction of the Project's NOx emissions is are "significant" is the fraction above 54 lbs/day.

(1) The SEIR fails to include vehicle emissions from Warriors game traffic in its analysis of operational emissions.²⁷

The DSEIR's impact assessment for operational ozone precursor emissions is also misleading because it omits from its quantitative tally of criteria pollutants the emissions the Project will generate in San Francisco and the Mission Bay neighborhood from basketball game-associated "vehicle miles traveled" (DSEIR, p. 5-37.) The DSEIR's rationale for this startling omission is that moving the Warriors games from Oakland to San Francisco will reduce the same number of "vehicle miles traveled" in Oakland that the Project will generate in San Francisco and the Mission Bay neighborhood.

This rationale is based on the unstated, but incorrect, assumption that the environmental setting at Oracle Arena and the Mission Bay site are identical. These settings are very different, in many crucial respects. The Mission Bay neighborhood and the surrounding areas of San Francisco are populated by San Franciscans, not Oaklanders. The residents, citizens, and registered voters of San Francisco are entitled to know what the Project's air quality impacts will be *on them*, regardless of whether the residents, citizens, and registered voters of Oakland will experience an air quality benefit as a result of the move. (July 26 Lippe, pp. 10-11.)

Also, Oracle Arena sits in the middle of a vast parking lot. To the west is I-880, various commercial properties, wetlands, and the Bay. To the east is the Coliseum, railroad tracks, ABC Supply (provider of industrial equipment), East Bay Truck and Auto Repair, BART tracks and the Coliseum BART Station, and then, over 2,000 feet away to the northeast there is a group of apartment buildings. To the north and south stretch commercial properties for well over a mile without any residences. This stands in stark contrast to the dense residential population surrounding the Mission Bay site.

The DSEIR's suggestion that respiratory disease, heart disease, and cancer-causing air pollution is fungible and transferable, without regard to the location or environmental setting in which it occurs, is unsupported.

²⁷ July 26 Lippe, p. 11; July 19 Gilbert, p. 10; October 30 Gilbert, pp. 6-10.

(2) Mitigation Measure M-AQ-2b does not comply with CEQA’s legal requirements.²⁸

Mitigation Measure M-AQ-2b requires the Project Sponsor pay a fee to the BAAQMD that the BAAQMD will use to purchase ozone precursor offsets. The purpose is to offset the amount by which the project’s ozone precursors emissions exceed the numerical thresholds discussed in the previous section of this letter.

Therefore, to the extent the thresholds are invalid, as argued above, M-AQ-2b fails to reduce ozone precursor emissions to less-than-significant levels. Further, the DSEIR does not even consider the feasibility or effectiveness of more robust mitigation strategies that could reduce ozone precursor emissions further below the (invalid) thresholds. (See DSEIR, p. 5.4-39, Table 5.4-9, “Estimated Emissions Reduction Required”.)

The amount of the offset fee required by M-AQ-2b is calculated by multiplying the total amount of *annual* criteria pollutant emissions exceeding the annual (invalid) thresholds by \$18,030 per weighted ton of criteria pollutant emissions; then adding 5% of that product for BAAQMD’s administrative fees, as follows:²⁹

ROG tons	4.4
NOx tons	12.6
PM tons x 20	<u>0</u>
Subtotal	<u>17</u>
Fee per ton	<u>\$18,030.00</u>
Subtotal	\$306,510.00
Admin fee 5%	0.05
Admin fee	<u>\$15,325.50</u>
Total Fee	\$321,835.50

The DSEIR indicates M-AQ-2b requires the Project Sponsor to pay only \$321,835.50, which is the amount required to offset one year’s worth of the Project’s operational criteria pollutant emissions. (See DSEIR, p. 5.4-41.) But the sports and entertainment arena portion of this Project has an operational life of at least 50 years, probably much longer,³⁰ and the office towers will last even longer. In contrast, the life spans of offset credit sources are much shorter than the expected life span of this Project. (See July 26 Lippe, July 19 Gilbert.) Therefore, the actual amount required to offset the Project’s above-threshold ozone precursor emissions is much higher than \$321,835.50. Therefore, the DSEIR’s premise that M-AQ-2b will achieve a complete offset of

²⁸Nov 2 Lippe FSEIR, pp. 5-6; October 30 Gilbert, pp. 17-19; 19-21.

²⁹54 lbs per day of ROG emissions equals 10 tons per year.

³⁰Oracle Arena was built in 1966, 49 years ago, and is still functional.

the Project's above threshold construction and operational criteria pollutant emissions is misleading and false.³¹

To address this deficiency, M-AQ-2b must be amended. The DSEIR must disclose the average life span of the offset credit sources the BAAQMD typically buys, then amend M-AQ-2b to require recalculation of the offset fee or other offset requirement after the average life span of such offset credit sources to account for their limited life span, changes in emissions, changes in attainment status, etc. In addition, M-AQ-2b must be amended to include a mechanism, in the event that BAAQMD does not spend the offset fee and returns it, to ensure the required offsets are purchased through another bona fide, verifiable offset program.

Accepting, *arguendo*, the validity of the 17 ton offset requirement, the DSEIR's discussion of Mitigation Measure M-AQ-2b leaves many questions unanswered regarding BAAQMD's offset program. For example, the effectiveness of the measure depends directly on the validity of numerous assumptions, including: (1) the assumption that \$18,030 is enough to purchase a ton of criteria pollutant emissions; (2) the assumption that the offset market has 17 tons of criteria pollutant emissions that can be reduced by engine retrofits or other offset techniques; (3) the assumption the Project Sponsor will accurately measure actual construction and operational emissions for purpose of determining how many tons of criteria pollutants must be offset; and (4) the assumption that BAAQMD has and will have reliable verification procedures in place ensuring that 17 tons of offset will actually be achieved.

a. The Response to Comment AQ-7 is Inadequate.

Comment AQ-7 is that the per ton charge for emission offsets is too low to achieve complete offset of the Project's emissions. The response is cagey on this point, but it appears the BAAQMD agreed with the comment, because the response states:

SF Planning has been in communication with BAAQMD with regard to its suggestion that a higher fee may be warranted to offset project emissions to a less than significant level and found that BAAQMD could not establish that an increased rate beyond that of the Carl Moyer Program plus a five percent administrative fee could meet the "rough proportionality" standard required under CEQA.

(RTC, p. 13.13-67.) The RTC's rationale for contending that a higher offset fee would not meet the "rough proportionality" standard is that offsets fees in other areas of the state are not higher than the offset fee proposed in the DSEIR. This is an error of law. The "rough proportionality" requirement requires a comparison of the cost of the mitigation to the degree of severity of the impact. The fee charged in other areas of the state are irrelevant to "rough proportionality."

³¹The DSEIR indicates that construction-related criteria pollutant emissions are mitigated by including them in the operational period emission mitigation strategy. (DSEIR, p. 5.4-34.)

b. New information and the refusal of the project sponsor to agree to Mitigation Measure M-AQ-2b since publication of the DSEIR require recirculation of a revised DSEIR.³²

By letter dated November 2, 2015 (i.e., after the RTC was issued), to the OCII, the Bay Area Air Quality Management District announced that it would not participate in Mitigation Measure M-AQ-2b's offset plan because the City and Project Sponsor refuse to agree to BAAQMD's offset fees. BAAQMD confirmed that the offset fees stated in the SEIR are insufficient to achieve the complete offset of ozone precursor emissions above the thresholds of significance and that unless the Project Sponsor and OCII agreed to the higher fees demanded, then BAAQMD would not participate in the offset program. The OCII has refused to require the Project Sponsor pay the higher fee. This eliminates a key basis for finding the Project's significant ozone precursor emissions to be substantially reduced and therefore, requires recirculation of the Draft SEIR.

The City cannot find that "Impact AQ-4: Potential conflicts with BAAQMD's 2010 Clean Air Plan" is less than significant with mitigation because the City and Project Sponsor refuse to agree to BAAQMD's offset fees per Mitigation Measure M-AQ-2b. (See November 2, 2015, letter from BAAQMD and November 2, 2015, OCII Memorandum re same.)

There is also no evidence that the "Option 2" offset within Mitigation Measure M-AQ-2b is feasible. There are too many unanswered questions regarding Option 2, including lack of assured verification of offsets to ensure their effectiveness, and lack of assurance that offset sources are available in the quantity required. BAAQMD's offset program at least answers some, if not all, of these questions.

The City and OCII cannot find that all feasible mitigation measures that would substantially reduce "Impact AQ-1: Impacts of Criteria Air Pollutants from Construction" have been adopted as required by CEQA section 21081, because there is no evidence that paying the offset fees demanded by BAAQMD is infeasible. Also, as discussed above, there is no evidence that the "Option 2" offset idea within Mitigation Measure M-AQ-2b is feasible; therefore, it is not an adequate substitute for BAAQMD's offset program. This also applies to Impact AQ-2: Impacts of Criteria Air Pollutants from Project Operations;" Impact C-AQ-1: Project Contribution to Regional Air Quality Impacts; and Impact C-AQ-1: Project Contribution to Regional Air Quality Impacts.

³²Lippe Nov 2 FSEIR, pp. 5-6; October 30 Gilbert, pp. 17-18; Oral testimony of Thomas N. Lippe at November 3, 2015, OCII hearing.

3. Changes to the Project Since Publication of the DSEIR Require Recirculation of a Revised DSEIR Due to New and More Severe Significant Impacts.³³

Under CEQA, if the project changes after publication of the Draft EIR, and these changes create a new significant impact not identified in the Draft EIR, or a substantial increase in severity of a significant impact that was identified in the Draft EIR, the lead agency must recirculate the draft EIR for public comment. (CEQA section 21092.1.)

Here, the RTC describes a number of “construction refinements”, including using dewatering generators, using a soil treatment pug mill, and removing rapid impact compaction from the construction plan. With respect to the air quality impacts of these “construction refinements” the RTC states:

The addition of the construction refinements would not substantially increase (approximately 2 percent for ROG and 4 percent for NOx) the average daily construction-related emissions disclosed in the Draft SEIR. This would not result in a substantial increase in the severity of the previously identified significant and unavoidable impact, and the same mitigation measures would apply requiring the project sponsor to minimize construction emissions.

(RTC, p 12-22.)

The RTC also describes a new variant, the Muni UCSF/Mission Bay Station Variant, and discloses that:

The Muni UCSF/Mission Bay Station Platform Variant would not substantially increase (approximately 2 percent for ROG and 5 percent for NOx) the average daily emissions disclosed in the Draft SEIR for the proposed project (see Table 5.4-7, page 5.4-31). Furthermore, Mitigation Measure M-AQ-1 (Construction Emissions Minimization) would also apply to the variant. While the estimated construction emissions under the variant shown in Table 12-2 are slightly higher than those identified for the proposed project in the Draft SEIR, this impact is not substantially more severe than the previously identified significant and unavoidable impact.

(RTC, p 12-22.)

There are several problems with these assertions. First, the RTC does explain whether construction refinement caused increases of 2 and 4 percent for ROG and NOx, respectively, are included within or additive to the Platform Variant caused increases of 2 and 5 percent for ROG and NOx. Without this information, the public does not know what additional quantum of ozone

³³Lippe Nov 2 FSEIR, pp. 6-7.

pollution the RTC deems insubstantial.

Assuming for the moment that the construction refinement caused increases are included within or the Platform Variant caused increases, the RTC offers no rationale why the 2 and 5 percent increases are not considered a “substantial” increase in the severity of the previously identified significant effect that Project construction will have on ozone precursor pollution. The RTC authors apparently believe these numbers speak for themselves. They do not. In fact, reliance on these appears to reflect a silent assumption that these increases above the previously identified quantities of emissions for these pollutants is “de minimis.” It must be remembered, however, that these increases are not above a previously identified less-than-significant quantity of emissions; the previously identified quantities were significant!

The RTC thus commits the exact errors of law rejected by the Court of Appeal in *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98 (“CBE”), i.e., using a “de minimis” rationale or any type of simple numerical ratio of the incremental impact compared to the pre-existing impact. “[T]he relevant question... is not how the effect of the project at issue compares to the preexisting cumulative effect, but whether ‘any additional amount’ of effect should be considered significant in the context of the existing cumulative effect. [footnote omitted] In the end, the greater the existing environmental problems are, the lower the threshold should be for treating a project’s contribution to cumulative impacts as significant.” (Id. At p. 120; see also *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 720-721.)

These increases should be considered substantial and the SEIR recirculated for public comment. Instead, the October 23, 2015, notice of publication of the Response to Comments informed the public they would have no opportunity to comment on the environmental effects of these changes in the Project.

4. The SEIR’s Cancer and Health Risk Assessment for Toxic Air Contaminants Is Invalid, Based on Legal Errors and Not Supported by Substantial Evidence.

(a) The SEIR’s threshold of significance for what is a cumulatively significant TAC impact is legally flawed.

Quoting the discussion of cumulative risk levels in BAAQMD’s 2009 *Revised Draft Options and Justification Report, California Environmental Quality Act Thresholds of Significance*, the DSEIR explained that the 100 in one million excess cancer risk threshold was based on USEPA guidance for “acceptable” risk. (DSEIR, p. 5.4-13.) The announced basis of that threshold for toxic air pollutants is identified as the 1989 preamble to the benzene National Emissions Standards for Hazardous Air Pollutants (NESHAP) rulemaking, which is focused on providing the “maximum feasible protection against risks to health ...” (*Id.*, emphasis added.)

In comments on the DSEIR, The Alliance objected that the DSEIR’s reliance on the 100

excess cancer threshold to determine cumulative significance was legally flawed because it improperly imports considerations of the cost and feasibility of mitigation into a determination of significance, even though CEQA requires that these two determinations be made in distinct steps.³⁴ The Alliance also objected that the DSEIR's purported justification of the 100 excess cancer threshold as representative of "pristine" conditions was not coherent or explained by the DSEIR or the 2009 BAAQMD reports cited by the DSEIR.

The FSEIR response to these comments objecting to the 100 excess cancer cumulative threshold argues that it is justified as the "upper limit of acceptability" under USEPA guidance. (FSEIR, p. 13.13-27.) The FSEIR explained that "pristine" conditions are those that are affected only by cumulative global atmospheric transport of TACs. (Id.) These responses are inconsistent with CEQA.

The SEIR's use of the 100 excess cancers per million threshold was legally flawed for several reasons. First, "a threshold of significance cannot be applied in a way that would foreclose the consideration of other substantial evidence tending to show the environmental effect to which the threshold relates might be significant." (*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1109.) In light of the obvious conclusion that the risk of the first 100 cancers in one million represent a material and significant health impact, the agency may not simply apply a regulatory standard from the USEPA "as an automatic determinant that the effect is or is not significant." (Id.)

Also, the EIR uncritically relies on an appeal to another agency's standards without justification, even though it is well-settled that mere compliance with another agency's regulatory standards cannot be used under CEQA as a sufficient basis for determining that a project's effects are insignificant. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 712-718 (improper to conclude that reliance with air quality regulations precludes significant impact); *Ebbetts Pass Forest Watch v. California Department of Forestry & Fire Protection* (2008) 43 Cal4th 936, 957 (err to conclude that compliance with pesticide restrictions precludes significant impact); *Oro Fino Gold Mining Corporation v County of El Dorado* (1990) 225 Cal.App.3d 872, 881-882 (meeting general plan noise standard does not preclude significant impact).) An agency must conduct its own fact-based analysis of project impacts, regardless of compliance with other regulatory standards. (*Californians for Alternatives to Toxics v. Department of Food & Agriculture* (2005) 136 Cal.App.4th 1, 16; *Citizens for Non-Toxic Pest Control v. Department of Food & Agriculture* (1986) 187 Cal.App.3d 1575, 1587-1588.) The OCII's failure to exercise independent judgment, evident in its uncritical reliance on other agency standards, violates CEQA. (CEQA Guidelines, §15084(e); *Friends of La Vina v. County of Los Angeles* (1991) 232 Cal.App.3d 1446, 1452.)

In addition, the DSEIR fails to provide any explanation for why cumulative TACs that do

³⁴Thomas Lippe, letter to Tiffany Bohee, July 26, 2015, pp. 16-18.

cause the first 100 excess cancers are “acceptable.” An EIR must contain facts and analysis, not just a bare conclusion, e.g., a conclusion as to “acceptable” risk. (*Santiago County Water District v County of Orange* (1981) 118 Cal.App.3d 818, 831.) The EPA standard borrowed by OCII and BAAQMD as the threshold for significant cumulative impact was designed to support a different regulatory scheme, not to support determinations of significance under CEQA. The EPA is permitted and required to consider factors of cost and feasibility in its regulation of toxics under the Clean Air Act. (See July 26 Lippe, pp. 16-18.) However, CEQA neither requires nor allows OCII to use EPA’s judgment of “acceptable” cancer risk to determine the significance of cumulative TAC impacts. The determination of “acceptable” environmental harm arises at the end of the CEQA analysis in the context of a statement of overriding considerations, not at the beginning of the process, in determining whether impacts are significant. (See, e.g., *City of Marina v. Board of Trustees of the California State University* (2006) 39 Cal.4th 341, 368-369.)

Also, the SEIR relies on a simplistic misrepresentation of actual EPA policy. (See July 26 Lippe, pp. 13-18.) The EPA’s actual policy is to assess increased cancer risk based on a host of site-specific factors within a range of values from 1 in one million to 100 in one million. This policy reflects the agency’s attempt to balance the costs and benefits of protecting public health in its implementation of a host of federal environmental laws, including the Clean Air Act, Clean Water Act, Resource Conservation and Recovery Act, CERCLA (Superfund), etc. (See July 26 Lippe, Exhibit 3.)³⁵

Instead of following this analytic approach, the DSEIR selects one value at the least environmentally protective end of the EPA’s “acceptable risk” range and uses it to determine the significance of the Project’s impacts, but without regard to the Project’s site-specific

³⁵“In the proposed NCP [Superfund National Contingency Plan], the Agency [EPA] had defined the acceptable risk range as being from 10^{-4} to 10^{-7} , meaning that when the excess risk to an individual of contracting cancer due to a lifetime exposure to a certain concentration of a carcinogen falls between approximately 1 in 10,000 [100 in one million] and 1 in 10 million, it is judged to be an acceptable exposure. As a measure of additional protection, the proposal provided that there should be a “point of departure” of 10^{-6} , toward the more protective end of the scale, that should be used in setting preliminary remediation goals; if conditions warranted, the final remedy could achieve a level elsewhere within the range. ¶ The final rule maintained the point of departure of 10^{-6} , but narrowed the risk range to 10^{-4} through 10^{-6} . This action was taken in response to public comment and concerns that the Superfund range went below the accepted de minimis level used by other EPA programs and those of other federal agencies. ... the Agency has retained the discretion to select a cleanup level outside the range in appropriate circumstances (e.g., where concerns about sensitive populations, synergistic effects among chemical mixtures, etc., suggest that the remedy should attain a level below 10^{-6}). The use of a range of acceptable risk is general practice for most government programs. As discussed below in the section on role of cost, it affords the Agency the flexibility to take into account different situations, different kinds of threats, and different kinds of technical remedies. If a single risk level had been adopted, (e.g., at the more stringent end of the risk range), fewer alternatives would be expected to pass the protectiveness threshold and qualify for consideration in the balancing phase of the remedy selection process.” (Id., 20 ELR 10237 [footnotes omitted].)

considerations. Again, the DSEIR has cherry-picked a threshold of significance to avoid finding the Project's cancer risk impact significant.

Also, CEQA neither requires nor allows the City to use the EPA's judgment of "acceptable" cancer risk to determine the significance of the Project's impacts. The City's discretion to decide that significant environmental harm is "acceptable" in light of the project's benefits arises at the end of the CEQA analysis, in the context of a statement of overriding considerations, not at the beginning of the process, in determining whether impacts are significant.

A statement of overriding considerations is required, and offers a proper basis for approving a project despite the existence of unmitigated environmental effects, only when the measures necessary to mitigate or avoid those effects have properly been found to be infeasible. (Pub. Resources Code, § 21081, subd. (b).) Given our conclusion the Trustees have abused their discretion in determining that CSUMB's remaining effects cannot feasibly be mitigated, that the Trustees' statement of overriding circumstances is invalid necessarily follows. CEQA does not authorize an agency to proceed with a project that will have significant, unmitigated effects on the environment, based simply on a weighing of those effects against the project's benefits, unless the measures necessary to mitigate those effects are truly infeasible. Such a rule, even were it not wholly inconsistent with the relevant statute (*id.*, § 21081, subd. (b)), would tend to displace the fundamental obligation of "each public agency [to] mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so" (*id.*, § 21002.1, subd. (b)).

City of Marina v. Board of Trustees of the California State University (2006) 39 Cal.4th 341, 368-69.

This is a critical distinction, because where the Project does not exceed thresholds of significance that are erroneously inflated by the concept of "acceptable risk," the City is absolved of further legal obligation to mitigate the impact. As a result, the public cannot know whether the City will allow an unknown number of cancer cases to occur that it could have feasibly avoided had it scrupulously followed CEQA. Nor does the public know, had the EIR determined that 46 additional child cancer cases per one million persons is significant, whether or not the City would have found the Project's benefits outweigh its environmental and adverse human health effects.

(b) The SEIR's reliance on "the ambient cancer risk in the most pristine portions of the Bay Area" to support its chosen threshold of significance for TACs is incoherent and inconsistent with CEQA.

In its comments on the DSEIR, the Alliance criticized the DSEIR's attempt to support its

“100 in a million excess cancer cases” threshold by stating: “The 100 in a million excess cancer cases is also consistent with the ambient cancer risk in the most pristine portions of the Bay Area based on the District’s recent regional modeling analysis.” (DSEIR p. 5.4-13, citing the 2009 BAAQMD Justifications report, p. 67). (See July 26 Lippe, pp. 16-18.) As the Alliance pointed out, neither the DSEIR nor the 2009 BAAQMD Justification report explains what this means. For example, how are “excess” cancer cases “consistent” with “ambient” cancer risk? What does “most pristine” mean? On a scale of 1 to 10, are Mission Bay and the “most pristine areas” separated by 1 unit, or 10 units, or somewhere in between? (See July 26 Lippe, p. 18.)

The RTC responds that: “It should be noted that when BAAQMD developed its 100 in one million cumulative criterion characterized in its CEQA Air Quality Guidelines as reflective of air quality in a ‘pristine’ portion of the Bay area, it was originally designated as its “Point Reyes” approach, reflecting the air quality in this National Seashore that the U.S. Park Service identifies as a Class I Park and wilderness area. Consequently, even such pristine areas as Point Reyes National Seashore can have a sizeable background cancer risk, largely due to cumulative global atmospheric transport.” (FSEIR, Vol. 4, p. 13.13-27.)

This is a remarkable revelation, because here, the SEIR’s calculation of this Project excess cumulative cancer risk is based on modeling only local TAC sources in the immediate vicinity of the Project and excludes any consideration of this admitted background risk from regional or global sources. As Paul Rosenfeld and Jessie Jaeger explain, the excess cancer risk from cumulative non-Project sources identified in the SEIR (26 excess cancers at Hearst Tower and 44 excess cancers at UCSF Hospital) was based on modeling that takes into account only local sources such as San Francisco’s roadways and Caltrain.³⁶ Indeed, the documentation for the modeling of Air Pollution Exposure Zones cited by the DSEIR specifically states:

When discussing the maps and drawing conclusions from them, it is important to consider what they portray and how they were produced. Specifically, the dispersion modeling, from which the maps are derived, produced concentrations and risk estimates from direct emissions. The maps themselves therefore portray concentrations of directly emitted PM2.5 and cancer risk associated with directly emitted TAC *at locations near the sources of these emissions. The results do not reflect regional or long-range transport of air pollutants.* Nor do they include the effects of the chemical transformation (formation or loss) of pollutants.³⁷

As a result of its exclusive focus on local sources, the SEIR’s assessment of this Project’s excess cumulative cancer risk improperly excludes the ambient cancer risk from regional, statewide, or globally transported TACs from the pre- project, existing-conditions, “baseline.”

³⁶ Nov 20 SWAPE, Exhibit 1 hereto, pp. 4-7.

³⁷ BAAQMD, SFDPH, and SFPD, *The San Francisco Community Risk Reduction Plan: Technical Support Documentation*, December 2012, p. 37.

The omission was material. This Project’s modeled excess cancer risk is 18 in one million for children resident in the UCSF Hearst Tower and 12 in one million for children at the UCSF Hospital. (FSEIR, Table 5.4-11, Revised, p. 14-121.) The HRA reports that the cumulative risk for these receptors, caused by TAC sources from the citywide modeling of local sources and by the Project sources, will be 44 and 56 excess cancers respectively. (*Id.*) But as the RTC now reveals, and Rosenfeld and Jaeger further explain, this risk does not include the baseline risk from regional or globally transported TACs.³⁸ When that non-local risk is included (i.e., 100 cancers per million), the resulting sum is well over 100 cancers per million. Yet the SEIR fails to disclose this as a significant impact.

Furthermore, in its justification of the cumulative threshold of significance, the SEIR does not explain why it makes sense to count only those excess cancers caused by local sources against the limit of 100 “acceptable” excess cancers. Indeed, the DSEIR’s initial reference to “pristine” conditions affected only by the cumulative global atmospheric transport of TACs was incoherent. But when pressed, the RTC now discloses that the SEIR, without explanation or justification, simply ignores the contribution of regionally or globally transported TACs to this Project’s cumulative excess cancer risk. The fact that TACs from a particular source may attenuate with distance does not explain why the cumulative background TACs from all sources, including more distant sources, should be ignored in a cumulative analysis.³⁹ CEQA requires consideration of all related sources of risk in cumulative analysis.

The regionally or globally transported background TACs responsible for 100 excess cancers are not included in, or related to, the SEIR’s analysis in any fashion. The SEIR evaluates non-project cumulative TAC impacts by modeling TAC concentrations attributable to specifically identified local TAC sources.⁴⁰ Significance is determined by comparing the excess cancers from the modeled local sources to the 100 per million excess cancer threshold. However, if background regionally or globally transported TACs are already responsible for 100 excess cancers, then the SEIR should start with the conclusion that existing global projects are already responsible for a significant cumulative impact. Instead, the SEIR has committed the fundamental error of failing to add the Project’s effects to the complete baseline for purposes of

³⁸As Rosenfeld and Jaeger explain, the SEIR’s focus on local sources in evaluating cumulative excess cancers may be consistent with BAAQMD guidance, which restricts cumulative analysis to sources within a 1,000 foot radius. (20 SWAPE, Exhibit 1 hereto, p. 4) BAAQMD guidance justifies ignoring non-local sources because at 1,000 feet the risk from a particular source is sufficiently attenuated as to be indistinguishable from the background TAC risk. However, that does not mean that the background risk is zero or that the background risk should be ignored in cumulative analysis. BAAQMD guidance cannot justify violating CEQA’s requirement to consider all related source of a cumulative impact.

³⁹For example, the SEIR does not propose to ignore the cumulative effects of globally transported greenhouse gasses.

⁴⁰Nov 20 SWAPE, Exhibit 1, pp. 4-5.

determining significance.⁴¹

As a result, the SEIR unjustifiably limits the geographic scope of its cumulative impact analysis to local sources, while admitting that the risk is affected materially by regionally or globally transported sources. An agency may not arbitrarily limit the geographic scope of cumulative analysis or omit relevant projects.⁴² Lead agencies must “define the geographic scope of the area affected by the cumulative effect and provide a reasonable explanation for the geographic limitation used.” (CEQA Guidelines, § 15130(b)(3), emphasis added; *Citizens to Preserve the Ojai v. County of Ventura* (1985) 126 Cal.App.3d 421, 430 (failure to explain limited scope of cumulative analysis is error); *Bakersfield Citizens, supra*, 124 Cal.App.4th at 1216 (same).) Here, the SEIR provides no explanation, reasonable or otherwise, for omitting the 100 excess cancers attributed to non-local, regionally or globally transported TACs from its analysis.

(c) The SEIR is inadequate because it omits a project-specific assessment of TAC health risks.

The DSEIR identified TACs as a health risk, particularly to children, and explained that BAAQMD requires a Health Risk Assessment (HRA) if there is a potential public health risk. (DSEIR, p. 5.4-11.) The DSEIR provides an HRA in the Air Quality Appendix and summarizes its result in Table 5.4-11. (DSEIR, p. 5.4-49.) The HRA shows that, even after mitigation, the Project’s TACs will cause an excess cancer risk of 46 in one million for children resident in the UCSF Hearst Tower and 42 in one million for children at the UCSF Hospital. (DSEIR, Table 5.4-11, p. 5.4-49.) The HRA reports that the cumulative risk for these receptors, caused by the Project’s TAC sources and by background TAC sources, will be 72 and 86 excess cancers respectively. (*Id.*)

The DSEIR adopts the following threshold of significance for the health risk analysis for TACs:

⁴¹ See *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722-723; *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 881-882. Indeed, the significance of a cumulative impact depends on the environmental setting in which it occurs, including the severity of existing environmental harm. (*Communities for a Better Environment v. California Resources Agency* (“*Communities*”) (2002) 103 Cal.App.4th 98, 120 “[T]he relevant question”... is not how the effect of the project at issue compares to the preexisting cumulative effect, but whether “any additional amount” of effect should be considered significant in the context of the existing cumulative effect. [footnote omitted] In the end, the greater the existing environmental problems are, the lower the threshold should be for treating a project’s contribution to cumulative impacts as significant”].)

⁴² *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 721-724 (error to confine cumulative air quality analysis to County where evidence showed sources were basin-wide); *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1213-1214 (ignoring other impact sources was “overarching legal flaw”).

The threshold of significance used to evaluate health risks from new sources of TACs associated with the project is based on the potential for the proposed project to substantially affect the extent and severity of the Air Pollutant Exposure Zone 41 at sensitive receptor locations. The health protective standards used for determining the Air Pollutant Exposure Zone and evidence supporting these standards are discussed in the Setting section above and were developed in consultation with BAAQMD staff as part of the preparation of a Community Risk Reduction Plan.[] The project site is not within an identified health vulnerable zip code; therefore the Air Pollutant Exposure Zone criteria for this location is based on: (1) cumulative PM_{2.5} concentrations greater than 10 µg/m³, and/or (2) excess cancer risk from the contribution of emissions from all modeled sources greater than 100 per one million population. For projects that could result in sensitive receptor locations meeting the Air Pollutant Exposure Zone criteria that otherwise would not occur without the project, a proposed project that would emit PM_{2.5} concentration above 0.3 µg/m³ or result in an excess cancer risk greater than 10.0 per million would be considered a significant impact. The 0.3 µg/m³ PM_{2.5} concentration and the excess cancer risk of 10.0 per million persons exposed are the levels below which the BAAQMD considers new sources not to make a considerable contribution to cumulative health risks. [] For those locations already meeting the Air Pollutant Exposure Zone criteria, a lower significance standard is required to ensure that a proposed project’s contribution to existing health risks would not be significant. Since the project is not within an Air Pollutant Exposure Zone, the above thresholds apply to the proposed project.

(DSEIR, p. 5.4-27, emphasis added, footnotes omitted.) Thus, the DSEIR would find a TAC “significant impact” based on excess cancers only if 1) the cumulative risk from all sources were greater than 100 excess cancers and 2) the project itself contributed more than 10 excess cancers. Similarly, the DSEIR would find a TAC “significant impact” based on PM_{2.5} concentrations only if 1) cumulative PM_{2.5} concentrations were greater than 10 ug/m³ and 2) the project itself contributed more than 0.3 ug/m³ to that PM_{2.5} concentration.

Although the HRA reports that the Project would cause well over 10 excess cancers (DSEIR, Table 5.4-11, p. 5.4-49) and its operations would increase PM_{2.5} concentrations more than 0.3 ug/m³ (DSEIR, Table 5.4-10, p. 5.4-48), the DSEIR concludes that the “cancer risk would be less than significant with mitigation” because no offsite receptors would meet the Air Pollution Exposure Zone (APEZ) criteria of PM_{2.5} concentration over 10 ug/m³ or 100 excess cancers.⁴³ (DSEIR, pp. 5.4-48, 5.4-49.)

⁴³ The DSEIR reports that the City and BAAQMD modeled health risks from TACs throughout the City from roadways, permitted stationary sources, port and maritime sources, and Caltrain sources in 2012 to identify areas in which the excess cancer risk from all modeled sources was greater than 100 in one million to identify Air Pollution Exposure Zones and that the Project is not located in such a zone. (DSEIR, p. 5.4-12.)

The DSEIR's discussion of the methodology for its analysis of cumulative TAC impacts equates the project-level and cumulative analyses as follows:

... the HRA takes into account the cumulative contribution of localized health risks to sensitive receptors from sources included in the Citywide modeling plus the proposed project's sources. Other future projects, whose emissions have not been incorporated into the existing Citywide health risk modeling, such as Pier 70 and Seawall Lot 337/Pier 48 would similarly be subject to CEQA requirements to analyze the health risk impact of their project. However, health risk impacts are localized, and health risks from sources decrease substantially with increasing distance.[] Thus cumulative impacts from the Pier 70 and Seawall Lot 337/Pier 48 would not combine with the proposed project's emissions to substantially increase health risks within the project vicinity. Thus, because the project-level analysis includes health risks from all known existing sources, the project-level analysis is also a cumulative health risk analysis.

(DSEIR, p. 5.4-28, emphasis added, footnote omitted.)

In comments on the DSEIR, The Alliance objected that the DSEIR ignored BAAQMD's stated threshold of risk of 10 excess cancers for single source impacts and instead relied only on the BAAQMD 100 excess cancer risk for assessing cumulative impacts.⁴⁴ The Alliance objected that the acknowledged Project-caused risks of 46, 38, and 42 excess cancers (to child residents of Hearst Tower, adult residents of Hearst Tower, and child residents of UCSF Hospital respectively) exceed the BAAQMD thresholds for determining the significance of single source impacts.⁴⁵

In support of these comments, the Alliance provided a technical letter from Paul Rosenfeld and Jessie Jaeger explaining that the DSEIR should have applied the BAAQMD threshold of 10 excess cancers or an increase of PM2.5 concentrations greater than 0.3 ug/m³ to the Project's individual impact. (July 20 SWAPE, pp, 8-10.) Rosenfeld and Jaeger explained that BAAQMD intended that the 10 in one million excess cancer threshold apply to all sources of emissions from a single project.

The FSEIR response AQ-1c to these DSEIR comments objecting to the lack of a project-specific TAC significance determination argues that the DSEIR did not ignore BAAQMD's 10 excess cancer threshold for individual projects because the DSEIR thresholds "are based on a combination of the BAAQMD 2010 CEQA Guidelines and assessments by the City of localized sources of toxic air contaminants and proximity to sensitive receptors." (FSEIR, p. 13.13-25, emphasis added.) The FSEIR argues that the "the project site conditions were such that the [10

⁴⁴July 26 Lippe, pp. 13-18.

⁴⁵*Id.* at 13-15.

in one million excess cancer] threshold did not apply in this instance as further explained below.” *Id.* The explanation is that the DSEIR would only apply the 10 excess cancer threshold for individual projects only if there is a significant cumulative impact, i.e., only if the Project’s sensitive receptors were located in an APEZ:

The City in partnership with the BAAQMD has identified the Air Pollutant Exposure Zone in the City – areas with poor air quality under existing and cumulative conditions[.]. The project site is not located within an Air Pollutant Exposure Zone. The SEIR states that in such a case, if the project could result in sensitive receptor locations meeting the Air Pollutant Exposure Zone criteria that otherwise would not occur without the project, a significant impact would occur if the proposed project results in an excess cancer risk greater than 10.0 per million (page 5.427). The analysis demonstrated that the project would not result in sensitive receptor locations meeting the Air Pollutant Exposure Zone criteria. Therefore, the 10.0 per million excess cancer risk criterion does not apply.

(FSEIR, p. 13.13-25, emphasis added, footnotes omitted.)

The FSEIR also provides a new HRA based on changes to the project description that relocate three emergency diesel generators and reduce Project-caused excess cancers. (FSEIR, p. 13.13-27; FSEIR, Appendix AQ2, pp. 9-17.) Because the revised Table 5.4-11 no longer shows unmitigated cumulative TAC impacts greater than 100 excess cancers and because the FSEIR accordingly determines that mitigation is not required for this impact, the FSEIR concludes that the impact is “less than significant” rather than “less than significant with mitigation.” (FSEIR, p. 14-121.)

The Alliance responded to the FSEIR by reiterating that the DSEIR fails to provide a project specific assessment of TAC health risks.⁴⁶ The Alliance explained that this omission is prejudicial by submitting a letter report from Paul Rosenfeld and Jessie Jaeger explaining that the Project’s impacts exceed the 10 excess cancer in one million risk thresholds for project-specific analysis used by BAAQMD and the majority of California air districts.⁴⁷

As the attached letter from Paul Rosenfeld and Jessie Jaeger explains, the FSEIR’s new HRA also fails to assess individual health risk from proposed project by comparing it to a project-specific threshold of significance.⁴⁸ The project will still, by itself, cause excess cancers in excess of the 10 excess cancer threshold used by the majority of California air districts to determine the significance of project-specific impacts. In particular, child residents of Hearst

⁴⁶Nov 2 Farrow, pp. 1-3.

⁴⁷Nov 2 SWAPE, pp. 2-4.

⁴⁸Nov 20 SWAPE, Exhibit 1, pp. 2-4.

Tower will suffer a risk of 18 excess cancers and child residents of UCSF Hospital will suffer a risk of 12 excess cancers. (FSEIR, Table 5.4-11, p. 14-121.)

The SEIR's failure to provide a project-specific assessment of the Project's TAC impact was legally erroneous and prejudicial to informed public participation and decision making.

As the Alliance objected, the DSEIR fails to provide a project-specific assessment of TAC health risks because it does not adopt and does not apply a threshold of significance for the project-specific impact. The SEIR's only thresholds of significance for TACs are thresholds for cumulative impacts. The SEIR's thresholds would find a considerable contribution to a significant cumulative impact only if (1) there were 100 excess cancers from all sources and (2) the project itself contributed 10 excess cancers. The SEIR's approach is wrong as a matter of law because it conflates project-specific and cumulative analysis and because it assumes without justification that the only relevant thresholds are the thresholds for cumulative impacts. This ignores the significance of the actual cancers the Project causes, by itself, independent of the cumulative context.

CEQA requires that an EIR assess both project-specific and cumulative impacts. (CEQA Guidelines, §§ 15126.2, 15130.) Because assessment of project-specific and assessment of cumulative impacts are distinct obligations, they require distinct thresholds of significance. Whereas a project-specific analysis requires only that an EIR compare a project's effects to a single threshold, cumulative analysis requires two thresholds because cumulative impact analysis is a two-step process. In cumulative analysis an agency must separately (1) determine whether the impacts of the project in combination with those from other projects with related impacts are cumulatively significant by comparing that total impact to a "step-one" threshold, and (2) if so, determine whether the project's own effect is a considerable contribution by comparing the project's own effect to a "step-two" threshold. (CEQA Guidelines, § 15130(a); *see* Kostka and Zischke, *Practice Under the California Environmental Quality Act* (2nd Ed., 2011 Update), §§ 13.39. 15.52; Remy, Thomas, et al, *Guide to CEQA* (11th Ed., 2007), pp. 474-475.)

CEQA recognizes that the thresholds used for project-specific analysis and for the second step of cumulative analysis differ. The step-two threshold of significance in cumulative analysis is used to determine whether the project's contribution to a significant cumulative impact is "considerable," i.e., "whether 'any additional amount' of effect should be considered significant in the context of the existing cumulative effect." (*Communities for a Better Environment v. California Resources Agency* ("CBE") (2002) 103 Cal.App.4th 98,119.) Even if a project's impact is "individually minor" and, thus, not found significant in a project-specific analysis, it may make a considerable contribution because it is "collectively significant." (*Id.* at 119-120; *Los Angeles Unified School Dist. v. City of Los Angeles* ("LAUSD")(1997) 58 Cal.App.4th 1019, 1025-1026.) Indeed, the step-two threshold may need to be a sliding scale because "the greater the existing environmental problems are, the lower the threshold should be for treating a project's contribution to cumulative impacts as significant." *CBE*, *supra*, 103 Cal.App.4th at 120. In sum, because CEQA specifically recognizes that the step-two threshold in cumulative analysis

may be lower than the threshold to determine whether an impact is individually significant, there can be no *a priori* assumption that the project-specific threshold is the same as the threshold for step-two in a cumulative analysis.

Here, the SEIR does not provide, much less justify, any threshold for a project-specific analysis. The only form of analysis is the two-step cumulative analysis under which the SEIR first determines whether cumulative risk exceeds 100 cancers and then goes on to consider whether the a project makes a considerable contribution. The SEIR simply declines to consider whether the Project's TAC impacts would be individually significant.

Not only is the omission of a separate project-specific analysis erroneous as a matter of law, it runs counter to the BAAQMD guidance. BAAQMD's 2009 Justification Report recommends a CEQA threshold for siting a new project of 10 excess cancers, applicable to stationary, area, and mobile sources of TAC emissions.⁴⁹ This is a project-specific, not a cumulative threshold. The 2009 Justification Report separately recommended cumulative threshold: 100 excess cancers from all sources within 1,000 feet.⁵⁰ Similarly, the May 2010 BAAQMD Guidelines identify separate thresholds for individual projects and for cumulative sources. Under that guidance, risk from an individual project is significant if it increases cancer risk by more than 10 in one million.⁵¹ Risk from all sources is cumulatively significant if the risk from any source results in a total risk greater than 100 excess cancers.⁵² Furthermore, the May 2010 BAAQMD Guidelines specifically provides that the "cumulative threshold sets a level beyond which any additional risk is significant."^{53, 54} Thus, contrary to the SEIR's implication,

⁴⁹ BAAQMD, Revised Draft Options and Justification Report, October 2009, pp. 66-67.

⁵⁰ *Id.* at 68.

⁵¹ BAAQMD, California Environmental Quality Act Guidelines Update, Proposed Air Quality CEQA Thresholds of Significance, May 3, 2010, p. 33.

⁵² *Id.* at 34; *see also id.* at 46 ("Projects proposed in areas where a CRRP [Community Risk Reduction Plan] has not been adopted and that have the potential to expose sensitive receptors or the general public to emissions-related risk in excess of the following thresholds from the aggregate of cumulative source would be considered to have a significant air quality impact. ... Emissions from a new source or emissions affecting a new receptor would be considered significant where ground-level concentrations of carcinogenic TACs from any source result in an increased cancer risk greater than 100.0 in one million.")

⁵³ BAAQMD, California Environmental Quality Act Guidelines Update, Proposed Air Quality CEQA Thresholds of Significance, May 3, 2010, p. 36, emphasis added.

⁵⁴ These risk thresholds for evaluating the significance of the risks from single source impacts and from cumulative sources are also set out in BAAQMD's 2011 update. *See* BAAQMD, California Environmental Quality Act Air Quality Guidelines, updated May 2011, pp. 5-3 (identifying 10 excess cancers as the threshold of significance for siting an individual new project), 5-15 (identifying 100 excess cancers as the cumulative threshold of significance). The individual project and cumulative risk thresholds are separately

the BAAQMD guidance does not permit an additional 10 excess cancers without mitigation where the cumulative risk is under 100.

The fact that BAAQMD calls for a cumulative significance determination and for mitigation when cumulative excess cancers from sources within the 1,000 foot zone of influence are over 100 per million if a project adds any excess cancers does not vitiate the validity of a project-level threshold of 10 per million. A project may make a considerable contribution to a significant cumulative impact even when the project-specific impact is individually minor and not significant. (*CBE, supra*, 103 Cal.App.4th at 119-120; *LAUSD, supra*, 58 Cal.App.4th at 1025-1026.) Conversely, a project make cause a significant impact by itself even if the cumulative impact is not significant. The SEIR simply ignores this fact. But this project level impact must be evaluated and disclosed in the SEIR.

The City of San Francisco has in the past applied the BAAQMD thresholds to provide distinct project-specific and cumulative analyses. For example, the 801 Brannan and One Henry Adams Streets Project DEIR states:

The following are thresholds for project-specific impacts: (1) an increase in lifetime cancer risk of 10 chances in one million, (2) an increase in the noncancer risk equivalent to a chronic or acute “Hazard Index” greater than 1.0,[ft] or (3) an increase in the annual average concentration of PM2.5 in excess of 0.3 micrograms per cubic meter. BAAQMD also recommends cumulative thresholds of 100-in-one-million cancer risk, a Hazard Index greater than 10.0, and a PM2.5 concentration greater than 0.8 micrograms per cubic meter.⁵⁵

Accordingly, that EIR separately evaluates and identifies both project-specific impacts and cumulative impacts by preparing distinct analyses as to whether 1) the project itself causes more than 10 excess cancers or 2) cumulative sources cause more than 100 excess cancers.⁵⁶ This is as it should be, because CEQA recognizes that the project-specific and cumulative analyses are distinct obligations.

stated and not dependent on each other. Individual risks are significant if the project causes over 10 excess cancers. (*Id.* at 5-3.) And where the cumulative risk is over 100 excess cancers there is no minimum contribution required from a project to trigger a cumulative significance determination with the obligation to mitigate: “A project would have a significant cumulative impact if the total of all past, present, and foreseeable future sources within a 1,000 foot radius (or beyond where appropriate) from the fence line of a source, or from the location of a receptor, plus the contribution from the project exceeds the following: . . . [a]n excess cancer risk levels of more than 100 in one million ... or 0.8 ug/m3 annual average PM2.5.” (*Id.* at 5-15.)

⁵⁵ 810 Brannan and One Henry Adams Streets Project DEIR, Exhibit 2, p. 266.

⁵⁶ *Id.*, pp. 281-284 (separately determining that project-specific impacts would be significant because excess cancers are over 10 and that cumulative impacts would be significant because over 100).

The City has also in the past found project-specific impacts to be significant because individual project TAC risk exceeds 10 excess cancers *even when the cumulative risk does not exceed 100 excess cancers*. For example, the EIR for the 706 Mission Street project concluded that cumulative TAC impacts from that would not be significant because excess cancers would not exceed 100.⁵⁷ The same EIR determined that the project-specific construction TAC impact would be significant because construction would cause 27.3 excess cancers.⁵⁸ Accordingly, mitigation was proposed to reduce risk below the project-specific threshold of 10 excess cancers.

Here, based on the SEIR's own analysis, the result should be the same as occurred in 706 Mission Street project EIR: the individual risk is acknowledged to be over 10 excess cancers even though the cumulative risk is reported to be under 100. Thus, the consequence of the omission of a project-specific analysis is the failure to disclose that the project will cause a significant impact, by itself, regardless of the cumulative context. It is undisputed that the Project will cause a risk of at least 12 excess cancers to child residents of the UCSF Hospital and at least 18 excess cancers to child residents of Hearst Tower (FSEIR, p. 14-121) and that this increased risk exceeds the project-specific threshold of significance recommended by the majority of California air districts, including BAAQMD.⁵⁹

Because OCII did not propose, justify, or apply a threshold of significance for project-specific impacts, the EIR is legally inadequate. Regardless of the conclusion that the EIR might have reached had it provided and justified a project-specific threshold of significance and applied it in a project-specific analysis, the EIR is insufficient as an informational document without this analysis. The omission is prejudicial because there is substantial evidence that a project-specific analysis would have disclosed a significant unmitigated impact. Under the circumstances, the EIR must be revised and recirculated.

The FSEIR fails to address the gravamen of the comments objecting to the absence of a project-specific analysis. The FSEIR responds to these objections by claiming that the DSEIR "did not ignore the threshold of 10 per one million for individual projects emissions," arguing that this BAAQMD threshold simply did not apply because cumulative impacts are not significant. (FSEIR, p. 13.13-25.) This response simply conflates the project-specific and cumulative analyses, as explained above.

⁵⁷ 706 Mission Street- The Mexican Museum and Residential Tower Project DEIR, June 27, 2012, Exhibit 3, pp. IV.G47 to IV.G.50.

⁵⁸Exhibit 3, at pp. IV.G31 to IV.G.36.

⁵⁹Nov 20 SWAPE, Exhibit 1, p. 2.

(d) The SEIR’s assessment of cumulative TACs is invalid because it fails to include all sources of related impacts.

The DSEIR’s analysis of cumulative TAC sources other than the Project-caused sources was based on a local-scale citywide modeling effort conducted in 2012. (DSEIR, p. 5.4-11 to 5.4-12, 5.4-28.) Thus, the background cumulative non-Project risk of excess cancers from TACs was taken from “the Citywide HRA database for all receptors.” (DSEIR, Appendix AQ, Table 6.1-8, fn 5; *see also* FSEIR, Appendix AQ2, Table 6.1-8, fn. 6 (same).) This cumulative background risk is stated as 44 excess cancers in one million for child receptors at the UCSF Hospital and 26 in one million for child and adult receptors at the Hearst Tower. *Id.* The DSEIR acknowledges that the prior environmental review for the Mission Bay project did not quantitatively assess TACs. (DSEIR, p. 5.4-50.)

The Alliance has objected that the cumulative analysis did not in fact evaluate all sources of TACs that would affect sensitive receptors because it omits foreseeable future sources of TACs from adjacent development already approved as part of the Mission Bay redevelopment program. (Nov 2 Farrow FSEIR, p. 3.) The Alliance demonstrated that the omission was prejudicial by submitting a technical report from Paul Rosenfeld and Jessie Jaeger explaining that the SEIR fails to include foreseeable future development in its analysis of cumulative TAC health risks.⁶⁰ Rosenfeld and Jaeger explain that the City’s designation of Air Pollution Exposure Zones does not include TAC impacts in the Project area from the future redevelopment of the Mission Bay area. This build-out was projected in the Mission Bay EIR to generate 218,549 vehicle trips and 2,684 truck trips per day. This level of additional traffic has the potential to cause excess cancers greater than the 100 cancer threshold identified by the EIR for a significant cumulative impact.

Cumulative analysis must include all sources of “related impacts,” including past, present, and potential future projects. (CEQA Guidelines, § 15130(a)(1), (b).) The unjustified omission of related sources of TACs is an error because without this disclosure the public and decision makers cannot “determine whether such information would have revealed a more severe impact.” (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 720, 724.) The future development of the rest of the Mission Bay project is clearly foreseeable because it has already been approved at the program level. The Warriors Arena Project is but one phase of the overall Mission Bay project. The California Supreme Court has held that it is error for an EIR for one phase of a project to omit impacts from future phases in its analysis of cumulative impacts. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 396.) The omission of this foreseeable future development is error.

The DSEIR implies that impacts from future development may be ignored because “[o]ther future projects, whose emissions have not been incorporated into the existing Citywide health risk modeling ... would similarly be subject to CEQA requirements to analyze the health

⁶⁰Nov. 2 SWAPE, pp. 4-12.

risk impact of their project.”⁶¹ (DSEIR, p. 4.4-28.) However, the SEIR may not tier from future environmental reviews: “CEQA’s informational purpose ‘is not satisfied by simply stating information will be provided in the future.’” (*Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 440-441 (emphasis in original).)

(e) The FSEIR fails to provide good-faith response to comments objecting to the analysis of TAC health risks, and the TAC analysis is inadequate because OCII failed to use its best efforts to use current science.

The SEIR’s HRA determines the number of excess cancers from the Project itself based on the modeled concentration of TACs from construction and operation of the Project, toxicity values for those TACs and a number of exposure parameters. (DSEIR, Appendix AQ, pp. 9-17; FSEIR Appendix AQ2, pp. 9-17.) The exposure parameters are intended “to estimate excess lifetime cancer risks for all potentially exposed populations for the construction and operation” of the Project. (FSEIR, App. AQ2, p. 13.) These exposure parameters include daily breathing rate, exposure time, exposure frequency, exposure duration, averaging time, and intake factor for inhalation. (DSEIR, Appendix AQ, p. 14; FSEIR Appendix AQ2, p. 14.) The SEIR reports that the exposure parameters are based on 2003 guidance from Cal/EPA’s Office of Environmental Health Hazard Assessment (OEHHA) and 2010 guidance from BAAQMD.

As noted above, the DSEIR’s analysis of cumulative TAC sources other than the project-caused sources was based on citywide modeling in 2012. (DSEIR, p. 5.4-11 to 5.4-12, 5.4-28.) The background cumulative non-Project risk of excess cancers from TACs was taken from “the Citywide HRA database for all receptors.” (DSEIR Appendix AQ, Table 6.1-8, fn 5.) The SEIR does not report the exposure parameters that were used for that 2012 modeling.

Comments on the DSEIR objected that the health risk assessment fails to use the most recent OEHHA Air Toxics Hotspots Program Risk Assessment Guidelines. (July 19 Gilbert, pp. 13-14.) The comments pointed out that current OEHHA exposure parameters call for the use of differential breathing rates for each age period in a health-risk analysis and incorporate higher breathing rates for children than those used in the SEIR’s HRA. The comments conclude that the SEIR’s HRA likely underestimates potential excess cancer risks due to its use of out-of-date data. The comments requested that the EIR recalculate excess cancers using differential breathing rates, including the correct daily breathing rate for children.

In response, the FSEIR does not dispute the validity of the new OEHHA guidance. Indeed, the FSEIR admits that BAAQMD intends to use the revised guidance in the future. (FSEIR, p. 13.13-50.) However, the FSEIR declines to provide a new assessment of health risks based on differential breathing rates, including the current understanding of children’s breathing

⁶¹The DSEIR mentions Pier 70 and Seawall Lot 337/Pier 48 as examples of such future projects, and then dismisses their impacts because they are allegedly too distant to affect the same receptors. (DSEIR, p. 5.4-28.) But the DSEIR ignores the Mission Bay buildout adjacent to the project.

rates, or to discuss the likely effect of the use of correct breathing rates in the analysis. The FSEIR argues 1) that the new OEHHA guidance post-dates the Notice of Preparation, 2) that air districts may not always adopt OEHHA guidance timely, and 3) that the San Joaquin Valley Air Pollution Control District responded to the new breathing rates by increasing its threshold of significance to one that is less stringent than OEHHA recommends. (*Id.*) The FSEIR also argues that because the analysis in the DSEIR is consistent with the methods previously used to determine existing risks it “represents a valid conservative estimate of incremental health risk.” *Id.*

As noted, the FSEIR also provides a new HRA based a change to the Project description, which relocates three emergency diesel generators. (FSEIR, p. 13.13-27; FSEIR, Appendix AQ2, pp. 9-17.) Despite the necessity of recalculating all of the Project-caused excess cancers, the new HRA does not use the current OEHHA breathing rates.

The Alliance objected that the FSEIR had not provided the requested analysis.⁶² The Alliance objected that the FSEIR response fails to acknowledge that OEHHA had recommended the higher children’s breathing rates in guidance issued in 2012, well before the 2014 Notice of Preparation. *Id.* The Alliance provided technical analysis demonstrating that the effect of the increased breathing rate can be to approximately double the excess cancer risk for children for some TAC sources compared to analysis using the out-of-date breathing rate assumption. *Id.*

Paul Rosenfeld and Jessie Jaeger reiterate that the effect of the currently recommended differential breathing rates can be to materially increase the excess cancer risk for children from Project-caused TACs compared to analysis using the out-of-date breathing rate assumption (see Exhibit 1).⁶³ Using the data for Project-caused TAC risks from the SEIR rather than the hypothetical exposure scenario in their November 2, 2015 letter, Rosenfeld and Jaeger determined the Project-caused excess cancers for child and adult receptors at Hearst Tower and child receptors at the UCSF Hospital using the currently recommended differential breathing rates. Excess cancer risk from project-caused TACs would increase materially compared to the risks determined using the out-of-date breathing rates – from 42% to 71%. For example, risk for a child resident of the Hearst Tower from Project-caused sources would increase 71%, from 18 to 31 excess cancers.

For the TAC risks from cumulative sources, Rosenfeld and Jaeger explain that the SEIR does not disclose the necessary information to calculate excess cancers using the 2012 and 2015 OEHHA guidance. For example, the SEIR does not provide either the TAC concentrations or the exposure parameters used to determine the cumulative non-Project excess cancers, i.e., the “2014 background risk” identified in the Appendices AQ and AQ2, Table 6.1-8. However, Rosenfeld and Jaeger explain that it is apparent from the FSEIR’s characterization of these data that the

⁶²Nov. 2 Farrow, pp. 4-5; Nov 2 SWAPE, pp. 12-15.

⁶³Nov 20 SWAPE, Exhibit 1, pp 4-6.

cumulative non-Project background risk was not calculated with the differential breathing rate recommended by OEHHA in its 2012 and 2015 guidance. Accordingly, Rosenfeld and Jaeger conclude that the SEIR materially understates total risk and that the actual risk may in fact exceed the 100 excess cancer cumulative threshold for some receptors.

Comments by responsible experts raised a substantive issue regarding the currency of the data on children's breathing rates that was used to determine TAC risks. The response was anything but good-faith reasoned analysis. Even though the FSEIR provided an entirely new HRA to reflect changes to the project, the FSEIR did not provide the requested analysis, or even discuss the likely effect of the use of current data regarding children's breathing rates on the SEIR's analysis. (FSEIR, p. 13.13-50.) Instead of providing the information requested, or a discussion of its effect on the analysis, the FSEIR offered formalistic evasion.

For example, the fact that BAAQMD has not yet revised its guidance is simply irrelevant to a discussion of the substantive issue raised in the comments, i.e., the actual risk to children. The facts of children's breathing rates determine the impact, not whether BAAQMD has yet incorporated those facts into a guidance document. OCII is obliged to "use its best efforts to find out and disclose all that it reasonably can." (CEQA Guidelines, § 15144.) This requires a substantive response to the issue raised in comments.

The FSEIR responds that, in response to the information that higher children's breathing rates result in risks that are higher than they understood them to be, the San Joaquin Valley Air Pollution Control District (SJVAPCD) has apparently chosen to adopt less stringent health protection than it previously required. That response is also irrelevant and evasive. If the SJVAPCD had previously set a health-protective risk level, it is difficult to understand how its discovery that the risk to children is higher than it had understood could justify relaxing that health-protective standard. If SJVAPCD's previous threshold was set and then relaxed based on considerations of cost or feasibility of mitigation, e.g., as a standard of "acceptable" risk, that was improper for the reasons discussed in section 6(a) above. Regardless, the FSEIR's response does not suggest that OCII or BAAQMD have changed the threshold of significance and does not suggest any basis for doing so; so the response does not address the concern in comments that the SEIR has failed to disclose the actual level of the risk. The comment requested that OCII disclose the actual risk based on current science, not that OCII re-characterize the significance of that risk.

Finally, as Rosenfeld and Jaeger explain, it is simply not true that OEHHA had not already recommended use of age-specific breathing rates, including the 1,090 L/kg-day rate for children, at the time of the Notice of Preparation.⁶⁴ OEHHA published and recommended use of higher, differential breathing rates for children in its *Technical Support Document for Exposure Assessment and Stochastic Analysis* in August 2012 well before the November 2014 Notice of Preparation and well before the SEIR's HRAs were prepared. This recommendation was made

⁶⁴Nov 2 SWAPE, p. 13.

pursuant to a mandate from the Children’s Environmental Health Protection Act. And, as noted, the second HRA post-dates the OEHHA March 2015 guidance, in which OEHHA again recommended use of the higher differential breathing rates. Despite this, the FSEIR argues that it is somehow relevant that the second OEHHA guidance on this topic had not been issued prior to the DSEIR. (FSEIR, p. 13.13.50.) The implication of the FSEIR that the breathing rates were not well understood or established or that they somehow remained controversial is simply disingenuous.

Refusal to respond to responsible comments from experts regarding analytic parameters with reasoned analysis, as well as mischaracterization of the currency of those parameter, are failures to meet CEQA’s disclosure obligations. For example, a court set aside an analysis of TACs that was based on outdated CARB guidance after comments pointed out this flaw and the final EIR declined to provide corrected analysis:

... the use in the final EIR of data extrapolated from CARB’s 1991 speciation profile # 508 for measuring aircraft emission of TAC’s did not meet the standard of “a good faith effort at full disclosure” required by CEQA. (Guidelines, § 15151.) “[W]here comments from responsible experts or sister agencies disclose new or conflicting data or opinions that cause concern that the agency may not have fully evaluated the project and its alternatives, these comments may not simply be ignored. There must be good faith, reasoned analysis in response.” [citation omitted] By using scientifically outdated information derived from the 1991 profile, we conclude the EIR was not a reasoned and good faith effort to inform decision makers and the public about the increase in TAC emissions that will occur as a consequence of the Airport expansion.

(Berkeley Keep Jets Over the Bay Committee v. Board of Port Com’rs (2001) 91 Cal.App.4th 1344, 1367 [111 Cal.Rptr.2d 598, 615], as modified on denial of reh’g (Sept. 26, 2001.)

Here, the failure to meet CEQA’s mandate to use best efforts at analysis and to provide reasoned good-faith facts and analysis in response to comments was clearly prejudicial. Rosenfeld and Jaeger demonstrate that if excess cancers were determined using the OEHHA guidance for children’s breathing rate rather than the outdated 2000 guidance, excess cancers would be materially increased and may exceed the threshold for a significant cumulative impact.⁶⁵ Because the FSEIR failed to respond substantively to the DSEIR comments and the SEIR fails to provide adequate information to determine how the changes to breathing rate data would affect the cumulative analysis, the SEIR fails as a disclosure document.

Here, the EIR should be revised and recirculated to provide a health risk assessment that is based on current science regarding the parameters that determine actual risk to children. The areas of maximum vulnerability to TACs from the Project include child receptors. (FSEIR, p. 14-

⁶⁵Nov 2 SWAPE, pp. 14-15; Nov 20 SWAPE, Exhibit 1, pp. 5-6.

114, 14-121.) And children are the most vulnerable to TAC exposure, as evidenced by the elevated excess cancer rates for children as compared to adults. (*See, e.g., FSEIR, Table 5.4-11, p. 14-121*).

5. Changes to the Project since Publication of the DSEIR Require Recirculation for Public Comment Due to New and More Severe Significant Impacts.⁶⁶

Under CEQA, if the project changes after publication of the Draft EIR, and these changes create a new significant impact not identified in the Draft EIR, or a substantial increase in severity of a significant impact that was identified in the Draft EIR, the lead agency must recirculate the draft EIR for public comment. (CEQA section 21092.1.)

Here, the RTC describes a number of “construction refinements”, including using dewatering generators, using a soil treatment pug mill, and removing rapid impact compaction from the construction plan. With respect to the air quality impacts of these “construction refinements” the RTC states:

The addition of the construction refinements would not substantially increase (approximately 2 percent for ROG and 4 percent for NOx) the average daily construction-related emissions disclosed in the Draft SEIR. This would not result in a substantial increase in the severity of the previously identified significant and unavoidable impact, and the same mitigation measures would apply requiring the project sponsor to minimize construction emissions.

(RTC, p 12-22.)

The RTC also describes a new variant, the Muni UCSF/Mission Bay Station Variant, and discloses that:

The Muni UCSF/Mission Bay Station Platform Variant would not substantially increase (approximately 2 percent for ROG and 5 percent for NOx) the average daily emissions disclosed in the Draft SEIR for the proposed project (see Table 5.4-7, page 5.4-31). Furthermore, Mitigation Measure M-AQ-1 (Construction Emissions Minimization) would also apply to the variant. While the estimated construction emissions under the variant shown in Table 12-2 are slightly higher than those identified for the proposed project in the Draft SEIR, this impact is not substantially more severe than the previously identified significant and unavoidable impact.

(RTC, p 12-22.)

⁶⁶Nov. 2 Lippe FSEIR, pp 6-7.

There are several problems with these assertions. First, the RTC does not explain whether construction refinement caused increases of 2 and 4 percent for ROG and NOx, respectively, are included within or additive to the Platform Variant caused increases of 2 and 5 percent for ROG and NOx. Without this information, the public does not know what additional quantum of ozone pollution the RTC deems insubstantial.

Assuming for the moment that the increases caused by the construction refinements and the increases caused by the Platform Variant are summed together to reach the 2 and 5 percent numbers, the RTC offers no rationale why the 2 and 5 percent increases are not considered a “substantial” increase in the severity of the previously identified significant effect that Project construction will have on ozone precursor pollution. The RTC authors apparently believe these numbers speak for themselves. They do not. In fact, reliance on these numbers appears to reflect a silent assumption that these increases above the previously identified quantities of emissions for these pollutants is “de minimis.” It must be remembered, however, that these increases are not above a previously identified less-than-significant quantity of emissions; the previously identified quantities were significant!

The RTC thus commits the exact error of law rejected by the Court of Appeal in *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98 (“CBE”), i.e., using a “de minimis” rationale or any type of simple numerical ratio of the incremental impact compared to the pre-existing impact. “[T]he relevant question... is not how the effect of the project at issue compares to the preexisting cumulative effect, but whether ‘any additional amount’ of effect should be considered significant in the context of the existing cumulative effect. [footnote omitted] In the end, the greater the existing environmental problems are, the lower the threshold should be for treating a project’s contribution to cumulative impacts as significant.” (Id. At p. 120; see also *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 720-721.)

These increases should be considered substantial and the SEIR recirculated for public comment. Instead, the October 23, 2015, notice of publication of the Response to Comments informed the public they would have no opportunity to comment on the environmental effects of these changes in the Project.

C. THE SEIR IS NOT SUFFICIENT AS AN INFORMATIONAL DOCUMENT WITH RESPECT TO TRANSPORTATION IMPACTS.

1. The SEIR’s Analysis of the Project’s Construction-related Traffic Congestion and Delay Impacts Is Based on Invalid Criteria.⁶⁷

The DSEIR’s analysis of the Project’s construction related traffic congestion and delay impacts is legally flawed because it is based on invalid criteria, it fails to lawfully assess the

⁶⁷July 27 Lippe, pp. 5-7; July 23 Smith, p. 15; Nov 2 Smith FSEIR p. 22.

Project's cumulative construction period impacts, and it improperly defers the development of mitigation measures to reduce the Project's construction-related traffic impacts to less than significant.

The DSEIR states "Construction related impacts generally would not be considered significant due to their temporary and limited duration." (DSEIR, p. 5.2-46.) This statement is placed in the section describing the DSEIR's thresholds of significance. Therefore, it appears this conclusion reflects a policy decision rather than a fact-based assessment.

In the impacts analysis section, the DSEIR similarly states: "Construction related impacts generally would not be considered significant due to their temporary and limited duration." (DSEIR p 5.2-111). Elsewhere the DSEIR quantifies the construction period's "temporary and limited duration" as 26 months. (DSEIR, p. 5.2-112.) However, the notion that the DSEIR can determine the Project's construction related traffic impacts to be "less than significant" based primarily on their temporary duration is legally and logically flawed because from a cumulative standpoint, the Project's construction impacts are part of an essentially permanent, not temporary, condition of ongoing construction in this part of San Francisco. Indeed, the DSEIR's discussion of the Project's cumulative construction period impacts recognizes there are numerous other construction projects planned in Mission Bay and that the construction related traffic impacts of these projects will combine with this Project's construction related impacts. (DSEIR, p. 5.2-210 (Impact C-TR-1.)

However, the DSEIR's discussion of the Project's cumulative construction period impacts is flawed because it is constrained by several artificial limits. First, as discussed in section I.A above, the impact assessment is limited to impacts and intersections and freeway ramps within the artificially restricted geographic "study area." Second, the impact assessment considers only construction projects within the Mission Bay neighborhood without regard to whether other "past, present, or reasonably foreseeable future projects" may be "closely related" because their impacts may combine with the Project's impacts.

Third, the DSEIR's analysis of cumulative traffic impacts for *construction* of the project only references a handful of foreseeable projects located very close to the Project, and the DSEIR's discussion of these projects is solely in terms of whether their construction periods overlap with construction of this Project, as if the operational impacts of other "past, present, and reasonably foreseeable future projects" are not "closely related." (See DSEIR, p. 5.2-10 and 11.)⁶⁸ This is incorrect because "closely related" simply means the other projects' impacts may

⁶⁸These projects are:

- 1.13 million gsf of UCSF LRDP projects under construction at the Mission Bay Campus, including, the UCSF East Campus project on Blocks 33/34,
- Construction of Bayfront Park,
- realignment of Terry A. Francois Boulevard,
- construction of a neighborhood park on the north side of Mariposa Street east of Owens Street,

combine with the Project's impacts.

Table 3 in the July 21 Wymer, report shows that it is possible to include a broader range of projects - across both time and area - in the assessment of the Project's cumulative construction period traffic impacts, and that when this is done, there are many Projects that will be under construction or operational in the period before, during, and after construction of the Project whose effects will combine with those of the Warriors Arena construction. Therefore, the Project's construction impacts are part of an essentially permanent, not temporary, condition of ongoing construction and increasing operational impacts from new projects in this part of San Francisco. Therefore, the SEIR errs by artificially separating the Project's construction period impacts from its operational impacts and then basing its determination of significance on the "limited duration" of the construction period. (DSEIR, p. 5.2-212.)

The second basis for the DSEIR's less-than-significant determination is the DSEIR's statement that "construction activities would be ... required to be conducted in accordance with City requirements." (DSEIR, p. 5.2-212.) This vague assurance is meaningless because the SEIR does not specify what these "City requirements" are, does not specify a performance standard that these City requirements would either impose or achieve, and presents no evidence that these unspecified "City requirements" are likely to avoid significant cumulative construction related traffic effects. (See *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 95 (CBE); *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359; 1394 (Gentry).

The third and final basis for the DSEIR's less-than-significant determination is "Improvement Measure I-TR-1: Construction Management Plan and Public Updates." The DSEIR suggests this Plan would help avoid significant cumulative construction related traffic effects. (DSEIR, p. 5.2-212.) But it is improper for the DSEIR to rely on Improvement Measure I-TR-1 to help reduce impacts to less than significant because it is not identified as a mitigation measure necessary to substantially reduce significant Project impacts; therefore, it is not enforceable. (CEQA Guideline 15126.4(a)(4).)

Finally, the DSEIR fails to quantify the Projects' construction period impacts, presumably based on its qualitative conclusion that unspecified "City requirements" and "Improvement Measure I-TR-1" will avoid significant impacts. This puts the cart before the horse.⁶⁹

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- the Exchange project on Mission Bay Block 40,
 - the Family House project on Mission Bay Block 7 East,
 - the Residential and Hotel project on Mission Bay Block 1,
 - the 360 Berry Street project on Mission Bay Block N4/P3, and
 - Caltrain's Peninsula Corridor Electrification Project.

⁶⁹CEQA does not permit an agency to simply adopt mitigation measures in lieu of fully assessing a project's potentially significant environmental impacts because mere acknowledgment that an impact would be significant is inadequate; the EIR must include a detailed analysis of "how adverse" the impact would be.

The RTC acknowledges that construction impacts, even if temporary, may be significant:

While in most instances, construction-related transportation impacts are determined to be less than significant, some projects involving concurrent construction of multiple buildings on a constrained site, prolonged construction period, high intensity of construction activities, and with likely impacts to adjacent or nearby traffic, transit, pedestrian, and bicycle circulation have been determined to have significant and unavoidable construction-related transportation impacts (e.g., 5M Project).

(FSEIR vol. 4, p. 13.11-155). Thus, the City cannot simply dismiss these impacts as less than significant without independent analysis of the project itself, rather than an assumption that a temporary impact is by its very nature less than significant.

The RTC also argues the Planning Department’s qualitative (rather than quantitative) analysis in this case is based on a several types of information that support the SEIR’s “less-than-significant” conclusion. (FSEIR, Vol. 5, p. 13.11-155.) The problem with the SEIR’s qualitative analysis is that, other than identifying these types of sources of information, it does not disclose either the specific *items* of information that support the SEIR’s “less-than-significant” conclusion or *how* these sources of information support that conclusion.

2. The SEIR Fails to Assess the Project’s Traffic Impacts on the Entire Affected Environment.⁷⁰

The DSEIR studies Project-induced increases in congestion and delay, for both incremental and cumulative impacts, at twenty-two (22) intersections and six (6) freeway ramps, as shown in Table 1.

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(*Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 655-56 *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1123; *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 831.)

⁷⁰July 27 Lippe, p. 1; July 23 Smith, p. 8; July 21 Wymer, pp. 1-12; Nov 2 Smith FSEIR pp. 5-8; Nov 2 Wymer FSEIR.

Table 1

Incremental Impact Assessment (With Implementation of the Special Events Transit Service Plan)	Incremental Impact Assessment (Without Implementation of the Special Events Transit Service Plan)	Cumulative Impact Assessment
Intersections at DSEIR, p. 5.2-18, Table 5.2-34 p. 5.2-121, Table 5.2-35 p. 5.2-123, Table 5.2-36 p. 5.2-172, Table 5.2-47 p. 5.2-174, Table 5.2-48	Intersections at DSEIR, p. 5.2-192, Table 5.2-53 p. 5.2-193, Table 5.2-54	Intersections at DSEIR, p. 5.2-214, Table 5.2-59 p. 5.2-217, Table 5.2-60.
Freeway ramps at DSEIR, p. 5.2-133, Table 5.2-37 p. 5.2-133, Table 5.2-38 p. 5.2-134, Table 5.2-39 p. 5.2-181, Table 5.2-49 p. 5.2-181, Table 5.2-50	Freeway ramps at DSEIR, p. 5.2-198, Table 5.2-55 p. 5.2-198, Table 5.2-66	Freeway ramps at DSEIR, p. 5.2-221, Table 5.2-61 p. 5.2-221, Table 5.2-62

Remarkably, the DSEIR fails to disclose the criteria the City used to *exclude* other intersections and freeway ramps. The omission of this fundamentally important information renders the DSEIR so legally inadequate as an informational document that it frustrates CEQA’s goal of providing the public with a meaningful opportunity to comment on the DSEIR.

Also, as shown in the letter reports from traffic engineers Larry Wymer and Dan Smith, the DSEIR omitted from its area of study numerous intersections and freeway ramps that will also suffer potentially substantial increases in traffic congestion and delay. (July 23 Smith, p. 8; July 21 Wymer, pp. 1-12; Nov 2 Smith FSEIR pp. 5-8; Nov 2 Wymer FSEIR.) The omission of these intersections and freeway ramps from the DSEIR’s analysis of the Project’s effect on traffic also renders the DSEIR so legally inadequate as an informational document that it frustrates CEQA’s goal of providing the public with a meaningful opportunity to comment on the DSEIR.

How did this happen? The DSEIR simply states: “The traffic impact assessment for the proposed project was conducted for 23 study intersections and six freeway ramp locations in the vicinity of the project site” (DSEIR, p. 5.2-72),⁷¹ with no further explanation. The same is true for the six freeway ramps. (DSEIR, p. 5.2-74.)

The DSEIR does inform the reader that:

⁷¹The DSEIR actually studies 22 intersections, not 23, in the tables listed in footnote 1.

The impacts of the proposed project on the surrounding transportation network were analyzed using the Transportation Impact Analysis Guidelines issued by the Planning Department in 2002 (SF Guidelines 2002), which provides direction for analyzing transportation conditions and in identifying the transportation impacts of a proposed project.

(DSEIR, p. 5.2-69.) These Guidelines provide:

2. Project Setting

The setting information shall be presented immediately following the Project Description as a discrete chapter or report section. The goal is to provide a brief but complete description of existing transportation infrastructure and conditions in the vicinity of the project. Normally, the described vicinity is a radius between two blocks and 0.25 mile, however, a larger area may be determined in the scoping process. *The specific perimeters of the study area, for both setting and project impact analysis, are to be confirmed as part of the approval for the scope of work.*

(Transportation Impact Analysis Guidelines (October 2002), pp.6-7 (italics added).) Based on this text, the reader would expect to find the criteria and rationale for delimiting “the specific perimeters of the study area” in the Scope of Work which the City approved pursuant to these Guidelines as a prerequisite to preparation of the DSEIR. Unfortunately, this expectation is disappointing, because the City-approved Scope of Work is also silent on the topic. (DSEIR, Appendix TR, pp. TR-8 to TR 14.)

The RTC’s responses are inadequate. The RTC relies on the fact that similar approaches were used in other EIRs.⁷² This is not relevant because the other referenced EIRs are not before this Board and are not adjudicated in a published Court of Appeal decision.

The RTC also responds that the lead agency has discretion to determine the geographic scope of the assessment area. (RTC, p. 13.11-25.) This response is not relevant to the comment here, i.e., on these facts the lead agency abused its discretion. These facts include the many recently built and approved projects in the downtown area whose traffic impacts will combine with the Projects impacts at many intersections outside the study area.

The RTC also responds that:

⁷²“The depth and approach of the analysis of freeway conditions presented in the SEIR is consistent with similar evaluations of transportation conditions conducted as part of recently completed or ongoing large planning studies in San Francisco, including the Central Corridor EIR, UCSF 2014 Long Range Development Plan (LRDP) EIR, California Pacific Medical Center LRDP EIR, etc. The 1998 Mission Bay FSEIR also did not address freeway ramp operation or queuing as a distinct transportation topic.” (RTC, p. 13.11-25.)

The study intersections were selected because they a) represent access points to the regional highway system, b) are located along major street corridors serving the Mission Bay Area, or c) are located in the immediate vicinity of the project site, and because they are the intersections most likely to be potentially affected by traffic generated by the proposed project. As stated on SEIR p. 5.2-15, the freeway ramps were selected for ramp operations analysis (i.e., four on-ramps and two off-ramps) as they represent the regional highway facilities most likely to be impacted by traffic generated by the proposed project.

(RTC, p. 13.11-25, 26.) Reasons a) and b) are non-responsive to the comment that the DSEIR failed to explain why it excluded large areas of the affected environment from the study area, because even if they support, including the intersections and ramps that were *included*, they say nothing about why additional intersections and ramps that were *excluded*.

Reason c), that “they are the intersections most likely to be potentially affected by traffic generated by the proposed project” is entirely conclusory and circular because the RTC justifies this unsupported assertion from the DSEIR by simply repeating it. Reason c) is also non-responsive, because the fact that intersections outside the study area are somewhat less likely than intersections within the study area to be affected does not mean they will not be affected in a potentially significant way. In sum, instead of data to support the exclusion of large portions of affected environment, the RTC offers up empty verbiage.

The RTC also relies to an unstated extent on “the Transportation Impact Analysis Guidelines issued by the Planning Department in 2002 (SF Guidelines)” which “suggests that a project study area would encompass a radius between two blocks and 0.25 miles, but that a larger area may be determined depending on the type of project.” (RTC, p. 13.11-27.) This document cannot lawfully excuse the lead agency from basing the size and location of the study area on the relevant facts of the case, including but not limited to “the type of project.”⁷³

⁷³*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1109 [underscore emphasis added], citing *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 114 (“CBE”); accord *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 342 [“A threshold of significance is not conclusive...and does not relieve a public agency of the duty to consider the evidence under the fair argument standard.”]; *Californians for Alternatives to Toxics v. Department of Food & Agriculture* (2005) 136 Cal.App.4th 1, 16 (lead agencies must review the site-specific impacts of pesticide applications under their jurisdiction, because “DPR’s [Department of Pesticide Regulation] registration does not and cannot account for specific uses of pesticides..., such as the specific chemicals used, their amounts and frequency of use, specific sensitive areas targeted for application, and the like”); *Citizens for Non-Toxic Pest Control v. Department of Food & Agriculture* (1986) 187 Cal.App.3d 1575, 1587-1588 (state agency applying pesticides cannot rely on pesticide registration status to avoid further environmental review under CEQA); *Oro Fino Gold Mining Corporation v. County of El Dorado* (1990) 225 Cal.App.3d 872, 881-882 (rejects contention that project noise level would be insignificant simply by being consistent with general plan standards for the zone in question). See also *City of Antioch v. City Council of the City of Pittsburg* (1986) 187 Cal.App.3d 1325, 1331-1332 (EIR required for construction of road and

The RTC rejects the comment that the study area must include many South of Market intersections between downtown and Mission Bay because:

A comment noted that because some of the basketball game attendees would be arriving from the San Francisco downtown and Financial District areas, they would be required to pass through SoMa to arrive at the project site, so that additional intersections in the SoMa area would have to be evaluated. Mode of travel and place of origin surveys of baseball game attendees conducted by the SF Giants, as well as available parking occupancy surveys, suggest that many of those game attendees that drove to work at their jobs in the Financial District and SoMa areas, tend to walk, ride transit, or take a taxi to AT&T Park, leaving their cars at their commuter parking locations in order to avoid the evening commute congestion that typically occurs near I-80 and AT&T Park and having to re-park their cars at game-day rates. It is likely that a similar condition would occur with the proposed project, with many of those working in downtown riding Muni or special event shuttles, and taking taxis or TNC vehicles², such as Uber or Lyft to the event center, rather than driving and having to park again with limited space availability.

(RTC, pp. 13.11-27, 28.)

The idea that people who work downtown would walk to the Warriors Arena because people who work downtown tend to walk to AT&T Park is unfounded and unsupported. A look at actual data suggests otherwise. According to Google Maps, walking from the Bank of America Building at California and Montgomery to AT&T Park takes 25 minutes; but to the Arena site, 41 minutes. Walking from the Transamerica Building at Washington and Montgomery to AT&T Park takes 29 minutes; but to the Arena site, 44 minutes. There is a time-of-walking tipping point beyond which people tend not to walk. The EIR's assumption that people will be willing to walk from downtown to Warriors games than it takes to walk to Giants games is unsupported.⁷⁴

The idea that people who work downtown would take taxis or an Uber or Lyft type ride service to the Warriors Arena because people who work downtown tend to do so to AT&T Park supports the Alliance's comment, and more so, because these vehicles will travel through SOMA during the extremely congested peak PM time period, thereby making many intersections not included in the study area worse, and then they will return from the Arena in the same time

sewer lines even though these were shown on city general plan); *Kings County Farm Bureau v. City of Hanford, supra*, 221 Cal.App.3d at pp. 712-718 (agency erred by “wrongly assum[ing] that, simply because the smokestack emissions would comply with applicable regulations from other agencies regulating air quality, the overall project would not cause significant effects to air quality.”)..)

⁷⁴See Nov 28 Smith, p. 1-2 and Exhibit A thereto.

period!

This response also ignores the fact that some people on the way to a Warriors game, after checking their online traffic maps, will exit from the Bay Bridge at Fremont and Harrison Streets and travel to the Arena through the SOMA intersections identified by Mr. Wymer as operating at LOS E or F but excluded from the study area. These people are traveling “from the downtown area” but are not considered in the response to comments because they do not “work” downtown.

In addition, the City’s response assumes that SOMA is so congested before game time that people would rather walk through SOMA than drive. If the environmental setting within a mile of the Arena is that heavily impacted (and the Alliance agrees it is), the SEIR cannot lawfully omit a full description of these conditions. (See *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722-723; *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 881-882.) Indeed, the significance of a cumulative impact depends on the environmental setting in which it occurs, including the severity of existing environmental harm. (*Communities for a Better Environment v. California Resources Agency* (“*Communities*”) (2002) 103 Cal.App.4th 98, 120 [“[T]he relevant question”... is not how the effect of the project at issue compares to the preexisting cumulative effect, but whether “any additional amount” of effect should be considered significant in the context of the existing cumulative effect. [footnote omitted] In the end, the greater the existing environmental problems are, the lower the threshold should be for treating a project’s contribution to cumulative impacts as significant. [footnote omitted]”]; *Kings County, supra*, 221 Cal. App. 3d at 720-721.) Therefore, the omission of this information from the SEIR represents a prejudicial failure to disclose required information.

The SEIR’s failure to study the affected area and to respond to comments on this issue are ably discussed by traffic engineer Dan Smith in his November 2, 2015, letter submitted to the OCII on November 3, 2015 (at pages 5-8 thereof). Reading his report is essential, but for present purposes I highlight one of his points: i.e., the SEIR excludes from its study area many intersections that are on the access route to and from the two UCSF hospitals located a block from the Project.

For example, using UCSF’s web interface for directions to the Medical Center to identify recommended emergency routes for Hyde and Bay, the primary recommended route is the Embarcadero to King, then Third. The secondary route is Hyde, then 8th. For the Transamerica building, the primary route is Clay/Drumm/Washington to Embarcadero, King, Third. The secondary route is Davis/Beale/Bryant/Embarcadero/Third. For Union Square, the primary is west on Geary, down Hyde/8th/Brannan/7th/16th. For the Bay Bridge, the primary is off at 8th and Harrison, down 8th/Brannan/7th/16th.⁷⁵ These documented emergency routes, and you could run plenty of other examples, demonstrate why the intersections along Eighth and along the Embarcadero should have been studied. The key intersections are the nine along the

⁷⁵See Nov 28 Smith, p. 2; Exhibit 14 to this brief

Embarcadero with Broadway, Washington, Market, Mission, Howard, Folsom, Harrison, Bryant and Brannan and the six on Eighth with Market, Mission, Howard, Folsom, and especially Harrison and Bryant.

Mr. Smith also refutes the response as follows:

the response cites 9 intersections along the Embarcadero and 15 along or east of Fourth Street that we claimed should have been studied. It claims that because the Project is shifted to its current location farther south-west from the originally proposed location on Piers 30-32, the primary routes to and from the Project site from Downtown, SOMA, the northern parts of the City and from the North Bay and the I-80 ramps would be shifted farther west, away from these intersections. But this is not true. Except for the relatively few instances in which there is a concurrent evening Giants game at AT&T park, the routes along the Embarcadero and along and east of Fourth Street remain the most effective and imageable routes to the currently proposed Project site and the parking facilities that serve it from much of the Downtown, SOMA, northern parts of the City, the North Bay and the I-80 ramps to and from the East Bay. Those paths are only likely to be altered on evenings with a concurrent Giants game. And if a massive shift of traffic further west was assumed in the City's thinking as it scoped the current SEIR and excluded the intersections along the Embarcadero and on and east of Fourth on that assumption, why didn't it add more intersections in the Eighth Street corridor (including but not limited to the ramps and intersections at Eighth and Harrison, Eighth and Bryant) and other intersections in the Van Ness, Franklin, Gough, Octavia corridors for example? The City has no good answer.

(Nov 2 Smith FSEIR p. 7.)

The RTC studies one intersection outside the study area, at 8th St and Brannan. But as Mr. Smith points out, this anecdotal approach is not a reliable indicator of effects at other intersections identified by Mr. Wyer as needing study, because this unusual intersection is "anomalous rather than exemplar of anything elsewhere" (Nov 2 Smith FSEIR p. 8.)

Consequently, the City must revise the DSEIR to include an analysis of the Project's congestion and delay impacts on the excluded intersections and freeway ramps and then recirculate the Revised DSEIR for at least 45 days for public review and comment.

3. The SEIR Fails to Disclose the Severity of the Project’s Impacts on Intersections and Freeway Ramps Which the Project Will Cause to Deteriorate to Level of Service (LOS) F.⁷⁶

In comments on the DSEIR, The Alliance objected that the DSEIR fails to disclose the severity of the Project’s congestion and delay impacts on intersections and freeway ramps which the Project will cause to deteriorate to Level of Service (LOS) F. (July 27 Lippe, pp. 3-4.) For intersections and freeway ramps in the study area where Project-induced increases in congestion and delay will cause deterioration to LOS F, the DSEIR fails to provide a full measurement of the degree of severity of the significant impact. Instead, for intersections pushed to LOS F, instead of presenting a measure of average delay, the DSEIR provides a “greater than” measurement of “80 seconds per vehicle.” (See 5.2-74 and Tables cited above.) For freeway ramps pushed to LOS F, instead of providing the average density, the DSEIR provides no measurement of “existing plus project” density. Instead, the severity of the Project’s impacts at intersections and freeway ramps pushed to LOS F has no upper limit, and remains undisclosed, other than to note that “demand exceeds capacity.” (See 5.2-75, Table 5.2-19 and Tables cited above.)

Thus, the DSEIR fails to comply with CEQA because, other than making the binary determination that the Project’s impacts on these intersections and freeway ramps are significant, the DSEIR fails to disclose the severity of these significant impacts. (See *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 831 [“The conclusion that one of the unavoidable adverse impacts of the project will be the ‘increased demand upon water available from the Santiago County Water District’ is only stating the obvious. What is needed is some information about how adverse the adverse impact will be”].) Consequently, the City must revise the DSEIR to include this missing information, then recirculate the Revised DSEIR for at least 45 days for public review and comment.

The RTC’s response is inadequate for several reasons. First, it caricatures the Alliance’s comments, stating:

The comment appears to state that an EIR, having determined that a project would cause or contribute to LOS F conditions, must also identify the specific number of seconds of delay expected to occur. That is, the comment appears to state that the EIR must state not merely that delay would be in excess of 80 seconds per vehicle, and therefore unacceptable; rather, the comment states the EIR must also identify how many seconds of delay, beyond the 80 seconds of average control delay signified by “LOS F,” would occur.

(RTC, p. 13-11.49.) The RTC then argues that “CEQA does not require this.” (RTC, p. 13-11.49.) The Alliance’s actual comment is that, in addition to identifying these impacts as

⁷⁶July 27 Lippe, p. 3; July 23 Smith, p. 11; July 21 Wymer, p. 12-13; Nov 2 Smith FSEIR, p. 16-18; Nov 28 Smith, pp. 2-3.

significant, the SEIR must disclose their severity. The lead agency, not the Alliance, chose to use a “seconds of delay” metric. Having done so, the agency cannot refuse to disclose the severity of the impacts on the ground that CEQA does not require using this particular metric.

A good example of the SEIR’s failure to disclose relative severity of significant impacts is its impact assessment for the intersection of 7th/ Mississippi and 16th Street. Figure 1 contrasts the impact assessment data for this intersection for the Weekday PM Peak Hour (i.e., 4 - 6 p.m) and Weekday Evening time periods as shown in the DSEIR, at Table 5.2-34 (p. 5.2-118) and Table 5.2-47 (p. 5.2-172) with the impact assessment data for this intersection shown in the Appendix containing the transportation analysis raw data (i.e., SEIR, Vol. 3, Appendix-TR.)

Figure 1: 7th/Mississippi and 16th St

	Existing Without Giants Game	Existing Plus Project - Without Giants Game			Existing With Giants Game	Existing Plus Project - With Giants Game
	Existing	No Event	convention	Basketball Game	Existing	Basketball Game
Time Period	Delay LOS	Delay LOS	Delay LOS	Delay LOS	Delay LOS	Delay LOS
DSEIR, PM Peak	68.6 E <i>Table 5.2-34</i>	>80 F <i>Table 5.2-34</i>	>80 F <i>Table 5.2-34</i>	>80 F <i>Table 5.2-34</i>	>80 F <i>Table 5.2-47</i>	>80 F <i>Table 5.2-47</i>
Appendix, PM Peak <i>Appendix Page #</i>	68.6 E <i>TR-179</i>	87.8 F <i>TR-275</i>	83 F <i>TR-299</i>	80.8 F <i>TR-311</i>	84.7 F <i>TR-191</i>	151.9 F <i>TR-323</i>
DSEIR, Evening	60.1 E <i>Table 5.2-35</i>	NA	NA	>80 F <i>Table 5.2-35</i>	75.6 E <i>Table 5.2-48</i>	>80 F <i>Table 5.2-48</i>
Appendix, Evening <i>Appendix Page #</i>	68.6 E <i>TR-203</i>	NA	NA	107.6 F <i>TR-335</i>	75.6 E <i>TR-215</i>	178.7 F <i>TR-347</i>

As this table shows, for certain conditions, the LOS data in the Appendix shows much greater LOS impacts for than the SEIR discloses in its summary tables, in some cases showing double or more than double the “>80” figure used in the summary tables (see yellow highlighted cells). This example is only one of 22 intersections in the study area.

The RTC argues that LOS metrics are not “reliable” above LOS F.⁷⁷ As traffic engineer Smith points out, where the above-LOS F delay calculations are substantial, they are meaningful even if somewhat imprecise, and should have been disclosed. (Nov 2 Smith FSEIR p. 17 [“where “the results might be 27 seconds added instead of a half-minute or 55 seconds added instead of a minute”]; Nov 28 Smith, pp 203.)

Also, the RTC’s response that LOS metrics are not “reliable” above LOS F is non-responsive to the Alliance’s actual comment (i.e., the SEIR must disclose the severity of significant impacts), rather than the RTC’s caricature of the comment focused solely on LOS metrics. If another metric is better, the SEIR should use it.

The RTC also argues that the Legislature has delegated to the Secretary of Resources the authority to change the legal standards governing an EIR’s analysis of traffic impacts in this location. (RTC, p. 13-11.51, 52.) Since such changes have not occurred, and may never occur, the possibility that they could occur cannot excuse the lead agency’s compliance with the law in effect now.

The RTC also suggests that increased traffic congestion is not an “environmental” impact under CEQA at all, stating: “In general, the effects of worsened congestion translate primarily into increased inconvenience to people, but not into adverse effects on public health or ecosystems.” (RTC, p. 13-11.51.) But the lead agency has demonstrated no courage in this conviction since it devoted hundreds of pages and thousands of dollars to the SEIR’s analysis of traffic impacts. Moreover, the Legislature’s amendment of CEQA to delegate authority to the Secretary of Resources to change the legal standards governing an EIR’s analysis of traffic impacts conclusively demonstrates that traffic impacts are “environmental” impacts under CEQA.

The RTC also argues that using LOS F as a metric for significance without disclosing the severity of the impacts at these intersections is sufficient for purposes of considering mitigation measures to reduce these impacts. (RTC, p. 13-11.50.) Even if this is true, the SEIR remains informationally deficient in this regard because without a legally adequate description of the nature and extent of the Project’s environmental harm, the lead agency cannot properly weigh whether the Project’s benefits outweigh that harm.

⁷⁷RTC, p. 13-11.50 [“LOS F reflects unstable traffic conditions whose severity is not reliably replicated for future conditions by the traffic LOS analysis tools used for traffic impact studies”].

4. The SEIR Fails to Identify the Significance and Severity of the Project's Impacts on Intersections Where the Project Will Use Parking Control Officers.

The Alliance commented that the DSEIR failed to provide quantitative impact assessments for two intersections (King/Third and King/Fourth) when the Project's basketball games coincide with a Giants' game in the Weekday PM/Saturday Evening Peak Hour and Weekday Evening/Late Evening Peak Hour time periods. (DSEIR, p. 5.2-172, Table 5.2-47; p. 5.2-174, Table 5.2-48)". Because the DSEIR provides no LOS or delay measurements for Project impacts with a Giants' game at these times, it does not inform the public whether the Project's congestion and delay impacts on these intersections are significant, and if so, the severity of these significant impacts. (July 27 Lippe, p. 4, July 23 Smith, p. 11; Nov 2 Smith FSEIR pp. 16-18.)⁷⁸

The RTC responds that "the intersection LOS and delay values for the intersections of King/Third and King/Fourth are provided on SEIR Table 5.2-34 through Table 5.2-36 for the various analysis hours." (FSEIR, Vol. 4, p. 13.11-53.) This is non-responsive because these tables describe the Project's impacts *without a Giant's game*.

The RTC also responds that: "the analytical tools and measurements appropriate for assessing the effectiveness of mechanized systems do not apply to PCO-controlled intersections. For all of these reasons, the intersection LOS at PCO-controlled intersections does not provide meaningful information and is not presented for those locations where PCOs already actively manage intersection operations." (FSEIR, Vol. 4, p. 13.11-53.) As discussed in section II.C.3 above, if another metric is better, the SEIR should use it, and the lack of precision in above-LOS F delay calculations are not relevant where the delays are substantial and the margin of error is slight (e.g., where "the results might be 27 seconds added instead of a half-minute or 55 seconds added instead of a minute." (Nov 2 Smith FSEIR p. 17.)

The RTC also responds that: "PCOs are an effective way to minimize traffic impacts that may occur otherwise." (FSEIR, Vol. 4, p. 13.11-53.) This is non-responsive because, under CEQA, mitigating impacts occurs after determining their significance and severity, not before. (*Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 655-56.)

⁷⁸Instead, the DSEIR indicates that the Project calls for posting Parking Control Officers (PCOs) at these intersections at the times indicated. But the adoption of a mitigation measure cannot substitute for disclosing whether the Project's impacts on these intersections are significant or their severity CEQA does not permit an agency to simply adopt mitigation measures in lieu of fully assessing a project's potentially significant environmental impacts because mere acknowledgment that an impact would be significant is inadequate; the EIR must include a detailed analysis of "how adverse" the impact would be. (*Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 655-56 *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1123; *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 831.)

The RTC also responds that the SEIR “describes the potential impacts at the study intersections in detail without the implementation of any of the proposed mitigation measures.” (FSEIR, Vol. 4, p. 13.11-54.) This is simply not true for overlapping Giants and Warriors games in the PM Peak and Evening hours at the King/Third and King/Fourth intersections (see SEIR, Vol 1, pp. 5.2-171-180.)

5. The SEIR’s Analysis of the Project’s Operational Traffic and Transit Congestion and Delay Impacts Is Legally Flawed.

(a) The DSEIR understates traffic and transit volumes in the PM peak period of 4:00 to 6:00 PM by using “time of arrival” at the Arena as a proxy measurement for “time of travel.”

The Alliance commented on the DSEIR that it used insufficient information and patently flawed logic in assuming only 5% of basketball game attendees will be traveling in the “study area” in the PM peak period of 4:00 to 6:00 p.m. (July 27 Lippe, pp. 7-11; July 23 Smith, p. 1; July 21 Wymer, p. 12-13; Nov 2 Smith FSEIR p. 13-16).

Table 5.2-21 states that 5% of arrivals are expected before 6:00 p.m. for 7:30 p.m. weekday basketball games; another 11% will arrive between 6:00 and 6:30 p.m. (DSEIR, p. 5.2-83.) This data is based on turnstile counts of people entering the arena. As explained by Dan Smith, this proxy measurement does not provide reliable data as to when game or event attendees are actually traveling through affected intersections or freeway ramps or using affected transit routes, and this error infects the entire analysis of the Project’s transit and traffic impacts. (July 23 Smith, p. 3.)⁷⁹

Common sense indicates that many or most of the 11% that the DSEIR says arrive at the turnstile between 6:00 and 6:30 p.m. would be traveling to the event in the PM peak period of 4:00 to 6:00 pm. This minimal adjustment alone changes the assumption on which the modeling is based from 5% to 16% traveling in the “study area” in the PM peak period of 4:00 to 6:00 pm. As shown by Mr. Smith, this minimal adjustment more than doubles the Project’s contribution of traffic to affected intersections, and would change the DSEIR’s determination from less-than-significant to significant at some intersections. (July 23 Smith, p. 3.)

This issue was flagged in public scoping comments on the DSEIR. (DSEIR, p. 2-15.)

⁷⁹In his analysis, Mr. Smith found: “it seems highly probable that as much as one-third or more of the trips that the DSEIR considers to take place in the 6 to 7 PM period and the 7 to 8 PM period would actually be on the transportation system in the more critical 5 to 6 PM commute peak hour. That would put 7,466 event-related travelers on the transportation system in the 5 PM to 6 PM period instead of the 1,866 assumed in the DSEIR, a difference that would likely result in transportation impacts not disclosed in the DSEIR and/or intensification of impacts and mitigation needs of those that were disclosed.” (July 23 Smith, p. 3.)

Yet, somehow, the DSEIR did not adjust its reliance on turnstile data to develop a reliable metric to use instead. Instead, the DSEIR offers a series of weak or irrelevant rationales for its methodology, including:

because basketball games typically start at 7:30 p.m. a higher percentage of inbound event attendees would travel to the event center during the 6:00 to 8:00 p.m. period than during the 4:00 to 6:00 p.m. commute peak period.

(DSEIR p. 5.2-71); and

the SF Guidelines do not include travel demand characteristics for the specialized uses (e.g., sports events, conventions, and other events) that would take place at the proposed event center. Similarly, standard trip generation resources, such as the Institute of Transportation Engineer's Trip Generation Manual, do not include sufficiently detailed trip generation data for such specialized uses. Therefore, the travel demand for the event center component of the proposed project was based on the estimated attendance, as well as information on current travel characteristics of Golden State Warriors basketball attendees at the Oracle arena in Oakland.

(DSEIR, p. 5.2-81); and

The data are based on information provided by the Golden State Warriors for their current facility, which was then adjusted to provide for earlier arrival patterns based on comparable information collected at similar NBA facilities to account for the increased availability of retail and restaurant uses at the proposed project site compared to Oracle Arena in Oakland. A summary of this data is provided in the travel demand technical memorandum included in Appendix TR.

(DSEIR, p. 5.2-82.)⁸⁰

⁸⁰ In the "Travel Demand Methodology and Results" section of Chapter 5.2, the DSEIR states:

The Basketball Game scenario reflects the travel demand of the office, retail and restaurant uses, plus an evening basketball game. The transportation impact analysis of the Basketball Game scenario was conducted for four analysis hours (weekday p.m., weekday evening, weekday late evening, and Saturday evening), for conditions without and with an overlapping SF Giants evening game at AT&T Park.

Table 5.2-21 presents the expected temporal distribution of arrival and departure patterns for basketball game attendees of the proposed project. The data are based on information provided by the Golden State Warriors for their current facility, which was then adjusted to provide for earlier arrival patterns based on comparable information collected at similar NBA facilities to account for the increased availability of retail and restaurant uses at the

A discussion and summary of the data from other venues than Oracle is provided in DSEIR, Appendix TR, at pp. TR-21 to TR-25 and TR-37 [Appendix A, p. A-9]. The table at page TR-37 provides time of arrival data from, in addition to Oracle, six purportedly “comparable” venues, namely: Icon Venue Group, Houston, Phoenix, Sacramento, Brooklyn (2013-2014), and Brooklyn (2014-2015). An interesting fact about this table is that the data for 4:00 to 6:00 p.m. arrivals at four of these six venues (i.e., Icon Venue Group, Houston, Phoenix, Sacramento) is “included in” the data for later time periods. So, in fact, the only purportedly comparable venue for which the DSEIR presents supporting data is Brooklyn (2013-2014 and 2014-2015). The venue with the largest proportion of arrivals in the 4:00 to 6:00 p.m. period is Brooklyn (2014-2015), with 4.1%.

In short, the City and the Warriors failed to develop accurate, reliable data on the key variable in the entire transportation analysis, i.e., the number of people traveling to events in the peak PM time period when traffic and transit crowding are at their worst. A lead agency “must use its best efforts to find out and disclose all that it reasonably can.” (CEQA Guideline, § 15144.)

The above quoted rationales do not excuse this failure. The scoping comments flagging this issue were submitted to the City between November 19, 2014, and December 19, 2014, during the middle of the basketball season. (DSEIR, p. 2-8 and 2-9, 2-15.) The Warriors played fifty-seven (57) games between December 19, 2014, through the close of the regular season on April 15, 2015.⁸¹ There are thirty (30) teams in the NBA.⁸² That means there were approximately eight-hundred and fifty five (i.e., $15 \times 57 = 855$) regular season games played in the 2014-2015 regular season after December 19, 2014. In the playoffs following the regular season, sixteen teams played a total of seventy-nine games after April 15, 2015.⁸³

proposed project site compared to Oracle Arena in Oakland. A summary of this data is provided in the travel demand technical memorandum included in Appendix TR. Based on this information, it was assumed that approximately 5 percent of arrivals to a basketball game would occur during the p.m. peak hour (5:00 to 6:00 p.m.), and up to 66 percent of arrivals would occur during the evening peak hour (7:00 to 8:00 p.m.). Similarly, up to 70 percent of the departures would occur during the late evening peak hour (9:00 to 10:00 p.m.). Event staff for basketball games would be expected to arrive between 4:30 and 5:00 p.m. and would be on post prior to the gate opening time; event staff would leave between 11:00 and 11:30 p.m.

(DSEIR, p. 5.2-82.)

⁸¹<http://www.nba.com/warriors/schedule>

⁸²<http://www.nba.com/teams/?ls=iref:nba:gnav>

⁸³<http://www.nba.com/playoffs/>

Therefore, both the Warriors and the City had ample opportunity to conduct market research by interviews and exit polling of a sample of the hundreds of thousands of fans attending these games to discover how far in advance of arriving at the turnstile they traveled through the traffic and transit impacted area surrounding the venue. The City's and Warriors' decision to pass up this opportunity after being informed of the issue does not satisfy their duty to use best efforts to find out and disclose all they reasonably can.

Indeed, the City was fully aware of the need to gather information more relevant to fans "time of travel" than turnstile counts and made some efforts to do so. But it failed to disclose that there are alternative metrics for "time of travel" or the results of its efforts in this regard. For example, an email exchange dated January 12, 2015, between the City's EIR consultant (ESA) and City Planning officials includes data on arrivals before 6:00 p.m. at the Arco Arena parking lot for a 7:00 p.m. Sacramento Kings game and arrivals before 6:00 p.m. in buildings for other NBA venues. (See July 27 Lippe, Exhibit 3.) Thus, the City was aware of other measurements (e.g., parking lot entry rather than turnstile counts) that could more accurately predict peak PM period travel to games.

Also, the arrival numbers cited in this email exchange show 14% arriving at the Arco Arena parking lot before 6 p.m. for one 7 p.m. game and 9% arriving before 6 p.m. in buildings for other NBA venues. These numbers indicate the DSEIR's assumption that 5% of fans will be traveling through the study area before 6 p.m. for 7:30 p.m. games is vastly understated. Yet the DSEIR fails to reference these numbers.

The RTC responds by reciting the information presented in the DSEIR from other NBA venues that the Alliance's comment on the DSEIR critiqued as irrelevant. (See July 27 Lippe, pp. 9-11; FSEIR, Vol. 4 pp. 13.11-41, 42.) The RTC also responds that: "Additional surveys of attendee arrivals at the Oracle Arena where the Golden State Warriors currently play or other NBA facilities, as suggested in a comment, were deemed unnecessary, because, as noted above, arrivals to the Oracle Arena during the 5:00 to 6:00 p.m. peak hour are low (about 1 percent of the total) and because data from another location with similar urban and development conditions to the proposed project (i.e., Barclays Center in Brooklyn, New York) was already available." FSEIR, Vol. 4 pp. 13.11-42.) These responses, however, are non-responsive to the comments that turnstile data, no matter what venue it is from, is not a valid proxy for travel in the 4-6 PM peak period for a 7:30 PM game time, and the Warriors and City's failure to gather relevant data renders the SEIR informationally deficient.

The RTC also responds by contesting Mr. Smith's estimate that as many as one-third of game patrons may be traveling to the Arena in the 4-6 PM park period, stating: "Though some of the points raised in the comments seem intuitively believable, actual data from comparable situations show that the comments have exaggerated the likely numbers of people would arrive before 6:00 p.m. for a 7:30 p.m. event." (FSEIR, Vol 4, p. 13.11-41.) This response, however, is non-responsive to the "common sense" point made above that many or most of the 11% that the DSEIR says arrive at the turnstile between 6:00 and 6:30 p.m. would be traveling to the event in

the PM peak period of 4:00 to 6:00 pm, and even this minimal adjustment would change the DSEIR's determination from less-than-significant to significant at some intersections. (July 27 Lippe, p. 8; July 23 Smith, p. 3.)

(b) The DSEIR only analyzes impacts of weeknight basketball games that start at 7:30 PM, not at other start times closer to the PM peak.⁸⁴

The Alliance commented on the SEIR that it fails to include reasonably foreseeable weekday Warriors basketball games starting at 6:00 pm rather than 7:30 pm, and this omission is important because even using the SEIR's turnstile count as a proxy for travel time to the Arena, 6:00 pm games require that fans travel in the 4-6 pm peak period, and this scenario should have been included in the impact assessment. (See July 23 Smith, p. 5 at COM-129.)

The RTC responds that "The variability of preseason and postseason games' timing is due in part to TV deals, opposing team traveling schedules, and/or outcomes of postseason series that are beyond the scope of Golden State Warriors control" (FSEIR, Vol. 4, p. 3.11-11) and that it is not precisely known how many of these games there will be. This is non-responsive, because under CEQA, the test for whether future activities associated with a project must be included in the impact assessment is not whether such activities are under the Project Sponsor's exclusive control, it is whether the future activities are reasonably foreseeable and may contribute to significant environmental effects. (*Laurel Heights Improvement Assn. v. Regents of the University of California* (1988) 47 Cal.3d 376, 395-396.) Here, both parts of the test are met. The Warriors have played in Oakland for 50 years and have won two NBA championships in that time period. Therefore, the frequency of 6:00 pm games in the past 50 years is known, and can easily be translated into an annual average that could be used for the next 50 years when the Warriors intend to play in San Francisco. Also, because traffic conditions are so bad already, small increments are enough to register as cumulatively significant. (*Communities for a Better Environment v. California Resources Agency* ("CBE") (2002) 103 Cal.App.4th 98,119-120.) Therefore, the omission of 6:00 pm games from the Project description and impact assessment is prejudicial.

6. The SEIR's Analysis of the Project's Cumulative Transportation Impacts Does Not Comply With CEQA.

(a) The 5% threshold of significance for impacts at intersections and freeway ramps operating at LOS E or F violates CEQA.⁸⁵

For intersections operating at LOS E or F, the DSEIR uses a threshold of significance of "a contribution of 5 percent or more to the traffic volumes at the critical movements operating at

⁸⁴July 23 Smith, p. 5; July 21 Wymer, pp. 12-13; Nov 2 Smith FSEIR pp. 3-5.

⁸⁵July 27 Lippe, p. 11. [Comment 2i.]

LOS E or LOS F” (DSEIR, p. 5.2-73-74.) For freeway ramps operating at LOS E or F, the DSEIR uses a threshold of significance of “a contribution of 5 percent or more to the traffic volumes on the ramp.” (DSEIR, p. 5.2-74.)⁸⁶

No rationale for the 5% threshold is provided. Indeed, blind reliance on this number ignores the law governing the assessment of cumulative impacts, which requires a fact based assessment that takes into account the severity of preexisting impacts. A one-size-fits-all “ratio” violates CEQA. (See *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 120 (“*Communities*”); *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 720-21 (*Kings County*). *Communities* and *Kings County* teach that the significance of a cumulative impact depends on the environmental setting in which it occurs, especially the severity of existing environmental harm, and that focusing on the magnitude (i.e., “ratio”) of the Project’s incremental contribution to severe preexisting harm is inconsistent with the definition of cumulative impacts under CEQA.⁸⁷

The RTC says: “Using their expertise regarding traffic analysis in the city, the City and its traffic consultants determined that using a ‘5 percent contribution’ as the threshold of significance was appropriate.” (FSEIR, Vol. 4, p. 13.11-72.) But invoking the agency’s expertise can only go so far. That expertise must be “supported by facts” and cannot be “unsubstantiated.” (CEQA Guideline 15384.) “A clearly inadequate or unsupported study is entitled to no judicial deference.” (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 410, ft. 12.) Here, the Planning Department’s “expert opinion” is based on legal error because it views transportation impacts as less deserving of scrupulous compliance with CEQA information disclosure requirements as other types of environmental. (See FSEIR, Vol. 4, p. 13.11-73.) Again, as noted above, the Legislature’s amendment of CEQA to delegate authority to the Secretary of Resources to change the legal standards governing an EIR’s analysis

⁸⁶“The project may result in significant adverse impacts at intersections that operate at LOS E or LOS F under existing conditions depending upon the magnitude of the project’s contribution to the worsening of the average delay per vehicle.” (DSEIR, p. 5.2-45.)

⁸⁷(*Communities*, 103 Cal.App.4th at p. 120 [“[T]he relevant question”... is not how the effect of the project at issue compares to the preexisting cumulative effect, but whether “any additional amount” of effect should be considered significant in the context of the existing cumulative effect. [footnote omitted] In the end, the greater the existing environmental problems are, the lower the threshold should be for treating a project’s contribution to cumulative impacts as significant. [footnote omitted]”]; *Kings County*, 221 Cal.App.3d at pp. 720-21 [“They contend in assessing significance the EIR focuses upon the ratio between the project’s impacts and the overall problem, contrary to the intent of CEQA.... We find the analysis used in the EIR and urged by GWF avoids analyzing the severity of the problem and allows the approval of projects which, when taken in isolation, appear insignificant, but when viewed together, appear startling. Under GWF’s ‘ratio’ theory, the greater the overall problem, the less significance a project has in a cumulative impacts analysis. We conclude the standard for a cumulative impacts analysis is defined by the use of the term ‘collectively significant’ in Guidelines section 15355 and the analysis must assess the collective or combined effect of energy development”].)

of traffic impacts conclusively demonstrates that traffic impacts are “environmental” impacts under CEQA.

(b) The year 2040 baseline for assessing the significance of the Project’s cumulative impacts violates CEQA.⁸⁸

The SEIR’s excessively distant time frame and massive development assumptions masks the Project’s nearer term cumulative impacts. The SEIR assesses the Project’s incremental traffic and transit impacts and its cumulative traffic and transit impacts pegged to the year 2040, which is 25 years in the future.⁸⁹ While the Alliance supports such long range forecasting in general, as used in this SEIR the year 2040 baseline for assessing the significance of the Project’s cumulative impacts is misleading, for two reasons.

First, this approach overlooks the Project’s cumulative traffic and transit impacts pegged to its first 1 to 10 years of operations. This time period is of immediate interest to the citizens of San Francisco because the traffic mess predicted by the DSEIR will be upon them then. And who among them know whether they will even be in the City by the year 2040. Thus, while including a year 2040 baseline is not in itself objectionable, the omission of a baseline 5 to 10 years in the future renders the DSEIR informationally defective.

Second, by using a baseline projected to the year 2040, the SEIR inflates the denominator in the 5% “ratio” it uses to determine the significance of Project cumulative impacts at LOS E and F intersections, thereby masking actual near-term significant effects. (See July 23 Smith, p. 25.)

The RTC states: “CEQA contains no rule fixing the time horizon for cumulative impacts analyses.” (FSEIR, Vol. 4, p. 13.11-65.) This is true, but all it means it that the time horizon or horizons selected must provide meaningful public disclosure of the Project’s environmental effects. The SEIR fails to disclose the significance of the Project’s cumulative impacts for the next 25 years!

The SEIR fails to respond to the Alliance’s comment that using the projection based approach over a 25 year future time horizon inflates the denominator in the calculation that is compared to the 5% threshold used to determine the significance of Project cumulative impacts at LOS E and F intersections. Elsewhere, the RTC contends that increasing the geographic scope the traffic study area risks diluting the Project’s contribution to impacts to the point of masking

⁸⁸July 27 Lippe, p. 12; July 23 Smith, pp. 25-26; Nov 2 Smith FSEIR pp. 20-22. [Comment 2h.]

⁸⁹“Future 2040 cumulative traffic volumes were estimated based on cumulative development and growth identified by the San Francisco County Transportation Authority SF-CHAMP travel demand model, using model output that represents Existing conditions and model output for 2040 cumulative conditions.” (DSEIR, p. 5.2-110.)

the Project's impacts. (FSEIR, Vol. 4, p. 13.11-26 ["As noted in CEQA case law related to the analysis of cumulative impacts, a geographic scope that is too extensive may dilute the significance of potential impacts"].) This risk also applies to the time horizon as well as geographic space. The amount of "cumulative" traffic against which this Project's contribution must be judged in terms of whether it is "cumulatively considerable" is higher the more future years are included. Using a 25 year horizon only, and ignoring a 10 or 15 year horizon makes it that much more difficult for this Project's contribution to tip the 5% threshold.

(c) The SEIR's use of a "projection" based approach to the Project's cumulative impacts is misleading.⁹⁰

The DSEIR states that:

Future 2040 cumulative traffic volumes were estimated based on cumulative development and growth identified by the San Francisco County Transportation Authority SF-CHAMP travel demand model, using model output that represents Existing conditions and model output for 2040 cumulative conditions. The 2040 cumulative traffic volumes take into account cumulative development projects in the project vicinity, such as the build-out of the Mission Bay Area, completion of the UCSF Research Campus and the UCSF Medical Center, the Mission Rock Project at Seawall Lot 337, Pier 70, etc., as well as the additional vehicle trips generated by the proposed project.

(DSEIR, p. 5.2-110.)⁹¹

The DSEIR presents no evidence supporting the DSEIR's assumption that the year 2040 projection is reliable for predicting future traffic and transit demand, other than the vague assertion that the "SF-CHAMP travel demand model, using model output that represents Existing conditions and model output for 2040 cumulative conditions ... has been validated to represent future transportation conditions in San Francisco." (DSEIR, p. 5.2-110.) But, as explained by Mr

⁹⁰July 27 Lippe, p. 13.

⁹¹In the section titled "Approach to Cumulative Impact Analysis" (DSEIR 5.1-6, § 5.1.5), the DSEIR asserts that the CEQA Guidelines provide "two approaches to a cumulative impact analysis ... (a) the analysis can be based on a list of past, present, and probable future projects producing related or cumulative impacts; or (b) a summary of projections contained in a general plan or related planning document can be used to determine cumulative impacts. The projections model includes individual projects and applies a quantitative growth factor to account for other growth that may occur in the area." (DSEIR, p. 5.1-7.) The DSEIR asserts that "The analyses in this SEIR employ both the list-based approach and a projections-based approach, depending on which approach best suits the individual resource topic being analyzed ... the Transportation and Circulation analysis relies on a citywide growth projection model that also encompasses many individual projects anticipated in and surrounding the project site vicinity, which is the typical methodology the San Francisco Planning Department applies to analysis of transportation impacts." (DSEIR, p. 5.1-7.)

Smith, the SF-CHAMP model's margin of error is greater than the 5% threshold used to determine the significance of Project cumulative impacts at LOS E and F intersections. (See July 23 Smith, p. 25.) Therefore, SF-CHAMP is the wrong tool for the task.

Further, given the sheer number of developments in this area of the City (see July 21 Wymer, Table 3) and the breakneck pace of their approval and implementation, the projection approach is misleading, not informative. Therefore, the DSEIR's cumulative impact assessment must use a list based approach to forecast reasonably foreseeable travel demand, and do so in a meaningful time frame.

The RTC does not specifically respond to this Alliance comment, but it does offer a general justification for using the projection approach, which is that the CEQA Guidelines authorize, and the City has a longstanding practice of, doing so. (FSEIR, Vol. 4, p. 13.11-65.) But these justifications fail where, as here, the analysis is misleading or fails to provide required information.

7. The DSEIR's Methodology for Analyzing Project Impacts on the Transit System Is Legally Flawed.

The DSEIR summarizes its methodology for analyzing Project Impacts on the transit system, as follows:

The impact of additional transit ridership generated by the proposed project on local and regional transit providers was assessed by comparing the projected ridership to the available transit capacity at the maximum load point. Transit "capacity utilization" refers to transit riders as a percentage of the capacity of the transit line, or group of lines combined and analyzed as screenlines across which transit lines travel. The transit analyses were conducted for the peak direction of travel for each of the analysis time periods.

(DSEIR, p. 5.2-75.)

This methodology contains two flaws. First, it suffers from the same unwarranted and unsupported assumptions about basketball fans' time of travel to the arena for games described above. Second, the DSEIR's use of transit screenline and route capacities is also misleading and unsupported.

(a) The DSEIR's use of transit screenline and route capacities is misleading and unsupported.⁹²

The SEIR's use of transit screenline and route capacities is misleading and unsupported,

⁹²July 27 Lippe, p. 14; July 23 Smith, pp. 5-8; Nov 2 Smith FSEIR p. 18-20.

so the City's process for evaluating a project's impacts on public transit evades disclosure of significant impacts. The SEIR's use of a project specific threshold of significant impact of 100 percent of screenline capacity rather than the normal 85 percent of screenline capacity exacerbates overcrowding impacts on the regular user community of and is unsupported and unwarranted.

For its Project specific (or incremental) transit impact analysis, the DSEIR uses the following thresholds of significance:

The proposed project was determined to have a significant transit impact if project-generated transit trips would cause downtown or regional screenlines, and, where applicable, directly affected routes, operating at less than its capacity utilization standard under existing conditions, to operate at more than capacity utilization standard. For Muni, the capacity utilization standard is 85 percent for conditions without an event at the project site, and 100 percent for conditions with an event at the project site. For regional operators, the capacity utilization standard is 100 percent for conditions without and with an event at the project site.

(DSEIR, p. 5.2-76, 77.)

For its cumulative transit impact analysis, the DSEIR uses the following thresholds of significance:

Under 2040 cumulative conditions, the proposed project was determined to have a significant cumulative impact if its implementation would cause the capacity utilization at the Muni and regional screenlines and/or corridors within the screenlines to exceed the capacity utilization standard noted above for conditions without and with an event at the project site, or if its implementation would contribute considerably to a screenline or corridor projected to operate at greater than the capacity utilization standard under 2040 cumulative plus project conditions (i.e., a contribution of 5 percent or more to the transit ridership on the screenline or route). In addition, if it was determined that the proposed project would have a significant project-specific transit impact under existing plus project conditions, then the impact would also be considered a significant cumulative impact under 2040 cumulative conditions.

(DSEIR, p. 5.2-76, 77.)

For both Project specific (incremental) and cumulative impacts, the DSEIR uses "capacity utilization standards" as baselines against which to measure the Project's impacts. Capacity utilization standards are specific percentages of the theoretical maximum capacity of a transit screenline or transit line.

For Project specific (or incremental) thresholds of significance for Muni, the DSEIR uses two different capacity utilization standards against which to measure the Project's impacts. For conditions without an event at the Project site, the capacity utilization standard is 85 percent of maximum theoretical capacity of the transit screenline or line. For conditions with an event at the Project site, the capacity utilization standard is 100 percent of maximum theoretical capacity.

If the question to be answered by the transit impact analysis is whether the Project will inflict significant suffering on people riding Muni, why does the DSEIR use two different baselines for its impact assessment. If exceeding 85% inflicts suffering without an event, then exceeding 85% will inflict suffering with an event.

The DSEIR does not examine this use of inconsistent baselines. However, the June 21, 2013, Planning Department Memorandum "Transit Data for Transportation Impact Studies" (at Appendix-TR, p. TR-624) states:

The SFMTA Board has adopted an "85 percent" capacity utilization standard for transit vehicle loads. In other words, transit lines should operate at or below 85 percent capacity utilization. The SFMTA Board has determined that this threshold more accurately reflects actual operations and the likelihood of "pass-ups" (i.e., vehicles not stopping to pick up more passengers). The Planning Department, in preparing and reviewing transportation impact studies, has similarly utilized the 85 percent capacity utilization as a threshold of significance for determining peak period transit demand impacts to the SFMTA lines.

(DSEIR, Appendix-TR, p. TR-624.) Thus, the 85 percent capacity utilization threshold apparently has nothing to do with the suffering of Muni's passengers; it simply reflects the reality of Muni's operations. And even if 85% of capacity is the break point at which Muni drivers tend to refuse to pick up more passengers due to overcrowding, then using 100% of capacity as a threshold of significance is entirely unsupportable.

For its cumulative impact analysis, the DSEIR uses the same baselines and thresholds of significance discussed above plus one more if the Project "would contribute considerably to a screenline or corridor projected to operate at greater than the capacity utilization standard under 2040 cumulative plus project conditions (i.e., a contribution of 5 percent or more to the transit ridership on the screenline or route)."

The 5% threshold for determining a Project's contribution to be "considerable" is stated at Appendix-TR, p. TR-625. No rationale for this number is provided. This approach leads to illogical and unsupportable results. For example, a Project contributing 1% more capacity utilization to a screenline that usually operates at 84%, resulting in a total capacity utilization of 85%, would be deemed to contribute considerably to a significant impact, while a Project contributing 1% more capacity utilization to a screenline that usually operates at 94%, resulting in a total capacity utilization of 95%, would be deemed to not contribute considerably to a

significant impact, even though the latter scenario should be deemed a more significant change than the former. (See *Communities, supra*; *Kings County, supra*.) In short, a one-size-fits-all “ratio” violates CEQA.

(b) The SEIR’s Cumulative Analysis Fails to Consider and Analyze the Project in the Context of the City’s Proposal to Remove the Northern Portion of I-280 as Far South as the Mariposa Street Interchange.

This issue is discussed in July 23 Smith, at page 13 which is incorporated herein by reference.

8. The SEIR’s Discussion of Transportation Impacts Is Incomplete.⁹³

(a) The SEIR fails to disclose the significance or severity of transportation impacts when both a Giants game and a Warriors game occur without the Special Events Transit Service Plan.

The SEIR analyzes transportation impacts in two broad scenarios: with and without implementation of the Special Events Transit Service Plan. But the DSEIR failed to provide a quantitative analysis of the significance or severity of the scenario in which both a Giants game and a Warriors game occur without the Special Events Transit Service Plan. The RTC admits this fact, but offers several justifications for this omission. (FSEIR, Vol 4, p. 13.11-9.)

The RTC’s argues that “it represents a worst-of-the-worst scenario, which would be expected to occur, on average, about nine times a year.” (FSEIR, Vol 4, p. 13.11-9.) This justification fails because the RTC also admits that this scenario’s additional impacts are on top of the significant impacts already identified in the “basketball game only - without Special Events Transit Service Plan” scenario. (FSEIR, Vol 4, p. 13.11-9.) The fact that the impact is significant is only part of the information required by CEQA. The other part is disclosing how severe the significant impact is. (*Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 831.) The SEIR fails in this regard.

As a result, the public was deprived of information essential to meaningful public participation. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392 [“An EIR is an ‘environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.’ [citations] The EIR is also intended ‘to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action’”].)

Moreover, without information regarding the extent of the Project’s significant

⁹³July 27 Lippe, p. 18; Nov 2 Smith FSEIR p. 1-3.

environmental harm, the OCCI and the City cannot weigh whether the Project's benefits outweigh that harm, which is the final step in the CEQA process where, as here, the impact remains significant after mitigation.⁹⁴

The RTC also argues that the "Giants and Warriors game without Special Events Transit Service Plan" scenario is "unlikely" because there is a planned funding mechanism (i.e., the Transportation Improvement Fund Ordinance currently pending before this Board) for the Transit Service Plan. (FSEIR, Vol 4, p. 13.11-9.) This justification fails for two reasons.

First, said funding is not assured, even if the Board adopts the Transportation Improvement Fund Ordinance ("Fund Ordinance"). Since the Fund Ordinance is not a Charter amendment, every future appropriation is subject to discretionary approval by future Boards of Supervisors. (*McMahan v. City and County of San Francisco* (2005) 127 Cal.App.4th 1368.) Setting this deficiency aside, SFMTA has acknowledged that the Budget and Finance Committee purported to make the Warriors responsible for any future budget shortfalls to the Fund Ordinance, yet all that the Warriors are actually required to do in this instance is engage in other transportation-related mitigation measures, much of it deferred, that is unrelated to the specific transportation mitigation measures specified by the MTA and funded by the Fund Ordinance. (See Exhibit 10, November 6, 2015, Budget and Legislative Analyst Report to the Budget and Finance Committee ("Nov 6 Budget Analyst Report"), p. 10 ["the Warriors will be responsible to provide additional transportation services to comply with EIR Mitigation Measures TR-2b and TR-18".]) Thus, funding for critical transportation mitigation is in no way assured.

Second, Under CEQA, an impact cannot be both significant and unlikely to occur. The likelihood of an impact occurring is a factor considered in the threshold determination of whether an impact is "reasonably foreseeable" and thus must be analyzed in an EIR/SED. (See CEQA Guidelines, § 15064, subd. (d).) The likelihood of an impact occurring is also a factor in the discussion of cumulative impacts. (See CEQA Guidelines, § 15030, subd. (b) [cumulative impacts shall reflect the severity of the impacts and their likelihood of occurrence].) Here, the SEIR determined that the "Warriors game without Special Events Transit Service Plan" scenario is likely enough to occur to identify the scenario as having significant impacts. Having done so, the agency cannot discharge its obligation to disclose the increased severity of impacts in the "Giants and Warriors game without Special Events Transit Service Plan" scenario by characterizing the "without Special Events Transit Service Plan" portion of the scenario as unlikely to occur.

⁹⁴See OCII Resolution No. 70-2015, pp. 43-45, ¶'s 7-10 [Impact TR-18: Effect of Project on Traffic Without Muni Special Event Transit Service Plan (DSEIR p. 5.2-191, RTC, Response TR-2); Impact TR-19: Effect of Project Traffic on Freeway Ramps Without Muni Special Event Transit Service Plan (DSEIR p. 5.2-197); Impact TR-20: Effect of Project Transit Demand Without Muni Special Event Transit Service Plan (DSEIR p. 5.2-199; RTC, Response TR-2; Response TR-5); Impact TR-21: Effect of Project Regional Transit Demand Without Muni Special Event Transit Service Plan (DSEIR p. 5.2-202, RTC, Response TR-2).

(b) The SEIR fails to disclose traffic delays the Project's office and retail operations will cause on days with Giants games but without Project-related events.

Figure 1 above also illustrates the SEIR's failure to disclose traffic delays the Project's office and retail operations will cause on days with Giants games but without Project-related events (i.e., convention, basketball game, or concert). And, using the delay numbers in the transportation appendix creatively reveals that such impacts are significant, at least for certain locations and time periods.

For example, in the PM peak period at the 7th/Mississippi and 16th St intersection, DSEIR page TR-179 shows "existing without Giants game" delay is 68.6 seconds; while page TR-275 shows "existing plus project without Giants game" delay is 87.8 seconds. This is an increment of 19.2 seconds of delay represents the contribution of traffic to the intersection from the Project's office and retail operations only, and is more than enough to tip this intersection from LOS E to F, which is a significant change.

Page TR-191 shows "existing with Giants game" delay is 84.7 seconds. The SEIR does not disclose, either in the body of the EIR or in its Appendices, the delay for "existing plus project with Giants game but without a Project-related event." To approximate this number, one can add the 19.2 second increment derived above (i.e., the contribution of traffic to the intersection from the Project's office and retail operations only) to 84.7 seconds. The result is 103.9 second of delay, a significant increase in the severity of existing significant delay.

According to the 2016 Giants schedule, the team will play 44 weekday evening regular season games plus 2 weekday evening preseason games (against the A's which are normally sold out) between the beginning of April to the end of September. If the team went all the way to the World Series and each of the playoff series went the maximum number of games, the team could play a maximum of about 11 weekday evening games in October. That totals 46 to 57 weekday evening games in a 7 month period. The use of the Warriors proposed event center is more difficult to assess. According to the information contained on DSEIR Volume 3, Appendix TR, page TR-19, Table 2, the proposed Warriors event facility could host a maximum of about 59 weekday events over the same beginning of April through end of October period (mix of Warriors regular season and playoff games, concerts, family-oriented shows, other sporting and convention/corporate events at average occurrences described in the referenced table). In that 7-month period, there are 156 weekdays. So there could be as many as 57 days per year where there is a weekday evening Giants game and no Warriors event center event, i.e., the undisclosed scenario described above. Also, the above example is just one of 22 intersections in the study area and at least 25 intersections outside the study area that will be affected to an unknown degree.

9. The SEIR Impermissibly Characterizes Mitigation Measures for the Project's Transportation Impacts as Components of the Project.⁹⁵

(a) The SEIR fails to consider other measures to reduce transportation impacts.

The SEIR buries measures to reduce the Project's significant transportation impacts in the "project description" instead of identifying them as mitigation measures. These measures include both one-time capital improvements and ongoing expenditures as set forth in the Transportation Management Plan ("TMP") and Transit Service Plan ("TSP"). This conflation of design features and mitigation measures violates CEQA because it insulates the measures from the analysis applicable to mitigation measures, i.e., are they feasible and effective. (See, *Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 657 [the EIR "fail[s] to consider whether other possible mitigation measures would be more effective"].) For example, as discussed in section C.8.(a) above, the SEIR fails to provide assess the significance or severity of the scenario in which both a Giants game and a Warriors game occur without the Special Events Transit Service Plan. As a result, potentially significant transportation impacts are completely unanalyzed, and unmitigated.

(b) The SEIR fails to identify enforceable mitigation.

The SEIR's conflation of design features and mitigation measures undermines the Mitigation Monitoring and Reporting Plan ("MMRP") because the TMP and TSP are not identified as enforceable mitigation measures, but rather "summarized" in a segregated "Section D" that is not adopted by the City as part of its findings for the Project or certification of the FSEIR. (Even if they are adopted as mitigation measures, however, the operational components of the TMP and TSP are unenforceable. (See July 23 Smith, at FSEIR, Vol. 4, pp. Com-135 - 139.)

Also, the SFMTA concedes that the TMP and TSP are unenforceable because necessary funding is not guaranteed, stating in relevant part:

The SFMTA cannot unequivocally guarantee future funding for the TSP at the levels analyzed in the Project Description in perpetuity; nevertheless, I am confident the SFMTA will be able to deliver the proposed service for the following reasons: ...

The SFMTA supports the Project with the understanding that the City, the Golden State Warriors, and SFMTA do not expect the SFMTA operating and capital budgets to experience any adverse impact associated with implementing the proposed Transit Service Plan and the capital investments to support it. SFMTA is further encouraged by the proposed ordinance that will establish The Mission Bay

⁹⁵Nov 3 Soluri Meserve to SFMTA, pp. 1-3; July 26 Smith at FSEIR, Vol. 6, pp. Com-135-139; July 27 Lippe at FSEIR, p. Com-126.

Transportation Improvement Fund and Designated Overlapping Event Reserve, funds from which would be appropriated by the Board of Supervisors as needed.

(MTA staff report dated November 3, 2015, enclosure 3.)

This error also obscures the City's massive public subsidy for the Project. A fundamental principle of CEQA is that development projects should mitigate their impacts to the extent feasible. (See, e.g., Pub. Resources Code, § 21002; see also CEQA Guidelines, § 15126.4.) With respect to the Project's transportation impacts, however, the City purports to adopt a "fair share" fee program to mitigate Project-level impacts. (*Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173 ("Anderson First").) As a threshold matter, the SEIR never clearly discloses to the public that it relies upon purported "fair share" payments to fund transportation improvement to reduce the Project's significant transportation impacts. This renders the SEIR defective as an informational document because the omitted information is required to assess the feasibility of the TMP and TSP.

In addition, the purported "fair share" is not fully enforceable, and therefore, cannot be considered part of an "effective" mitigation plan. The payment of impact fees may constitute adequate mitigation if "part of a reasonable plan of actual mitigation that the relevant agency commits itself to implementing." (Id.) The *Anderson First* decision identified the information that is required in an EIR to establish the adequacy of a "fair share" mitigation measure, which includes the following: (i) identification of the required improvement; (ii) estimate of the cost of the required improvement; (iii) sufficient information to determine how much the project would pay towards the improvement; and (iv) the fees must be part of a reasonable, enforceable plan or program sufficiently tied to the actual mitigation of the impacts at issue. (*Anderson First, supra*, 130 Cal.App.4th at 1189-90.) The SEIR fails to provide this necessary information.

While the SEIR mentions the TMP and TSP as reducing the Project's transportation impacts, the SEIR fails to identify the total costs of the improvements, the Project's allocated contribution, and the reasonable and enforceable program to pay for the Project's impacts. Although withheld from the Project's CEQA documentation, important information bearing on these questions is contained in the November 6 Budget Analyst Report (Exhibit 10), released after certification of the SEIR. The November 6 Budget Analyst Report makes the following "Key Points:"

- The proposed ordinance establishes the Mission Bay Transportation Improvement Fund (Fund) as a category four fund, setting aside General Fund monies to pay for services provided by SFMTA, SFPD, and DPW to the Warriors Project. It is anticipated that the revenues to be realized from the Warriors Project will provide for the needed funding sources to the General Fund.

Fiscal Impact

- SFMTA's estimated costs to purchase four new light rail vehicles and make other transportation system improvements to accommodate the Warriors Project

are \$55.3 million. Estimated revenues generated by the Warriors Project to pay these costs are \$25.4 million, resulting in a revenue shortfall of \$29.9 million. The estimated revenue shortfall of \$29.9 million will be financed through sale of SFMTA revenue bonds or other financing source. Annual debt service is projected to be paid from tax revenues generated by the Warriors Project.

- SFMTA’s expenditures for transportation services to the Warriors Project will be paid by SFMTA fare and parking revenues generated by these services. The Mission Bay Transportation Improvement Fund will pay for SFMTA service to the Warriors Project not covered by these fare and parking revenues, and for SFPD and DPW services to the Warriors Project.
- City departments’ estimated annual expenditures to provide services to the Warriors Project are \$10.1 million. These expenditures will be funded by an estimated \$11.6 million in revenues generated by the Warriors Project, resulting in net revenues of \$1.5 million.

Policy Consideration

- If the Warriors Project generates insufficient General Fund tax revenues to pay for all of SFMTA’s costs to provide transportation services to the Warriors Project, the Warriors will need to directly provide some transportation services.
- Only General Fund tax revenues directly generated by the Warriors Project should be included in the Controller’s estimates of Project revenues to the City.

Recommendations

- Amend the proposed ordinance to specify that if the annual cap of 90 percent of General Fund revenues from the Project site and events at the Event Center is insufficient to cover SFMTA’s expenditures for transportation services to the Warriors Project, then the Warriors will be responsible to provide the additional transportation services to comply with EIR Mitigation Measures TR.2b and TR.18.
- Amend the proposed ordinance to specify that only tax revenues generated on-site by the Warriors Project are included in the Controller’s estimates of General Fund revenue generated by the Warriors Project for the purpose of calculating the annual General Fund contribution to the Mission Bay Transportation Improvement Fund.

(November 6 Budget Analyst Report, pp. 1-2.)

Thus, documents prepared outside the CEQA process concede the project applicant is not being asked to bear the full cost of its own project-level mitigation. Moreover, the SEIR and the November 6 Budget Analyst Report fail to disclose that the “estimated revenues generated by the Warriors Project to pay these costs” are not payments directly by the project applicant, but rather the re-direction of sales and other taxes generally attributable to Project operations that would otherwise flow to the City’s General Fund for other citywide services or transportation improvements. This information was hidden in the Event Center Expenditure Plan, which the SFMTA approved on November 3, 2015 (“Expenditure Plan”). (See Enclosure 3 to SFMTA

staff report dated November 3, 2015.)

In other words, rather than simply require the project applicant to be financially responsible for the capital improvements needed to mitigate its project-level impacts, the City is establishing a fee program that does not even require the applicant to pay the cost of the needed improvements. Instead the City is voluntarily giving up tax generated General Fund revenues that would otherwise support other City programs and services. By cloaking this deficient mitigation strategy as a design feature of the Project, the City never engages in a meaningful analysis of potentially feasible mitigation measures involving the project applicant actually mitigating these project-level impacts. Therefore, the first three categories of information required by *Anderson First* are completely missing from the Project's CEQA documentation.

The fourth category of information required by *Anderson First*, namely information about a reasonable and enforceable plan, is lacking altogether because there simply is no enforceable plan to cover the funding gap for project-level mitigation. The November 6 Budget Analyst Report speculates that the acknowledged \$29.9 million funding gap can be "financed through sale of SFMTA revenue bonds or other financing source." (November 6 Budget Analyst Report, p. 1.) Incredibly, as of three days after FSEIR certification, there was no plan at all, much less an enforceable plan, about how to fund the shortfall and ensure the necessary project-level mitigation gets implemented.

In an attempt to address the lack of an actual plan, the November 6 Budget Analyst Report states, "Annual debt service is projected to be paid from tax revenues generated by the Warriors Project." (November 6 Budget Analyst Report, p.1.) This speculation, however, fails for at least three reasons. First, the available information calls into question whether such tax revenues will be adequate to actually cover the annual debt service. The November 6 Budget Analyst Report estimates annual costs for project-level transportation mitigation at \$10.1 million and total Project tax revenues at 11.6 million that could be redirected to pay for these costs. As explained by economist Jon Haveman, however, these revenue estimates are far from conservative.⁹⁶ In fact, should attendance fail to materialize as predicted, revenues may not be adequate to cover the estimate annual payments on the speculative finance mechanism for the \$29.9 million infrastructure costs.

Second, implicitly acknowledging the speculative nature of the Project's revenue and expense projections, the November 6 Budget Analyst Report claims that the project applicant should be required to make up any annual shortfall based on the Mission Bay Transportation Improvement Fund ("Fund"). However, it is not at all clear that the referenced provision of the Fund ordinance requiring the project applicant to cover any deficiencies in annual expenses also applies to the cost associated with debt service on the outstanding \$29.9 million in addition to the

⁹⁶"Warriors Stadium Economics: Uncertainty and Alternatives, version 2.0," prepared by Jon Haveman, Ph.D. of Marin Economic Consulting, dated November 29, 2015, is attached to the November 30, 2015 "Appeal Brief" submitted by Soluri Meserve as Exhibit 4.

ongoing annual operational expenses. Further, the revision to the Fund ordinance recommended by the Budget Analyst requiring the Warriors to “directly provide some transportation services” in the event of a General Fund shortfall does not actually require the Warriors to make up the financial deficiency, but rather to engage in other, unrelated transportation mitigation measures set forth in M-TR-2b and M-TR-18. (November 6 Budget Analyst Report , p. 10.) The Legislative Analyst’s proposal therefore provides no greater certainty that the mitigation measures identified in the TMP, and funded by the Fund ordinance, will actually be implemented.

Third, since the vast majority of the project applicant’s financial contributions to transportation mitigation going forward is not based on a payments to a dedicated impact fee program but rather the City’s voluntary redirection of General Fund revenues, a Charter amendment would be required to actually bind future Boards (*McMahan v. City and County of San Francisco* (2005) 127 Cal.App.4th 1368) and thereby establish an enforceable program as contemplated in *Anderson First* and its progeny.

10. The SEIR’s Identification of Numerous Mitigation Measures is Unlawful for Several Reasons, Including Deferral of Development and Lack of Evidence of Unavoidability.⁹⁷

One of the main purposes of an EIR is to identify ways to mitigate or avoid potentially significant impacts. Pub. Res. Code §§ 21002.1(a), 21061. CEQA therefore requires that the lead agency propose and describe mitigation measures aimed at minimizing any significant impact identified in an EIR. Pub. Res. Code §§ 21002.1(a), 21100(b)(3); 14 Cal. Code Regs. §§ 15121(a), 15126.4.

The SEIR takes the position that the City and the project proponent can devise specific mitigation measures later, well after the public has had its opportunity to review the SEIR and comment on the efficacy of mitigation measures. Mitigation Measure TR-2b states that:

The project sponsor *shall work with the City to pursue and implement, if feasible, additional strategies* to reduce transportation impacts. In addition, the City shall pursue and implement, if feasible, additional strategies that could be implemented by the City or other public agency (e.g., Caltrans). These strategies could include the following... .

(DSEIR, p. 5.2-129 (emphasis added). The strategies compound the problem by including measures that include equivocal language such as “explore,” “work to identify off-site parking lot(s)” (which should have been done as part of the preparation of the SEIR), “work to include,” “seek partnerships,” “meet to discuss,” and “encourage.” (DSEIR, p. 5.2-129 to 130). The above referenced language does not commit the City or the project sponsor to any course of action to

⁹⁷July 27 Lippe, p. 16; July 23 Smith, pp. 17-25.

mitigate the identified environmental impacts. Mitigations that are “not guaranteed to occur at any particular time or in any particular manner” are inadequate. *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 281; *see also, Federation of Hillside & Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1260 (remote and speculative mitigations were inadequate); *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1119 (mitigation measure rejected because it identified general goal for mitigation rather than a specific performance standard).

Mitigation TR-9d makes the same mistake regarding a serious safety issue at the UCSF helipad. In this instance, the City simply defers the development of a lighting plan that fails to include specific measures. It only requires consultation with SFO staff concerning the effects of lighting on pilots and consultations and approvals regarding firework displays and laser light shows with advance notification to UCSF. Furthermore, the DSEIR calls for the development of “specialized lighting guidelines.” (DSEIR, p. 5.2-272). Mitigation TR-9a has a similar flaw.

The FSEIR’s response to comments actually supports the Alliance’s point. The response cites CEQA Guideline § 15126.4(a)(1)(B) to support the notion that deferral is appropriate. While the response stretches the meaning of section 15126.4(a)(1)(B) and the cases interpreting it, these authorities stand for the proposition that deferral is permissible if there are specified performance standards and the mitigations can be accomplished in more than one way. Then the response to comments states that “performance criteria must be sufficiently definite to ensure that the potential impacts would be mitigated.” (SFEIR, p. 13.11-201.) That is the problem with TR-2b. There are no performance criteria at all, let alone sufficiently definite ones. The mitigation is simply a menu of options for the City and the project sponsor to consider at a later date.

Mitigation TR-11c suffers from the same infirmity because it merely requires “the project sponsor to *continue to work with the City* to pursue additional strategies to reduce impacts during overlapping events.” (DSEIR p. 13.11-174 (emphasis added)). In fact, TR-11c is even worse, because the SEIR admits there is no evidence the mitigation is feasible, stating:

However, due to the physical limitations of the City’s street grid, land may not be available for City purchase that would allow for the expansion of street width to accommodate additional travel lanes or other design techniques to achieve the standard of LOS D or better, and City policies disfavor expansion of roadway capacity in order to achieve the City’s Transit First and other goals that attempt to limit private vehicle use. Consequently, it cannot be determined what mitigation measures may be available for affected areas, and then whether the measures would be feasible given the physical constraints of the street network and the availability of funding to implement the measures. The City would implement those measures *that it deems feasible...*

(DSEIR, p. 13.11-175 (italics added).) Not only is the City deferring the formulation of the mitigation, it has not even made the pre-requisite determination of whether a mitigation is even

available or feasible. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727 [agreement that called for purchase of replacement groundwater was an inadequate mitigation measure because there was no indication that such water was even available]. A vague and unenforceable promise to simply examine matters later is not a mitigation at all.

Mitigation TR-11c adds even more wiggle room to allow the project sponsor to escape implementation. For additional strategies to reduce impacts, Mitigation TR-11c adds that “The project sponsor shall exercise *commercially reasonable efforts*” to “avoid scheduling non-Golden State Warriors events of 12,500 or more event center attendees that start within 60 minutes of the start (respectively) of events at AT&T Park,” and to “negotiate with the event promoter to stagger start times... .” It also requires that “the project sponsor shall: (1) make *commercially reasonable efforts* to negotiate with the Port of San Francisco” regarding parking “and (2) (if such negotiations are successful) provide free shuttles” from such parking. (DSEIR, p. 13.11-180 (italics added).) The determination whether efforts are “commercially reasonable” is within the discretion of the project sponsor, and therefore unenforceable and illusory.

Also, “commercially reasonable efforts” is not the correct standard for determining a mitigation’s feasibility. “What is required is evidence that the *additional* costs or lost profitability are sufficiently severe as to render it impractical to proceed with the project” if the Sponsor is *required* to avoid scheduling non-Golden State Warriors events of 12,500 or more attendees within the start of events at AT&T Park. (*Uphold Our Heritage v. Town of Woodside* (2007) 147 Cal.App.4th 587, 599 (emphasis added).)

TR-11c also states that:

in the event the off-site parking lots at 19th Street and the Western Pacific site are implemented, the SFMTA shall consult with Caltrans in assessing the feasibility of signaling the intersection of Pennsylvania/I-280 southbound off-ramp. If determined feasible by the SFMTA and Caltrans, the SFMTA and Caltrans shall establish the level of traffic volumes that would trigger the need for a signal, and the project sponsor shall fund its fair share...

(DSEIR, p. 13.11-180 (italics added).) Again, the SEIR defers all the analysis concerning its feasibility.

Mitigation TR-13 states that to accommodate Muni transit demand during overlapping events at both AT&T Park and the proposed project, “the project sponsor shall work with the Ballpark/Mission Bay Transportation Coordinating Committee to coordinate with the SFMTA to provide additional shuttle buses between key Market Street locations and the project. Examples of the additional service include...” Again, there is no definite mitigation provided and the City is simply asking the project proponent to discuss the matter in the future. (DSEIR, p. 5.2-184).

A similar requirement is set forth in Mitigation TR-11b:

As a mitigation measure to optimize effectiveness of the transportation management strategies for day-to-day operations and events in the Mission Bay area, at AT&T Park, UCSF Mission Bay campus, and the proposed project, the project sponsor shall actively participate as a member of the Ballpark/Mission Bay Transportation Coordinating Committee in order to ***evaluate and plan*** for operations of all three facilities (i.e., AT&T Park, UCSF Mission Bay Campus, and the proposed event center)... .

The Transportation Coordinating Committee ***shall consult on changes to and expansion of transit services, and for developing and implementing strategies within their purview that address transportation issues*** and conflicts as they arise.

(DSEIR, Vol 1, p. 5.2-179 (emphasis added)). This mitigation highlights the illegality of the City's approach. The Committee will "evaluate and plan" and shall "develop" strategies later. This is required to be considered as part of the environmental review process, not deferred to a later date, after project approval.

With respect to TR-5a, TR-5b and TR-14 (requiring the Project Sponsor to ask Caltrain, ferry operators, and BART, to provide additional service for Project events, the RTC simply states the impact is significant and unavoidable: "Therefore, the SEIR does not rely on these measures to find the corresponding impacts less than significant, but rather determines the impact would be significant and unavoidable without mitigation." (FSEIR, p. 13.11-200). In this scenario, the finding of "unavoidability" is defective because there is no evidence it is infeasible to require the Project Sponsor to execute a contract with some or all of these third-party transit service providers to provide additional service for Project events. (*City of Marina v. Board of Trustees of the California State University* (2006) 39 Cal.4th 341, 350, 355-356, 360-361.)

The SEIR states that:

In order to accommodate the additional transit demand to the South Bay during weekday and Saturday evening conditions, one additional train car (average capacity of 130 passengers per car) on at least one inbound train per hour would be needed. For the weekday late evening period, two additional train cars (average capacity of 130 passengers per car) on at least one outbound train per hour would be needed. Alternatively, the transit demand could be accommodated within one special outbound train (total capacity up to 650 passengers) at the end of the basketball game, similar to the service currently being offered to SF Giants home games (two special outbound trains).

In order to accommodate the additional transit demand to the North Bay, four additional Golden Gate Transit buses (40 passengers per bus) plus one ferry boat (250 to 350 passengers per boat) per hour, or alternatively seven additional buses per hour would need to be provided.

(DSEIR, p. 5.3-146).⁹⁸ While the SEIR clearly identifies the need, Mitigation TR-5 completely misses the mark. Instead of providing concrete requirements to address this lack of transit, the mitigation states as follows:

However, since the provision of additional South Bay and North Bay service is uncertain and full funding for the service has not yet been identified, implementation of both mitigation measures remain uncertain. Accordingly, the proposed project's significant impacts to Caltrain, Golden Gate Transit and WETA transit capacity would remain *significant and unavoidable with mitigation*.

(DSEIR, p. 5.3-146 to 147; *see also*, DSEIR 5.2-185). This approach has been condemned by the courts.

CEQA requires the agency to find, based on substantial evidence, that the mitigation measures are “required in, or incorporated into, the project”; or that the measures are the responsibility of another agency and have been, or can and should be, adopted by the other agency; or that mitigation is infeasible and overriding considerations outweigh the significant environmental effects. (§ 21081; Guidelines, § 15091, subd. (b).) In addition, the agency “shall provide that measures to mitigate or avoid significant effects on the environment are fully enforceable through permit conditions, agreements, or other measures” ([Public Resources Code] § 21081.6, subd. (b)) and must adopt a monitoring program to ensure that the mitigation measures are implemented ([Public Resources Code] § 21081.6, subd. (a)). *The purpose of these requirements is to ensure that feasible mitigation measures will actually be implemented as a condition of development, and not merely adopted and then neglected or disregarded.* (See § 21002.1, subd. (b).)

The city acknowledged in the TIMP that there was great uncertainty as to whether the mitigation measures would ever be funded or implemented. Although the city adopted the mitigation measures, it did not require that they be implemented as a condition of the development allowed under the GPF and made no provision to ensure that they will actually be implemented or “fully enforceable” (§ 21081.6, subd. (b)). We therefore conclude that there is no substantial evidence in the record to support a finding that the mitigation measures have been “required in, or incorporated into” (§ 21081, subd. (a)(1)) the GPF in the manner contemplated by CEQA, and the city failed to provide that the mitigation measures would actually be implemented under the GPF (§ 21081.6, subd. (b)).

Federation of Hillside & Canyon Associations v. City of Los Angeles (2000) 83 Cal.App.4th

⁹⁸The SEIR admits that these are “*new significant* impacts not previously identified in the Mission Bay FSEIR.” (DSEIR, p. 5.2-147).

1252, 1260–126 (italics in original, fn. omitted)⁹⁹; see also, *Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1188 (“To be adequate, these mitigation fees, in line with the principle discussed above, must be part of a reasonable plan of actual mitigation that the relevant agency commits itself to implementing.”)

Mitigation TR-5 suffers from the flaws identified in this line of cases. Again, the SEIR and lead agency uses the determination that the impact is significant and unavoidable as a justification for having an unenforceable mitigation, but the finding of “unavoidability” is defective because there is no evidence it is infeasible to require the Project Sponsor to execute a contract with third-party transit service providers to provide additional service for Project events. Further, the approving agencies have failed to fill this gap, because these Mitigations do not commit these agencies to implement these measures.

TR-5a also uses equivocal language and further states that “the project sponsor shall work with Caltrain to provide additional Caltrain service to and from San Francisco on weekdays and weekends. The need for additional service shall be based on surveys of event center attendees conducted as part of the TMP.” (DSEIR, p. 5.2-147). TR-5b contains nearly identical language providing that the project sponsor shall work with Golden Gate Transit regarding providing ferry and bus service. (DSEIR, p. 5.2-147). The problem with these mitigation measures are two-fold. First, the SEIR identifies the need for additional transit with specificity (e.g., two additional train cars), then the mitigation simply ignores the analysis and says the mitigation will be based on “surveys of event center attendees.” If the problem has been identified, a subsequent survey, without specified parameters or controls, cannot dictate the required transportation needs. And, the City may not cede responsibility for assessing an impact to a project proponent. *California Clean Energy Committee v. City of Woodland*, supra, 225 Cal.App.4th 173, 194. The public and decisionmakers are entitled to be informed of the transit need, as the SEIR has identified, and then mitigations must be developed to address that identified need. Second, while the impact has been identified, and the mitigation for the impact also identified (e.g., two additional train cars), the mitigation only requires the project sponsor to “work” on transportation issues, but does not require it to pay its fair share to fund the actual mitigation.

Caltrain, for its part, invited the City and the project sponsor to work with it to develop the appropriate mitigation, stating:

Caltrain agrees with the DSEIR’s analysis of capacity impacts to our service, the conclusion that additional service has the potential to mitigate a portion of these impacts, and the statement that additional Caltrain service has not yet been defined, funded or agreed to. Caltrain understands the importance of the regional

⁹⁹ The court in *Federation of Hillside & Canyon Associations v. City of Los Angeles* used the substantial evidence test, but the Alliance believes based on subsequent construction of the standard of review by the courts, that the failure to require implementation of a mitigation measure is a failure to proceed in a manner required by law.

transportation services we provide and we look forward to working collaboratively with the City and County of San Francisco and the project sponsors to address the transportation challenges and opportunities presented by this unique project. As the project advances through the environmental process we encourage the City and the project sponsors to engage with us directly to more formally define, analyze and identify funding for any contemplated increase in Caltrain service.

(FSEIR, Vol. 6, p. COM-20 [Caltrain letter dated July 27, 2015].) The mitigation measure provides no assurance that the mitigation will happen and dismisses the mitigation by simply calling the impact significant and unavoidable when there is a potentially feasible mitigation present.

The SEIR makes the same mistake with respect to Mitigation TR-14 regarding impacts on BART during overlapping events at AT&T Park and the proposed project. The SEIR simply says “since the provision of additional East Bay, South Bay, and North Bay Service is uncertain and full funding for the service has not yet been identified, implementation of these mitigation measures remain uncertain.” The SEIR then states that

the project sponsor shall work with the Ballpark/Mission Bay Transportation Coordinating Committee to coordinate with BART to provide additional service from San Francisco following weekday and weekend evening events. The additional East Bay BART service could be provided by operating longer trains. The need for additional BART service shall be based on characteristics of the overlapping events... .

(DSEIR, p. 5.2-185).

The response to comments attempts to rehabilitate these fatal flaws in the SEIR by stating:

because some or all of the additional demand could be accommodate (sic) by other transit providers serving the East Bay, North Bay, and South Bay (e.g., BART also serves the South Bay and not projected to operate at more than 100 percent capacity utilization), the actual additional service needed to accommodate the demand may be less than identified in the SEIR. Thus, in order to provide additional transit most efficiently, the amount of additional service should be responsive to the actual travel patterns, as determined during monitoring of events.

(FSEIR, p. 13.11-193). There are several problems with this response. First, the SEIR attempts to have it both ways. On the one hand it provides analysis of the transportation need, then on the other it attempts to downplay the need by saying it may not reflect the situation accurately. This

argument either calls into question the SEIR's impacts analysis, or is an attempt to avoid mitigating the clearly significant impact. Second, it allows the project sponsor to determine the need for additional transportation at a later date. There are no parameters specified as to the conduct of the surveys, and no way to tell whether the surveys will be accurate. There is no indication as to whether the City will verify the accuracy of the surveys. Third, it still does not solve the problem of providing the funding for the mitigation. The response further states:

Neither the project sponsor nor the City has the legal authority and logistical ability to provide the additional service to and/or from the North Bay and South Bay, or to commit to funding of the additional service. However, the proposed TMP and Mitigation Measures require that the City and project sponsor to work with the regional transit agencies to provide additional service. Despite the lack of any guaranteed outcome, such efforts might well bear fruit, based on past experience. The provision of additional regional transit service during special events is common in San Francisco. As noted in the SEIR, additional service can include adding cars to scheduled trains, or provision of special event trains.

(FSEIR, p. 13.11-183). There are multiple problems with this response. First, the notion that the City can simply shed its responsibility to provide for mitigations because other agencies are responsible for implementation was rejected in *City of Marina v. Board of Trustees of the California State University, supra*, and *County of San Diego v. Grossmont-Cuyamaca Community College Dist.* (2006) 141 Cal.App.4th 86, 97–98. Second, as stated above, a promise to “work with regional transit agencies” is not a mitigation. Third, if the provision of additional service during special events is common in San Francisco, there should be no barriers to providing the necessary mitigations for these impacts.

CEQA requires the City to identify “both the significant effects of proposed projects and the feasible alternatives or feasible mitigation measures which will avoid or substantially lessen such significant effects.” Pub. Res. Code § 21002; 14 Cal. Code Regs. § 15126.4(a)(1). Here, the SEIR identifies both the effects and the necessary solution. But, the SEIR does not mandate the solution as a mitigation. “Each public agency shall mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so.” Pub. Res. Code § 21002.1(b). “The core of an [Environmental Impact Report (EIR)] is the mitigation and alternatives sections.” *Preservation Action Council v. City of San Jose* (2006) 141 Cal.App.4th 1336, 1350. It is completely feasible to mitigate the significant effect by funding the fair share of the transit impact. Caltrain is willing to work with the City and the project sponsor to craft the mitigation. The City simply fails to require a feasible mitigation.

The CEQA Guidelines specifically recognize that requiring a project to implement or fund its “fair share” of a measure designed to mitigate a cumulative impact is an effective way to address the project's contribution to the impact. 14 Cal. Code Regs. § 15130(a)(3). Even where fees are required, the courts have required that fees translate into actual mitigations. “A commitment to pay fees without any evidence that mitigation will actually occur is inadequate.”

Save Our Peninsula Committee v. Monterey County Bd. of Supervisors (2001) 87 Cal.App.4th 99, 140. Here, the problem is worse. No mitigation fees are even required to be paid for an identified significant impact. CEQA requires that an EIR propose specific mitigations to reduce identified traffic impacts. *Federation of Hillside & Canyon Associations v. City of Los Angeles*, *supra*, 83 Cal.App.4th at 1261 (EIR invalid because mitigation measures were not “required in, or incorporated into” (§ 21081, subd. (a)(1)) the General Plan Framework (GPF) in the manner contemplated by CEQA, and the city failed to provide that the mitigation measures would actually be implemented under the GPF (§ 21081.6, subd. (b)).) For these reasons, mitigations for transit impacts are inadequate.

(a) The SEIR Improperly Defers the Development of Mitigation Measures to Reduce the Project’s Construction-related Traffic Impacts to less than Significant.¹⁰⁰

With respect to cumulative construction impacts related to ground transportation (Impact C-TR-1), the SEIR asserts the impacts are less than significant. (FSEIR Vol. 4, p. 13.11-157; DSEIR vol. 1, p. 5.2-212.) The Alliance discusses this conclusion in section II. C. above.

Since the impact was improperly determined to be less than significant, mitigation is necessary to reduce the impact. However, Improvement Measure I-TR-1, which calls for the preparation of a Construction Management Plan and Public Updates, was improperly deferred. I-TR-1 merely calls for the project sponsor to require the contractor to:

prepare a Construction Management Plan for the project construction period. The preparation of a Construction Management Plan could be a requirement included in the construction bid package. Prior to finalizing the Plan, the project sponsor/construction contractor(s) shall meet with DPW, SFMTA, the Fire Department, Muni Operations and other City agencies to coordinate feasible measures to include in the Construction Management Plan to reduce traffic congestion, including temporary transit stop relocations and other measures to reduce potential traffic, bicycle, and transit disruption and pedestrian circulation effects during construction of the proposed project. This review should consider other ongoing construction in the project vicinity, such as construction of the nearby UCSF LRDP projects and construction on Blocks 26 and 27.

(DSEIR, p. 1-14). The mitigation has no performance standards or other specific requirements. It is simply at the discretion of the project sponsor and the contractor. Meeting and coordinating with City officials, without any specific requirements or performance standards, is an illusory mitigation at best. And, there is no basis in which the public can understand the efficacy of the measures. The Construction Management Plan “could” “encourage” carpools, transit, bicycles and walking for construction workers, identify parking for construction workers, and “could” provide construction updates to businesses and residents. (DSEIR, p. 5.2-116 to 117). There are

¹⁰⁰July 27 Lippe, pp. 5-7; July 23 Smith, p. 15; Nov 2 Smith FSEIR p. 22.

no specific mandates included in I-TR-1. The CEQA Guidelines require that “Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally-binding instruments. In the case of the adoption of a plan, policy, regulation, or other public project, mitigation measures can be incorporated into the plan, policy, regulation, or project design.” 14 Cal. Code Regs. 15126.4(a)(2). Nothing in I-TR-1 is enforceable, let alone fully enforceable, through conditions, agreements or other legally binding instruments. The measure cannot even be quantified since it relies on future contractors hired by the Project sponsor. Therefore, it is wholly inadequate as a mitigation measure.

11. The SEIR’s Transit and Traffic Analyses Understate Impacts Because They Rely on Outdated Baseline Data.¹⁰¹

The Alliance commented that the SEIR’s transit and traffic analyses understate impacts because they rely on outdated baseline data. “In assessing the impact of a proposed project on the environment, the lead agency should normally limit its examination to changes in the existing physical conditions in the affected area as they exist at the time the notice of preparation is published, or where no notice of preparation is published, at the time environmental analysis is commenced.” (*Save Our Peninsula Committee v. Monterey County Bd. Of Supervisors* (2001) 87 Cal.App.4th 99, 123, citing CEQA Guideline § 15126.2; see also, *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 953; CEQA Guideline § 15125(a).)

However, the case law also recognizes that factors after the issuance of the NOP may influence the selection of the correct baseline. “Environmental conditions may vary from year to year and in some cases it is necessary to consider conditions over a range of time periods.” *Save Our Peninsula Committee v. Monterey County Bd. Of Supervisors* (2001) 87 Cal.App.4th at 125. Speaking specifically to traffic, the Court stated: “Since the environmental review process can take a number of years, *traffic levels as of the time the project is approved may be a more accurate representation of the existing baseline against which to measure the impact of the project.* (See, e.g. *Fairview Neighbors v. County of Ventura* (1999) 70 Cal.App.4th 238 [maximum estimated traffic was appropriate baseline].)” *Ibid.* at 126 (emphasis added).

The RTC contends the transit and traffic data used were up-to-date and adjusted to account for recent developments and growth. This is incorrect, both factually and legally. As shown by traffic engineer Smith, the SEIR does not present baseline data current to either the issuance of the NOP, or a later time that would account for the continued phenomenal growth in Mission Bay and the surrounding environs. Instead, the City relies on stale data that meets neither legal test and results in an underestimate of the environmental transit and traffic impacts. (Nov 2 Smith FSEIR, p. 9-13.)

Smith shows the transit data is from 2010 and 2011, well before the NOP was issued. Smith notes that when the NOP was issued, large number of development projects were

¹⁰¹July 23 Smith, p. 9; Nov 2 Smith FSEIR pp. 9-13.

completed and occupied and the recovering economy increased ridership considerably. The City claims it took steps to ensure that the data was up-to-date, but Smith provides detailed analysis of why the City actually did not update the analysis, and that some of the data being represented as updated is actually old data from 2012 and 2013. It is certainly not up-to-date and is not representative of existing conditions at the time the NOP was issued in November of 2014, nor takes into account additional development since then. As Smith notes, BART's comment on the DSEIR states that "Given strong job expansion in San Francisco, BART has experienced unprecedented ridership growth (~25% over the last four years) which creates a number of peak period capacity challenges." (Nov 2 Smith FSEIR, p. 10 [FSEIR Vol. 4, p. COM-19].)

Smith also shows the traffic data fails to include traffic volumes associated with developments in northern Mission Bay, SOMA and the C-3 that were completed after 2013 or were nearing completion by 2015. (Nov 2 Smith FSEIR, p. 9-13.)

12. The SEIR Fails to Consider the Disruptive Impacts of the At-grade Rail Crossing on LOS at 7th/ Mississippi and 16th Street.

This issue is discussed in July 23 Smith at page 14; the FSEIR's responses to comments at Vol. 4, pp. 13.11-55, 56; Nov 2 Smith FSEIR, at page 18, and Nov 28 Smith FSEIR (Exhibit 12 hereto) at pages 4-7, all of which are incorporated herein by reference.

13. The SEIR concludes, without adequate foundation, that the project would not have an adverse impact on emergency access to UCSF hospitals.

This issue is discussed in July 23 Smith at page 16; Nov 2 Smith FSEIR at page 22; Nov 10 Smith FSEIR Access; and Nov 28 Smith FSEIR (Exhibit 12 hereto) at page 2, all of which are incorporated herein by reference.

14. The New Project Variant disclosed in the FSEIR requires recirculation due to new and more severe significant impacts.¹⁰²

The new project variant will dig up King Street for six months and Third Street for fourteen months. (FSEIR, pp. 12-11, 12-25.) This will exacerbate construction phase impacts on traffic, creating new significant impacts not previously identified in the SEIR.

This issue is discussed in Nov 13 Smith FSEIR King St., and Nov 17 Smith FSEIR 3rd St., all of which are incorporated herein by reference.

¹⁰²Nov 13 Smith FSEIR King St., Nov 17 Smith FSEIR 3rd St.

D. THE SEIR IS NOT SUFFICIENT AS AN INFORMATIONAL DOCUMENT WITH RESPECT TO HYDROLOGY, WATER QUALITY, AND BIOLOGICAL IMPACTS.

1. The DSEIR Is Not Sufficient as an Informational Document with Respect to the Project's Wastewater Treatment Infrastructure Impacts (Comment UTIL-3).¹⁰³

The DSEIR concedes the Project's cumulative wastewater flow, in combination with other approved projects, will exceed the Mariposa Pump Station's capacity, and therefore, the Project will have a significant and unavoidable impact because it "would require or result in the construction of new wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects." (DSEIR, p. 5.7-13 - 5.7-20 [Impact C-UT-2].) But the DSEIR's disclosure of the nature and severity of the potentially significant impacts of building these new wastewater treatment facilities falls far short of CEQA's requirements.

The DSEIR generally describes the type of new wastewater treatment facilities that might be built. (DSEIR, p. 5.7-14.) The DSEIR then identifies a number of potentially significant impacts of constructing new wastewater treatment facilities necessitated by the Project, stating:

These construction activities would be expected to result in temporary increases in truck and construction employee traffic, noise, and air pollutant and greenhouse gas emissions. In addition, depending on the site-specific design and location, the pump station improvements could result in physical effects on cultural resources, biological resources, water quality, and hazardous materials.

(DSEIR, p. 5.7-14.) The DSEIR then vaguely suggests that these impacts could be mitigated to less than significant levels by adopting "typical" mitigation measures, stating:

Most, if not all, of these potential impacts can generally be mitigated to a less-than-significant level with typical mitigation measures, similar to those identified in the Initial Study and the SEIR for this project. Long-term operational impacts would likely be less than significant because operation of the pump stations would be similar to existing operations of these facilities.

(DSEIR, p. 5.7-14.)

These vague descriptions fail to discharge the City's legal obligations under CEQA to fully describe the Project, including its "reasonably foreseeable consequence" of necessitating the construction of additional wastewater treatment facilities, and to include an "analysis of the

¹⁰³July 26 Lippe, pp. 1-10; July 19 Gilbert, pp. 2-3; Nov 2 Lippe FSEIR, pp. 8-12, Nov 2 BSK; Nov 2 Ringelberg..

environmental effects” of this future action and the mitigation measures that may reduce those impacts. (See e.g., *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 396 (*Laurel Heights I*) [“an EIR must include a analysis of the environmental effects of future expansion or other action if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects].)

As shown in both the DSEIR’s analysis of mitigation measures and the Mission Bay Alliance’s comments on many types of impacts that construction of additional wastewater treatment facilities will cause (e.g., air quality, noise, traffic), the “mitigation measures ... identified in the Initial Study and the SEIR for this project” do not ensure that “impacts can generally be mitigated to a less-than-significant level.”

Finally, the DSEIR states:

In the event that additional future wastewater flows would exceed the pump station capacities before the needed wastewater system improvements could be completed, it is assumed that the SFPUC would make internal operational or piping changes to accommodate the additional flows in the interim in order to remain in compliance with RWQCB permit requirements. The interim system modifications would be subject to the approval of the RWQCB under the terms of the Bayside NPDES permit. Approval by the RWQCB would ensure that water quality of the Bay would be protected during the interim period. Any interim system modifications are assumed to be operational or internal to the existing pump stations and therefore would not result in any physical environmental effects.

This remarkable passage suggests that the City is prepared to approve and allow construction of this Project without ensuring the construction of additional, adequate, sewage treatment capacity required by the Project. This is the opposite of responsible planning. Moreover, the City is apparently poised to take this action based on several unsupported assumptions. First, the DSEIR assumes, without discussion or evidentiary support, that interim modifications will not have a significant effect on the environment.

Second, the DSEIR assumes the Project’s wastewater impacts on the Bay will only be “interim” until the SFPUC builds or expands permanent new wastewater treatment facilities; and that in this supposedly “interim” period, the Regional Water Quality Control Board will mitigate any “interim” impacts to less than significant. But there is no evidence to support the assumption the Project’s wastewater can be treated to avoid significant adverse effects on Bay water quality before the SFPUC builds or expands permanent wastewater treatment facilities. Nor is there evidence that Regional Water Quality Control Board regulation during any purported “interim” period would avoid significant adverse effects on Bay water quality. Nor is there any evidence as to how long this purportedly “interim” period will last, or how many other projects that will

cumulatively exceed the Mariposa Pump Station’s capacity will commence operations during this purportedly “interim” period.

Indeed, this DSEIR’s approach represents a total abdication of the City’s legal responsibility under CEQA to identify the Project’s significant effects, to identify mitigation measures that would substantially reduce those effects, and to adopt all feasible mitigation measures that would substantially reduce those effects. To put it colloquially, punting the problem to the SFPUC or Regional Water Quality Control Board does not pass muster under CEQA.

(a) The Response to Comment UTIL-3 is Inadequate.¹⁰⁴

The RTC for Comment UTIL-3 essentially says that the Project is “first come, first served” for purposes of using up remaining sewer system capacity in the Mariposa sub-basin. (FSEIR, Vol. 5, pp. 13.17-11.) But the assertion that the cumulative future projects listed in the referenced report by Hydroconsult Engineers (i.e., Blocks 25b, 33-34, 40 and Hospital Phase 2),¹⁰⁵ will be operational further in the future than the Project is unsupported. In fact, these cumulative future projects are not even listed in the cumulative future projects list at DSEIR, pages 5.1-8 - 10. As a result, the SEIR’s assertions are unsupported and untestable.

The response’s assertion that “Future improvements in the SFPUC’s wastewater system are beyond the project sponsor’s control” is also unsupported; in fact, it is contradicted by overwhelming evidence. Where it is advantageous to the project, the SEIR assumes the City will do things over which the project sponsor has no control to support the project, e.g., comply with its NPDES permit, provide transportation infrastructure to handle the crowds, etc. Indeed, the City is named as a responsible party or is directly involved in dozens of mitigation measures identified in the proposed Mitigation Monitoring and Reporting Program.¹⁰⁶ But here, the SEIR takes an inconsistent position, disclaiming any Project Sponsor control over a different matter within the City’s control, i.e., expansion of the sewer system, apparently for no reason other than it is advantageous to the project to do so.¹⁰⁷

¹⁰⁴July 26 Lippe, pp. 1-10; July 19 Gilbert, pp. 2-3; Nov 2 Lippe FSEIR, pp. 8-12, Nov 2 BSK; Nov 2 Ringelberg..

¹⁰⁵Hydroconsult Engineers, Inc. 2015. Combined Sewer Impact Analysis, Golden State Warriors Arena EIR. February 25, referenced on RTC, p. 13.17-15, n 8.

¹⁰⁶One example is Mitigation Measure M-TR-2b: Additional Strategies to Reduce Transportation Impacts: “The project sponsor shall work with the City to pursue and implement commercially reasonable, if feasible, additional strategies (i.e., in addition to those included in the project TMP) to reduce transportation impacts. In addition, the City shall pursue and implement, if feasible, additional strategies to that could be implemented by the City or other public agency (e.g., Caltrans).”

¹⁰⁷The San Francisco Public Utilities Commission is a department of the City and County of San Francisco.

2. The DSEIR Is Not Sufficient as an Informational Document with Respect to the Project's Contaminated Wastewater (I.e. Combined Sewage and Stormwater) Impacts on San Francisco Bay Water Quality or Biological Resources (Including from Inadequately Treated Sewage and Toxic Chemicals (E.g., Pcb's and Metals) (Comments Hyd-3 - Hyd-6).¹⁰⁸

In the chapter on the Project's Water Quality impacts, the DSEIR evaluates the impact of Combined Sewage Discharges (CSDs or CSOs) to the Bay that exceed treatment capacity of the Mariposa Pump Station due to the combination of increased storm water flows combined with sewage wastewater flows. The DSEIR uses two thresholds of significance based on the City's NPDES permit, stating:

- Wet weather flows to combined sewer system: The impact analysis examines whether project related increases in wastewater flows would contribute to combined sewer discharges during wet weather. The impact is considered less than significant if the increased flows would not increase the frequency of combined sewer discharges above the long-term average specified in the NPDES permit for the SEWPCP, the North Point Wet Weather Facility, and Bayside wet-weather facilities.
- Effluent discharges from SEWPCP: For the analysis of impacts related to changes in the quality of effluent discharges from the SEWPCP, the analysis considers whether discharges of wastewater to the combined sewer system would cause effluent quality to exceed the discharge limitations of the NPDES permit for the SEWPCP. If not, the impact is considered less than significant.

(DSEIR, p. 5.9-30.)

Thus, for purposes of complying with CEQA's requirement that it identify the Project's significant impacts, the DSEIR makes two unsupported assumptions: (1) that City compliance with its NPDES permits will avoid significant impacts, and (2) that the City will in fact comply with its NPDES permits. The DSEIR must support these assumptions with evidence.

In addition, the first threshold quoted above only looks at "frequency of combined sewer discharges above the long-term average" and ignores increases in quantity and duration of overflows. (See DSEIR, pp. 5.9-34 to 5.9-36.) The DSEIR notes:

The model analyzed the effects of discharging the average flows from the proposed project in combination with the existing average flows in the drainage area. Under this scenario, the frequency of CSDs would not increase, but the

¹⁰⁸July 24 Lippe, pp. 4-10; Nov 2 Lippe FSEIR, pp. 10-12; July 21 Hageman; Nov 2 Hageman; Nov. 2 BSK; July 22 Cline, pp. 1-15.

volume of the CSDs would increase from 5.34 to 5.63 million gallons and the duration would increase from 17.2 to 17.3 hours.

(DSEIR, 5.9-35.) The DSEIR finds this impact less than significant because it defines “significance” solely in terms of the *number* of CSD events and compliance with the City’s NPDES permit, regardless of the *quantity* of sewage discharged, stating:

Because average and peak wastewater flows from the project site would not increase the frequency of CSD events from the Mariposa sub-basin and would be consistent with the requirements of the NPDES permit, project level water quality impacts related to contributions to an increase in CSD frequency would be *less than significant*.

(DSEIR, 5.9-35, 36.) The DSEIR makes the same finding for the Project’s cumulative impact based on the same evidence and the same rationale. (DSEIR, 5.9-35, 36.)

This is a legal error because the DSEIR cannot merely reference a project’s compliance with another agency’s regulations. Lead agencies must conduct their own fact-based analysis of project impacts, regardless of whether the project complies with other regulatory standards.¹⁰⁹

The 1998 Mission Bay FSEIR sets the stage for this legal error in its finding that CSO impacts on the Bay are less than significant, stating:

The same conclusions for the proposed project apply to the cumulative effects of Bayside projects, in that the cumulative increase in pollutant mass load from these projects would have a less-than-significant effect on water quality. As shown in Table V.K.8, the project would represent less than 3% of the increased total pollutant load from the Bayside. The cumulative loads for pollutants would

¹⁰⁹ See, e.g., *Californians for Alternatives to Toxics v. Department of Food & Agriculture* (2005) 136 Cal.App.4th 1, 16 (lead agencies must review the site-specific impacts of pesticide applications under their jurisdiction, because “DPR’s [Department of Pesticide Regulation] registration does not and cannot account for specific uses of pesticides..., such as the specific chemicals used, their amounts and frequency of use, specific sensitive areas targeted for application, and the like”); *Citizens for Non-Toxic Pest Control v. Department of Food & Agriculture* (1986) 187 Cal.App.3d 1575, 1587-1588 (state agency applying pesticides cannot rely on pesticide registration status to avoid further environmental review under CEQA); *Oro Fino Gold Mining Corporation v. County of El Dorado* (1990) 225 Cal.App.3d 872, 881-882 (rejects contention that project noise level would be insignificant simply by being consistent with general plan standards for the zone in question). See also *City of Antioch v. City Council of the City of Pittsburg* (1986) 187 Cal.App.3d 1325, 1331-1332 (EIR required for construction of road and sewer lines even though these were shown on city’s general plan); *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 712-718 (agency erred by “wrongly assum[ing] that, simply because the smokestack emissions would comply with applicable regulations from other agencies regulating air quality, the overall project would not cause significant effects to air quality.”).

generally increase by 4-6%. Thus, the project would cause approximately half of this cumulative increase for the Bayside. To put this in context, City discharges are a very small portion of the region-wide discharges to the Bay. Compared to municipal dischargers in the Bay Area, the load contribution of the Southeast Plant represents about 12% of all other municipal dischargers, and the Mission Bay project would represent less than 3% of that 12% (or 0.36% of all municipal wastewater discharged to the Bay). In addition, besides municipal wastewater, other sources of pollutant loading to San Francisco Bay include riverine inputs, nonurban runoff, urban runoff, point sources, dredging/sediment disposal, spills, and atmospheric deposition. Of these sources, point sources, including municipal dischargers and other permitted industrial dischargers, represent about 1-6% of the total load input to the Bay-Delta estuary. Regarding stormwater discharges, San Francisco Bayside stormwater flows are about 1.8% of the total regional urban storm flow to the Bay. Considering the contribution of the project and of the cumulative Bayside projects in the context of all the other pollutant inputs to the Bay, the cumulative pollutant loading from Bayside projects would be extremely small.

(1998 MB FSEIR, p. V.K.52.)

This logic reflects the “de minimis” and “ratio” rationales rejected in *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 120 (“CBE”) [“[T]he relevant question”... is not how the effect of the project at issue compares to the preexisting cumulative effect, but whether “any additional amount” of effect should be considered significant in the context of the existing cumulative effect. [footnote omitted] In the end, the greater the existing environmental problems are, the lower the threshold should be for treating a project’s contribution to cumulative impacts as significant. [footnote omitted]”, and *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 720-21 [“They contend in assessing significance the EIR focuses upon the ratio between the project’s impacts and the overall problem, contrary to the intent of CEQA.... We find the analysis used in the EIR and urged by GWF avoids analyzing the severity of the problem and allows the approval of projects which, when taken in isolation, appear insignificant, but when viewed together, appear startling. Under GWF’s ‘ratio’ theory, the greater the overall problem, the less significance a project has in a cumulative impacts analysis. We conclude the standard for a cumulative impacts analysis is defined by the use of the term ‘collectively significant’ in Guidelines section 15355 and the analysis must assess the collective or combined effect of energy development”].) *Communities* and *Kings County* teach that the significance of a cumulative impact depends on the environmental setting in which it occurs, especially the severity of existing environmental harm.

Therefore, accepting the Hydroconsult numbers at face value, the starting point for

assessing whether adding 2.9 million gallons per year¹¹⁰ of incompletely treated CSD pollution to the existing condition of San Francisco Bay is significant is the existing condition of San Francisco Bay.¹¹¹ The DSEIR says very little on the topic. The 1998 Mission Bay FSEIR provides some information, but the DSEIR does not discuss how much of the 1998 Mission Bay FSEIR's information may be outdated as a result of the passage of seventeen years, and is, therefore, unknown.

The 1998 Mission Bay FSEIR characterizes "municipal wastewater" as follows:

Municipal wastewater is a relatively strong waste stream containing high concentrations of organic matter that will decompose (measured as biochemical oxygen demand because the decomposition requires oxygen), inorganic particulates (measured as total suspended solids), nutrients (measured as total nitrogen and phosphorus), and pathogenic microorganisms. It also contains oil and grease and small quantities of toxic metals, pesticides, solvents, and plasticizers (additives in plastics that maintain softness and pliability). Conventional secondary treatment, as employed by San Francisco at its Southeast Water Pollution Control Plant, greatly reduces the concentrations of most substances in municipal wastewater. On the other hand, dissolved metals and organic substances that are resistant to breakdown by bacteria, may pass through the plant relatively unaltered. This waste stream, after treatment, is referred to as municipal wastewater effluent in this SEIR.

(1998 MB FSEIR, p. V.K.4.)

The 1998 Mission Bay FSEIR characterizes "urban stormwater" as follows:

Urban stormwater is a large-volume wastewater stream. Pollutants contained in urban runoff include street litter, sediment (mostly inorganic particulates, measured as total suspended solids), oil and grease, oxygen-demanding substances, pathogenic microorganisms, toxic metals, and pesticides. The concentrations of oxygen-demanding substances, nutrients, and pathogenic microorganisms are much lower than in untreated municipal wastewater. CSOs exhibit a blend of the untreated characteristics of municipal wastewater and urban

¹¹⁰5.63 – 5.34 = 0.29 x 10 = 2.9.

¹¹¹"If the rainstorm is a large one, and the capacity of the storage/transport box sewers is exceeded, treated combined sewer overflows (CSOs) occur at outfalls along the City's shoreline. When combined sewage is temporarily stored in transport/storage structures, floating materials are removed from the water surface and some solids settle to the bottom of the structures. The accumulated solids are then flushed to the treatment plant after the storm has subsided. The treatment that occurs within the structures is approximately equivalent to primary treatment." (1998 MB FSEIR, p. V.K.8-9.)

stormwater runoff.

(1998 MB FSEIR, p. V.K.4.)

The 1998 Mission Bay FSEIR characterizes the “impairment of Central San Francisco Bay” as follows:

The State Water Resources Control Board (SWRCB) has listed central San Francisco Bay as impaired on the basis of field surveys of the water column, sediments, sediment toxicity, bivalve bioaccumulation, and water toxicity. The determination relates to mercury, copper, selenium, diazinon, and polychlorinated biphenyls (PCBs).

- Mercury. The main source of mercury in the Bay is erosion and drainage from abandoned gold and mercury mines. Other sources include natural sources, atmospheric deposition, and various industrial and municipal sources.
- Copper. Copper enters the Bay through municipal sources, stormwater runoff (primarily through automobile brake pad dust), and other nonpoint sources (such as soils and abandoned mines). These are the three main sources, and they contribute roughly equivalent amounts.
- Selenium. Selenium enters the Bay through industrial point sources (e.g., oil refineries), agriculture, and natural sources. Control programs are in place to address selenium discharges from oil refineries
- Diazinon. Diazinon is a pesticide that enters the Bay as runoff from agriculture and, to a lesser extent, residential land uses. Diazinon is a primary component of insecticides. Homeowner pesticide use peaks in late spring and early summer.
- PCBs. Although PCBs are no longer manufactured in the U.S., PCBs previously released to the environment enter the Bay through stormwater runoff and transport through the food chain. PCB levels in fish have resulted in health advisories for fish consumption.

(1998 MB FSEIR, p. V.K.8-9.)

The above information shows the existing environmental harm (or “preexisting cumulative effect” in the words of *Communities, supra*) is severe, and this Project will make it worse. Therefore, the DSEIR’s finding that the Project’s cumulative CSD impacts on the Bay are less-than-significant is erroneous as a matter of law. It is based on two legal errors: (1) the exclusion of CSD *quantity* from its threshold of significance, which reflects the “de minimis” and “ratio” rationales rejected in *Communities, supra* and *Kings County, supra*; and (2) the DSEIR’s reliance on another agency’s regulatory standards (i.e., the NPDES permit) to determine significance under CEQA.

As discussed in July 21 Hageman, Nov 2 Hageman, and Nov 2 Ringelberg, the Project’s CEQA documents (i.e., the 1998 Mission Bay FSEIR, 2014 NOP/IS, and 2015 DSEIR), fail to

analyze or develop mitigation measures to reduce the Project's likely contribution of a suite of toxic chemicals, including PCBs, to San Francisco Bay in amounts deleterious to the Bay's biota.

Further, it is impossible to place the discussion of this entire issue (at DSEIR pages 5.9-34 to 5.9-36) in a meaningful context, because the DSEIR does not inform the reader if the discussion assumes construction or expansion of permanent wastewater treatment facilities by the SFPUC.

Also, the DSEIR says: "the [Hydroconsult] model estimated the annual average frequency, volume, and duration of CSDs that would occur once the Mariposa wet- and dry-weather pump stations reach the combined capacity of 11.2 mgd under existing and project conditions. The model estimates that under existing conditions, CSDs from the Mariposa sub-basin occur approximately 10 times per year with an average volume of 5.34 million gallons and duration of 17.2 hours." (DSEIR, p. 5.9-35.) This text implies that the "Hydroconsult" model includes wet-weather flows and wet-weather CSDs. But the only Hydroconsult memo cited and included in Appendix HYD states:

Three scenarios were analyzed: base case, project, and cumulative. The base case scenario includes existing conditions plus developments and improvements expected to be substantially complete previous to occupancy of the GSW arena. The project scenario adds the DWF from the arena only and the cumulative scenario adds the project DWF plus DWF from reasonably foreseeable projects in the basin. In all three scenarios, the wet weather flow (stormwater runoff) is assumed to not contribute to the CSS; rather is treated and pumped directly to the Bay. All DWF from the proposed GSW arena is assumed to flow to the Mariposa pump station (MPS), therefore Mariposa is the only basin analyzed.

(DSEIR, Appendix HYD, p.1.) The statement "wet weather flow (stormwater runoff) is assumed to not contribute to the CSS; rather is treated and pumped directly to the Bay" makes sense if it refers only to stormwater from the Mission Bay Redevelopment Area, because all of that stormwater will be separated from wastewater flows when the separate stormwater system for Mission Bay is completed in 2015. (See DSEIR, p. 5.7-4.)¹¹² But the DSEIR also states that storm water from areas outside Mission Bay will continue to combine with wastewater flows to

¹¹²"The separate stormwater system for the Mission Bay South Plan area is currently being implemented by the master developer and includes four drainage zones within the geographic boundaries of the reconfigured Central sub-basin that have already been constructed and one drainage zone within the geographic boundaries of the reconfigured Mariposa sub-basin which is currently under construction. Stormwater in each of the drainage zones flows by gravity to one of five stormwater pump stations in the locations shown on **Figure 5.7-2**, including Pump Station SDPS-5 near the east end of 16th Street. When construction of the fifth drainage basin is completed (anticipated in 2015, prior to construction and operation of the proposed project), all stormwater runoff from Mission Bay South will be conveyed through the separate stormwater system and discharged to the Bay and China Basin Channel (Mission Creek)." (DSEIR, p. 5.7-4 (pdf151).)

the Mariposa Pump Station and will contribute to wet weather CSDs. (DSEIR, p. 5.7-7.)¹¹³ If this is correct, then the Hydroconsult dry-weather analysis is beside the point.

Also, the numbers for Mariposa Pump Station capacity and wastewater or stormwater flows are confusing. For example, DSEIR page 5.9-35 says the Mariposa wet- and dry-weather pump stations have a “combined capacity of 11.2 mgd.” DSEIR page 5.7-7 also refers to “the combined capacity of the Mariposa pump station and transport/storage structure (11.2 mgd).”¹¹⁴ But DSEIR page 5.9-34 says: “The potential effect would be greatest in the reconfigured Mariposa sub-basin, which has a *wet weather capacity of 12 mgd* (italics added).”

(a) The Responses to Comments Hyd-3 - Hyd-6 are Inadequate.

The Alliance’s comments letter regarding hydrology, water quality and biological impacts observed that the DSEIR’s heavy reliance on City compliance with its NPDES permit to ensure the Project’s combined stormwater and sewage impacts are less than significant is an unsupported assumption. (July 24 Lippe, p. 4-10.) The RTC simply repeats this unsupported assumption many times. (See RTC at pp. 13.21-17; 13.18.)

Compliance with these plans, policies, and water quality criteria and objectives as enforced through the Bayside NPDES permit ensures that discharges of treated effluent from the SEWPCP are protective of water quality in San Francisco Bay. Therefore, compliance with the Bayside NPDES permit effluent and receiving water limitations is protective of water quality and it is appropriate to use the requirements of the NPDES permit as a threshold of significance for effluent discharges from the SEWPCP. Using this threshold, the SEIR properly concluded that water quality impacts related to effluent discharges from the SEWPCP are less than significant as described in Impact HYD-6 (pp. 5.9-33 to 5.9-41).

(RTC at p. 13.21-19.)

The Alliance’s previous comment requested that the City support this assumption with

¹¹³“The 240-acre reconfigured Mariposa sub-basin of the combined sewer system is divided into two tributary areas that direct flow to the Mariposa Pump Station. Tributary B includes Potrero Hill to the south of Mariposa Street and is outside of the Mission Bay Plan area; this tributary area directs both rainwater and wastewater to the pump station. Tributary A includes areas to the north of Mariposa Street that are located within the Plan area; in this area, stormwater flows are directed to the separate stormwater system constructed for the Mission Bay South development, and only wastewater flows are directed to the Mariposa Pump Station.” (DSEIR, p. 5.7-7.)

¹¹⁴“In the event that wet weather flows in the Mariposa subbasin exceed the combined capacity of the Mariposa pump station and transport/storage structure (11.2 mgd), the excess flows are discharged to the Bay as a combined sewer discharge after receiving flow-through treatment in the transport and storage structure.”

evidence. The RTC fails to do so. Therefore, the Alliance gathered that evidence, and it shows the City has a continuous, consistent, and pervasive pattern of violating its NPDES permits. (See Nov 2 Lippe FSEIR, Exhibit M.) Therefore, the SEIR's assumed basis for finding water quality impacts less than significant is false.

My July 24, 2015, comment letter regarding hydrology, water quality and biological impacts observed that the DSEIR's threshold of significance for the effect of untreated wastewater discharges to the Bay, which consists of limiting such discharges to 10 per year, ignores the quantity and duration of such discharges. The response stresses the work the City must do to prevent municipal wastewater from degrading water quality in the Bay, stating:

As described in the permit, and on p. 5.9-20 of the SEIR, the SFPUC must implement the following nine minimum controls in accordance with the Combined Sewer Overflow Policy to reduce the frequency of combined sewer discharges and their effect on receiving water quality:

1. Conduct proper operation and regular maintenance programs for the combined sewer system and combined sewer discharge outfalls;
2. Maximize the use of the collection system for storage;
3. Review and modify pretreatment programs to minimize the effect of non-domestic discharges to the collection system;
4. Maximize flow to the SEWPCP and North Point Facility for treatment;
5. Prohibit combined sewer discharges during dry weather;
6. Control solids and floatable materials in combined sewer discharges;
7. Develop and implement a pollution prevention program focused on reducing the effect of combined sewer discharges on receiving waters;
8. Notify the public of combined sewer discharges; and
9. Monitor to effectively characterize combined sewer discharge effects and the efficacy of combined sewer discharge controls.

These controls represent the best conventional and best available technology economically achievable as required under the Clean Water Act. The City is currently implementing these controls as required by the Combined Sewer Overflow Control Policy.

(RTC at p. 13.21-26.) This is all good and important work, but it is non-responsive to the Alliance's comment. The fact that these measures are the best the City can, or is legally required to do, is not relevant to whether the impact is significant. It may be relevant to whether further mitigation of the impact is feasible or effective, but these considerations cannot affect whether the impact is deemed significant.

The top two paragraphs on page 13.21-27 of the RTC assert that all waste water is treated. This is beside the point that the City anticipates and is allowed by its NPDES permit up to 10 discharges per year of waste water subject to only primary, rather than secondary, treatment.

The RTC appears to reject the Alliance's comment that the SEIR ignores duration and quantity, not just frequency, of the 10 discharges per year on grounds the NPDES permit does not address the duration and quantity of these discharges. But the issue here is whether impacts on Bay water quality are significant. CEQA does not allow the use of the NPDES permit terms as an absolute proxy for that determination.

In addition, the RTC fails to adequately respond to the Alliance's comments that the Project will cause potentially significant harm by mobilizing and transporting hazardous materials, including PCBs, to the Bay in stormwater runoff.

As hydrologist Matt Hageman states:

Our comments noted the detection of PCB in soil at the Project site and the need to implement measures during soil disturbing construction activities to prevent the transport of contamination to San Francisco Bay via stormwater. Response HYD-2 simply states that stormwater BMPs for PCBs must be consistent with best available technology economically achievable to meet requirements of the California Construction General Permit (p. 13.21-12). However, the Response does not specify BMPs that would meet this requirement. It is key that certification of the FSEIR is upheld until BMPs specific to preventing the spread of PCB contamination are identified.

(See Nov 1 SWAPE, p. 1.) Biologist Erik Ringelberg makes the same points for a broader range of materials, stating:

Stormwater Mitigation. The biological effects of stormwater on the environment are not properly analyzed. The offered responses to comments regarding stormwater mitigation are particularly ironic given that the site has demonstrably failed to maintain its Best Management Practices (BMPs) and has visible waste material literally clogging its stormwater drains. (See BSK comments.) The concept that simply stating that a BMP will work, without analyzing the nature of the impacts, and without maintaining those BMPs calls into question every part of the DSEIR that relates to sediment, toxins and wildlife exposures. For illustration, the BMPs at the site currently are not properly maintained and have been filled in or partly filled in with sediment, or breached completely. However, even if these sediment BMPs had been installed correctly and maintained, they do nothing for dissolved-fraction toxic chemicals. The project fails to implement the sediment BMPs correctly and does not even offer readily implementable BMPs for dissolved-fraction chemicals found at the site 4, 5, 6, 7. Yet, the Response states unequivocally, any potential effects associated with contaminated stormwater runoff into San Francisco Bay would be avoided during construction through compliance with the Construction General Permit and implementation of a Stormwater Pollution Prevention Plan (SWPPP) as described in the Section

13.21, Response HYD-2. (p. 13.19-22) The SWPPP is solely intended to manage ordinary construction sediment and has no specific intent to manage hazardous waste, and in any case does nothing for dissolved hazardous chemicals.

(Nov 2 Ringelberg, pp. 10-11.)

3. The DSEIR Is Not Sufficient as an Informational Document with Respect to Project Impacts on Biological Resources, Including Wetlands and Wildlife.¹¹⁵

(a) The SEIR's exclusion of the Project's impacts on biological resources is erroneous.

The lead agencies' decision to exclude the Project's impacts on biological resources from the DSEIR (see DSEIR, p. 5.1-1) is erroneous as a matter of law. Both the NOP/IS and the DSEIR announce that their analyses are "tiered" to the 1998 Mission Bay FSEIR pursuant to CEQA Guideline 15168(c). (IS, p. 23-24; DSEIR, pp. 1-1, 5.1-2, 3.) Both the NOP/IS and the DSEIR also announce that the standards used to exclude resource topics from the DSEIR are the standards used to determine if a subsequent EIR is required under CEQA section 21166 and Guideline section 15162. (See NOP/IS, pp. 23-25; DSEIR, p. 5.1-3.)

Based on these predicates, the City decided to prepare a focused EIR, and to conduct no environmental review with respect to the following resources: Biological Resources, Aesthetics, Land Use Cultural Resources, Paleontological Resources, Geology and Soils, Recreation, Hazardous Materials, and Population and Housing. As discussed in more detail in the July 27, 2015, letter from the Mission Bay Alliance's legal counsel regarding "tiering," the City's assumption that it may prepare an EIR for this Project that tiers to the 1998 Mission Bay FSEIR is legally incorrect. As discussed in several comment letters submitted on behalf of the Mission Bay Alliance, and below regarding the Project's impacts on biological resources, the evidence relating to these excluded resource topics meets both the "fair argument" standard, as well as the CEQA section 21166 standards. Moreover, the SEIR's exclusion of the Project's impacts on biological resources is an omission of required information under CEQA that is reviewed de novo by the courts. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1207-08.) Therefore, the City must prepare and recirculate for public review a Revised Draft EIR addressing all of the Project's environmental impacts.

¹¹⁵ July 26 Lippe, pp. 11-15; July 16 BSK Wetland; July 21 Ringelberg; Oct 29 BSK Wetland; Nov 2 Lippe FSEIR, pp. 10-15; Nov 2 BSK; Nov 2 Ringelberg; October 7, 2015, letter to OCII from Soluri Meserve regarding Clean Water Act 404 and CZMA Consistency.

- (b) The SEIR’s exclusion of the Project’s impacts on biological resources is erroneous because the lead agency failed to prepare any CEQA document that adequately describes the Project’s environmental setting to allow an assessment of the Project’s impacts on biological resources.**

The principal BSK Associates reports referenced here establish that the SEIR fails to adequately describe the environmental setting.¹¹⁶ “An EIR must contain an accurate description of the project’s environmental setting. ... There is good reason for this requirement: ‘Knowledge of the regional setting is critical to the assessment of environmental impacts.’” (*Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 874.)

The full range of environmental setting information which the SEIR fails to describe is discussed in the four BSK Associates reports referenced here which are incorporated herein by this reference.

- (c) There is substantial evidence supporting a fair argument the Project will have a significant adverse effect on biological resources.**

While the NOP/IS give short shrift to on-site biological resources, there is substantial evidence, in the NOP/IS and in July 21 Hageman, Nov 2 Hageman, July 21 Ringelberg, Nov 2 BSK, and Nov 2 Ringelberg, supporting a fair argument the Project may have significant effects on (1) migratory birds; (2) off-site special status species downstream of the Project, including steelhead (*Oncorhynchus mykiss*); and (3) the on-site wetland and its ecology and associated wildlife.

With respect to migratory birds, the NOP/IS admits that the 1998 Mission Bay FSEIR did not assess the Redevelopment Plan’s effects on migratory birds. (NOP/IS, p. 81.) In addition, the NOP/IS concedes the Project may have significant impacts on migratory birds because it recommends the adoption of mitigation measures to substantially reduce these impacts, stating: “With implementation Mitigation Measures M-BI-4a, Preconstruction Surveys for Nesting Birds, and M-BI-4b, Bird Safe Building Practices, the project would not result in any new or substantially more severe significant impacts on resident or migratory bird species than those identified in the FSEIR.” (NOP/IS, p. 81.)

This approach violates CEQA in a number of ways. First, as discussed above, the Project is a separate project from the 1998 Redevelopment Plan, or at a minimum, is not within the scope of the 1998 Mission Bay FSEIR. This fact precludes the City from “tiering” to the 1998 FSEIR for any resource, including impacts on biological resources such as migratory birds.¹¹⁷ Second, trying to mitigate significant impacts before assessing their nature and extent puts the cart before

¹¹⁶July 21 Ringelberg, Nov 2 BSK, Nov 2 Ringelberg, July 16 BSK Wetland, and Oct 29 BSK Wetland.

¹¹⁷*Sierra Nevada Conservation, supra.*

the horse.¹¹⁸ Third, as discussed above, the NOP/IS's concession that the Project may have significant impacts on migratory birds is substantial evidence supporting a fair argument the Project will have a significant adverse effect on migratory birds; therefore, the City is required to include an assessment of these impacts in the DSEIR.¹¹⁹ Fourth, even if the City's assumption that CEQA section 21166 applies is correct, the addition of a 750,000 square foot sports arena and an additional 160 foot office tower to the Mission Bay Redevelopment Plan are substantial changes in the Redevelopment Plan that give rise to new potentially significant effects on birds that must be analyzed in the subsequent EIR.

With respect to impacts on special status species, the NOP/IS states:

At the time of preparation of the Mission Bay FSEIR, the project site contained several buildings and facilities and was noted as lacking any notable vegetative habitat, with no state listed threatened, endangered or rare plants, or rare, threatened or endangered animal species known to occur in the upland portion of the Mission Bay plan area, including the project site. Subsequent to that time, the project site has been subject to building removal, grading, excavation, and construction of paved surface parking lots, fencing and utilities on portions of the site. Other than the creation of the depression as a result of remediation actions, no other changes in the site since the preparation of the FSEIR have altered the characteristics of the site in relation to biological habitat. These changes in conditions on the project site have not altered the fact that the site provides no suitable habitat for any sensitive or special status species due to the sparse and ruderal nature of onsite vegetation, as well as the site's location in a densely urbanized environment, as confirmed through the reconnaissance survey and database review of special status species occurrences within the vicinity of the project site. In addition, there have been no substantial changes with respect to the circumstances under which the project would be undertaken, nor has any new information become available that demonstrates new or more severe impacts associated with the proposed project.

(NOP/IS, pp. 78-79.)

But as Mr Ringelberg points out:

¹¹⁸CEQA does not permit an agency to simply adopt mitigation measures in lieu of fully assessing a project's potentially significant environmental impacts because mere acknowledgment that an impact would be significant is inadequate; the EIR must include a detailed analysis of "how adverse" the impact would be. (*Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 655-56; *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1123; *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 831.)

¹¹⁹*Protect the Historic Amador Waterways, supra.*

the potential project impacts to the closest federally designated critical habitat is steelhead *Oncorhynchus mykiss* are ignored. This habitat runs directly adjacent to the project area. In addition, San Francisco manzanita (*Arctostaphylos franciscana*) critical habitat is present approximately 2.6 miles to the west and should also have been identified and analyzed. The federal critical habitat analysis is missing, and the provided analysis itself is defective. The potential project's impact(s) to these listed species and their critical habitat are therefore unexamined. The project's dust, stormwater, surface flooding, and groundwater place those species at risk from hazardous chemicals.

(July 21 Ringelberg, p. 11.)

As both Mr. Hageman and Mr. Ringelberg point out, none of the Project's CEQA documents assess the effects of toxic chemical runoff on Bay biota, including steelhead. Where, as here, the lead agency fails to study an area of possible environmental impact, a fair argument may be based on the limited facts in the record because deficiencies in the record may enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences." (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.)

Further, there is substantial evidence in July 21 Hageman, Nov 2 Hageman, July 21 Ringelberg, Nov 2 BSK, and Nov 2 Ringelberg, supporting a fair argument the Project may have significant effects on steelhead from toxic runoff. Again, even if CEQA section 21166 applies, CEQA requires including this issue in the subsequent EIR. The Phase 11 reports showing the site is contaminated with a suite of toxic compounds is significant new information showing the potential for new significant effects not previously identified.¹²⁰

With respect to potential impacts on the on-site wetland, the NOP/IS indicates the DSEIR will not assess impacts on the wetland even though the 1998 FSEIR did not, and could not have, analyzed the wetland since it was apparently created sometime after 2005. (See July 21 Ringelberg, Figure 1 and accompanying text.)

Typically, if there is a potential wetland resource, there would be a formal delineation prior to release of the DEIR so the resource can be analyzed, and appropriate mitigation developed. Here, the NOP/IS claims it may not be jurisdictional (p. 80), and at the same time attempts to suggest mitigation (p. 81) in case it is. But the mitigation suggested is not enforceable, in violation of CEQA. Further, as discussed above, trying to mitigate impacts before assessing their significance puts the cart before the horse. (*Lotus v. Department of*

¹²⁰See Letter to Marty Glick re: Phase 2 Subsurface Investigation Approval, Golden State Warriors Arena, Blocks 29-32, San Francisco, CA 94158; Phase II Environmental Site Assessment, Golden State Warriors Arena, Blocks 29-32, Mission Bay, San Francisco, California.

Transportation, supra.)¹²¹

In addition, the NOP/IS' evidentiary basis for dismissing the wetland from the DSEIR is flimsy, stating:

Because the excavation depressions on the site are small, isolated features resulting from recently completed hazardous materials remediation activities and are surrounded by paved areas and urban development, these features do not provide the important biological habitat functions and values that are typically associated with federally protected wetlands.

(NOP/IS, pp. 78-79.) But as Mr. Ringelberg points out:

Conversely, and in rebuttal to their prior assertion that there are readily substitutable habitats nearby, small wetland features can have exceptional ecological value, in particular if they are one of the few remaining features in an urban setting.

(July 21 Ringelberg, p. 6.)

Further, there is substantial evidence in the report from Erik Ringelberg supporting a fair argument the Project may have a significant effect by destroying the on-site wetland. Again, even if CEQA section 21166 applies, CEQA requires, including this issue in the subsequent EIR, because the presence of the wetland is a change in circumstances since certification of the 1998 FSEIR that gives rise to the potential for new significant effects not previously identified.

(d) The Response to Comment Bio-5 is Inadequate.

The FSEIR argues that the wetland feature on the site is not a state or federal wetland. Yet Response BIO-5 provides no evidence of consultation with either the U.S. Army Corps of Engineers ("Corps") or the State Water Resources Control Board ("SWRCB") regarding the status of the feature. With respect to the jurisdiction of the Corps, the FSEIR claims that under draft regulations that are stayed, the feature would be exempted from jurisdiction. This interpretation is not supported by any specific language in the referenced Sixth Circuit Court of Appeals decision, and thus has no authority.

The FSEIR also argues that the site was never abandoned such that the feature would have been "recaptured" as a wetland under the Clean Water Act. Yet no explanation is provided for the lack of any activities at the site or changes to the wetland feature between 2007 and 2014, a period of seven years. This inactivity at the site is demonstrated in the plates included in the July 16 BSK Wetland report, at Figures 2a-2e.

¹²¹Also, the NOP/IS fails to even mention the state wetland policy (WRAPP) under Porter Cologne (fn. 49).

The FSEIR also makes the circular argument that the existence of priority pollutants within the wetland feature is irrelevant because the City does not consider the wetland feature to be jurisdictional. Again, no credible evidence is provided to support the argument that the wetland is not subject to federal jurisdiction in the first place.

The FSEIR incorrectly relies exclusively on federal law and ignores the broader jurisdiction of the state over all of its waters, including wholly constructed features. As such the SEIR fails to adequately describe the sites physical features, the relevant regulatory requirements, and the avoidance, minimization and mitigation requirements it would be subject to. State waters are more broadly defined than waters of the U.S.: “‘Waters of the state’ means any surface water or groundwater, including saline waters, within the boundaries of the state.” (Wat. Code, 13050, subd. (e).) This has been interpreted by the SWRCB to literally “include all waters within the state’s boundaries, whether private or public, including waters in both natural and artificial channels.” Contrary to RTC BIO-5, the fact that the remediation at the site was at one time overseen by the San Francisco Regional Water Quality Control Board (“RWQCB”) has no bearing on whether the feature would be considered jurisdictional by the SWRCB. While the SWRCB may choose to follow jurisdictional determinations by the Corps, the SWRCB has much broader authorities and may also assert jurisdiction under the parameters of Water Code section 13050, subdivision (e). As the FSEIR cannot point to any jurisdictional determination by the Corps, there is nothing for the SWRCB to follow; therefore, it would follow its own regulations and orders.¹²²

As explained in comments submitted by the Alliance, the need for a Clean Water Act (“CWA”) section 404 fill permit also requires the Corps to prepare a Coastal Zone Management Act (“CZMA”) consistency finding, as required by the Bay Conservation Development Commission. (See Oct 7, SM Law, CWA 404.) The FSEIR’s attempted rebuttal of the need for a Coastal Zone Management Act (“CZMA”) consistency determination is also incorrect. In addition to claiming that the requirement does not apply because the City (not the Corps or the SWRCB) has determined that the feature is not jurisdictional, the FSEIR argues that filling the wetland would have no effect on resources in the coastal zone. As explained below, however, the wetland complex has significant habitat value to biological resources and supports coastal resources. As a result, a CZMA consistency determination is required.

To further substantiate the existence of the wetland features on the site, BSK Associates has prepared a desktop delineation for submittal to the Corps to finally resolve the issue of

¹²²See Executive Order W-59-93 attached as Exhibit N to Nov 2 Lippe FSEIR; State Water Resources Control Board Memorandum, January 25, 2001, Effect of SWANCC v. United States on the 401 Certification Program attached as Exhibit O to Nov 2 Lippe FSEIR; State Water Resources Control Board Guidance, June 25, 2004, for Regulation of Discharges to “Isolated” Waters attached as Exhibit P to Nov 2 Lippe FSEIR; State Water Resources Control Board Order NO. 2004-0004-DWQ attached as Exhibit Q to Nov 2 Lippe FSEIR; State Water Resources Control Board Resolution NO. 2008-0026 attached as Exhibit P to Nov 2 Lippe FSEIR.

jurisdiction. (See Exhibit L to Nov 2 Lippe FSEIR.) BSK determined there are 0.51 acres of permanent wetlands at the site. The delineation also explains that the wetland provides the following nexus functions with the San Francisco Bay: (I) Sediment trapping, (ii) Nutrient recycling, (iii) Pollutant trapping, transformation, filtering, and transport, (iv) Retention and attenuation of flood waters, (v) Runoff storage, (vii) Export of organic matter, (viii) Export of food resources, and (ix) Provision of life cycle dependent aquatic habitat (such as foraging, feeding, nesting, breeding, spawning, or use as a nursery area) for species.

The purpose of environmental review is to inform the public of the likely effects of carrying out a project. Here, the IS/NOP failed to accurately describe the wetland on the site, or to even provide a process by which the feature would be further investigated and the appropriate mitigation required. The information submitted by the Alliance constitutes substantial evidence of a fair argument that the Project will have a significant adverse effect on biological resources. In the alternative, per CEQA section 21166 and CEQA Guidelines section 15162, the facts described above constitute a change in circumstances since the 1998 SEIR involving, and significant new information showing, a new significant effect not previously analyzed in the 1998 SEIR. Under either standard, the OCII and the City must prepare and circulate for public comment an environmental impact report to review the Project's impacts on this wetland resource.

Despite the existence of likely jurisdictional wetlands on the site, the DSEIR ignores the Project's need for a 404 CWA fill permit and the accompanying CZMA consistency determination in the list of project approvals. (DSEIR, pp. 3-51 to 52.) The DSEIR also fails to address the potential jurisdiction of the SWRCB over wetland and other biological resources on the site. As a result of these omissions, the DSEIR fails as an informational document.

E. THE SEIR IS NOT SUFFICIENT AS AN INFORMATIONAL DOCUMENT WITH RESPECT TO NOISE IMPACTS.¹²³

1. The SEIR's Thresholds of Significance Are Unlawful under CEQA.

(a) The SEIR's use of regulatory thresholds of the San Francisco Noise Ordinance as its CEQA thresholds of significance is an error of law.¹²⁴

For purposes of both operational noise sources such as crowds and traffic and construction noise sources such as both impact and non-impact equipment, the SEIR uses regulatory thresholds of the San Francisco Noise Ordinance as thresholds of significance for CEQA purposes. This is an error of law, because it injects the question of what is "allowed," the which is the final step in the CEQA process, into the determination of "significance," which is

¹²³July 25 Lippe; July 24 Hubach; Nov 2 Lippe FSEIR, pp. 1-2, 14-15; Nov 2 Hubach.

¹²⁴July 25 Lippe; July 24 Hubach; Nov 2 Lippe FSEIR, pp. 1-2, 14-15; Nov 2 Hubach.

the first step in the CEQA process. The question of what is allowed, in both the final step of the CEQA process and in San Francisco's legislative decision to set regulatory thresholds in the Noise Ordinance, involves weighing considerations relating to the social and economic benefits of the Project. The determination of "significance" under CEQA does not.

Injecting consideration of what is "allowed" into the determination of "significance" subverts the integrity of the entire analysis. For projects for which an EIR has been prepared, both the EIR and the mandatory findings required by CEQA section 21081, the analysis starts with whether an impact is significant. A finding of significance triggers the obligation to identify and adopt feasible mitigation measures that are effective in substantially reducing the significant impact. Once all feasible and effective mitigation measures have been identified and adopted, if the impact remains significant, the agency may approve the project if it finds that social or economic considerations outweigh environmental harm. Each of these steps in the analysis is distinct.

The RTC's responses to comments conflate and confuse these steps, and thereby undermine the integrity of the analysis. This conflation of the distinct steps in the analysis explains why the FSEIR/RTC's insistence on using the San Francisco Police Code's regulatory requirements (i.e., the City's final resolution of what is allowed and what is not allowed) as thresholds of significance is inconsistent with CEQA. The Police Code's regulatory requirements reflect the City's effort to balance the protection of people from harmful noise against the need for social and economic activity. That balance does not necessarily reflect the point at which impacts become significant. Under CEQA, such balancing is also required, but not where significance is determined. In short, even where the lead agency believes an activity should be "allowed" because the social or economic considerations outweigh the environmental harm, the EIR must still disclose whether the impact is significant.

(b) The SEIR fails to use thresholds of significance based on human health and welfare.¹²⁵

The SEIR's use of regulatory thresholds of the San Francisco Noise Ordinance as its CEQA thresholds of significance and its reliance on other agencies' thresholds of significance are errors of law because the SEIR fails to use thresholds of significance based on human health and welfare. The DSEIR refers to the World Health Organization (WHO) as "perhaps the best source of current knowledge regarding the health effects of noise impacts because European nations have continued to study noise and its health effects, while the United States Environmental Protection Agency all but eliminated its noise investigation and control program in the 1970s." (DSEIR, p. 5.3-4.) The DSEIR also cites WHO's Guidelines for Community Noise and its thresholds for adverse effects of noise on people.

In contrast to many other environmental problems, noise pollution continues to

¹²⁵July 25 Lippe, pp. 4-7; July 24 Hubach, pp. 3-6, Nov 2 Lippe FSEIR, pp. 1-2, 14-15; Nov 2 Hubach.

grow and it is accompanied by an increasing number of complaints from people exposed to the noise. The growth in noise pollution is unsustainable because it involves direct, as well as cumulative, adverse health effects.

(WHO, Guidelines for Community Noise, p. vii.)

Specific effects to be considered when setting community noise guidelines include: interference with communication; noise-induced hearing loss; sleep disturbance effects; cardiovascular and psycho-physiological effects; performance reduction effects; annoyance responses; and effects on social behaviour.

(WHO, Guidelines for Community Noise, p. v.)

The scope of WHO's effort to derive guidelines for community noise is to consolidate actual scientific knowledge on the health impacts of community noise and to provide guidance to environmental health authorities and professionals trying to protect people from the harmful effects of noise in non-industrial environments.

(WHO, Guidelines for Community Noise, p. iii.)

As discussed by Mr. Hubach:

WHO's night-time standard for sleep disturbance inside bedrooms is 30 dBA, and outside bedrooms with "window open (outdoor values)" is 45 dBA. WHO's night-time and daytime standard for "speech intelligibility and moderate annoyance" for inside dwellings is 35 dBA. For outdoor living areas, WHO's daytime and evening standard for moderate annoyance is 50 dBA and for serious annoyance is 55 dBA.

(July 24 Hubach, p. 3.) Yet, despite citing the WHO Guidelines, the DSEIR fails to use these standards as its thresholds of significance, and finds that "ambient plus project" noise levels much higher than the WHO's standards for harmful noise are less than significant.

Another human health and welfare based standard is provided by the State of California:

State regulations include requirements for the construction of new hotels, motels, apartment houses, and dwellings other than detached single-family dwellings that are intended to limit the extent of noise transmitted into habitable spaces. These requirements are collectively known as the California Noise Insulation Standards and are found in Title 24 of the California Code of Regulations.

The State of California updated its Building Code requirements with respect to

sound transmission, effective January 2014. Section 1207 of the California Building Code (Title 24 of the California Code of Regulations) establishes material requirements in terms of sound transmission class (STC) 13 rating of 50 for all common interior walls and floor/ceiling assemblies between adjacent dwelling units or between dwelling units and adjacent public area. The previous code requirements (before 2014) set an interior performance standard of 45 dBA from exterior noise sources. This requirement will be re-instated in July of 2015.

(DSEIR, p. 5.3-10.) DSEIR does not tell us what buildings in area comply with this code. (See DSEIR § 5.3.3.4 [Sensitive Receptors], and Table 5.3-4.) However, as Mr. Hubach observes:

Table 5.3-8 shows that all three receptors chosen for analysis will add construction noise to pre-existing ambient noise levels that already exceed the health and welfare based standards discussed above. As a result of construction operations (assuming all noise producing construction operations occur at the same time, noise levels at the Madrone Residential Tower will rise from 70.1 to 70.9 dBA (hourly Leq), at the Hearst Residential Tower from 71.2 to 80.8 dBA (hourly Leq), and at UCSF Hospital from 67 to 72.8 dBA (hourly Leq).

(July 24 Hubach, p. 4.) Since the Project's noise, when added to background or ambient noise, exceeds the above health and welfare based standards, the impact is significant even if the impact does not violate the San Francisco Police Code.

2. The SEIR's Use of "Ambient plus Increment" Thresholds of Significance for All Noise Impacts Is Legal Error.¹²⁶

As described by Mr. Hubach in the context of operational noise impacts (Impact NO-5), the DSEIR uses a series of "ambient plus increment" thresholds. As discussed by Mr. Hubach, using "ambient plus increment" thresholds where existing noise levels are already high:

disregards the fact the Project will make severe conditions worse. In addition, using these "ambient plus increment" thresholds for operational noise results in an unsustainable gradual increase in ambient noise. It is a formula for ever-increasing noise levels because each new project establishes a new, higher, baseline; then when the next project is approved, the incremental change will be added to the new baseline.

(July 24 Hubach, p. 5.)

By ignoring the severity of existing noise levels and only looking to the "de minimis" nature of the Project's incremental effect, the DSEIR's noise impact determinations violate

¹²⁶July 25 Lippe; July 24 Hubach Nov 2 Lippe FSEIR, pp. 1-2, 14-15; Nov 2 Hubach.

CEQA. (See *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 120 (“CBE”) “[T]he relevant question”... is not how the effect of the project at issue compares to the preexisting cumulative effect, but whether “any additional amount” of effect should be considered significant in the context of the existing cumulative effect. [footnote omitted] In the end, the greater the existing environmental problems are, the lower the threshold should be for treating a project’s contribution to cumulative impacts as significant. [footnote omitted]”).¹²⁷ *Communities* and *Kings County* teach that the significance of a cumulative impact depends on the environmental setting in which it occurs, especially the severity of existing environmental harm.

3. The Construction Refinements and New Project Require Recirculation.

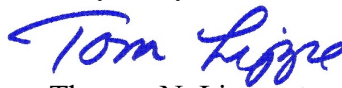
As noted above, the RTC describes a number of “construction refinements,” including using dewatering generators, using a soil treatment pug mill, and removing rapid impact compaction from the construction plan and a new Project Variant. With respect to the air quality impacts of these construction refinements and new Project Variant, the RTC finds these changes do not create a new significant noise impact, or a substantial increase in severity of a previously identified significant noise impact, and therefore, recirculation is not required.

As described in the Nov 2 Hubach letter, the construction refinements and new Project Variant will create new significant impacts. The RTC’s findings to the contrary reflect the same flawed “existing ambient plus project increment” thresholds of significance discussed above regarding noise impacts.

III. CONCLUSION

For the reasons described above, the Board of Supervisors should grant this appeal and void the OCII’s certification of the SEIR.

Very Truly Yours,



Thomas N. Lippe

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¹²⁷*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 720-21 [“They contend in assessing significance the EIR focuses upon the ratio between the project’s impacts and the overall problem, contrary to the intent of CEQA.... We find the analysis used in the EIR and urged by GWF avoids analyzing the severity of the problem and allows the approval of projects which, when taken in isolation, appear insignificant, but when viewed together, appear startling. Under GWF’s ‘ratio’ theory, the greater the overall problem, the less significance a project has in a cumulative impacts analysis. We conclude the standard for a cumulative impacts analysis is defined by the use of the term ‘collectively significant’ in Guidelines section 15355 and the analysis must assess the collective or combined effect of energy development”].)

EXHIBIT 1



Technical Consultation, Data Analysis and
Litigation Support for the Environment

2656 29th Street, Suite 201
Santa Monica, CA 90405

Matt Hagemann, P.G, C.Hg.
(949) 887-9013
mhagemann@swape.com

November 20, 2015

Thomas N. Lippe
The Law Offices of Thomas N. Lippe
201 Mission Street, 12th Floor
San Francisco, CA 94105

**Subject: Comments on the Event Center and Mixed-Use Development Project at
Mission Bay Blocks 29-32**

Dear Mr. Lippe:

We previously reviewed the October 23, 2015 Final Subsequent Environmental Impact Report (FSEIR) for the Event Center and Mixed-Use Development at Mission Bay Blocks 29-32 Project (“Project”) and submitted a November 2, 2015 letter addressing deficiencies in the FSEIR’s impact analyses. After submission of our November 2 letter, we reviewed the CEQA findings rejecting the alternative project site proposed by Mission Bay Alliance (MBA) and the new health risk assessment in the FSEIR. We have determined that the rejection of the MBA alternative location based on the claim that it would have more severe air quality impacts is unjustified. We have also confirmed that the new health risk assessment in the FSEIR does not alter the conclusions in our November 2, 2015 letter that the SEIR fails to adequately evaluate the Project’s health risks.

Failure to Adequately Evaluate Project Health Risk

In our November 2 letter, we found that the health risk assessment conducted in the FSEIR was inadequate for the following three reasons:

1. The FSEIR failed to provide a project-specific health risk assessment for the Project;
2. The FSEIR’s cumulative health risk assessment does not account for all foreseeable sources of toxic air contaminant (TAC) emissions; and
3. The FSEIR failed to incorporate updated child breathing rates, set forth by the Office of Environmental Health Hazard Assessment (OEHHA) in their 2012 and 2015 recent guidance.

We have reviewed the FSEIR’s updated health risk assessment, and have determined that it does not change the conclusions made in our November 2 letter.

Failure to Assess Individual Health Risk from Proposed Project

The FSEIR’s updated health risk assessment is based on revisions to the Project description that would make a number of changes affecting toxic air contaminants, including locating the proposed emergency generators above grade, rather than within the parking structure on Lower Parking Level 1, as originally proposed in the DSEIR (FSEIR, p. 14-118). While this change in location reduces the Project’s health risk impact, it does not reduce it to below applicable significance thresholds, nor does it change the fact that both the DSEIR and FSEIR incorrectly rely upon cumulative criteria used to identify Air Pollutant Exposure Zone (APEZ) communities to make significance determinations.

As previously discussed in our November 2 letter, the FSEIR fails to assess the Project’s individual health risk. Instead, the FSEIR assesses only the Project’s cumulative health risk impact. This approach, however, is inadequate, as CEQA requires the assessment of both cumulative and project-specific impacts. The Project’s individual health risk should have been compared to a threshold of significance for project-specific impacts, such as the Bay Area Air Quality Management District’s (BAAQMD) project-level significance threshold of 10 in one million.¹ This is the threshold of significance used by the majority of California air districts.²

Our November 2 letter demonstrated that the Project’s excess cancers were well in excess of the 10 in one million threshold used by BAAQMD (see table below) (DSEIR, Table 5.4-11, p. 5.4-49).

DSEIR Health Risk Assessment			
Sensitive Receptor	Project Risk	Threshold	Exceed?
	<i>Excess Cancers in One Million</i>		
UCSF Hearst Tower Child Resident	46	10	Yes
UCSF Hearst Tower Adult Resident	38	10	Yes
UCSF Hospital Child Resident	42	10	Yes

This analysis relied upon data from the DSEIR’s health risk assessment. When the Project-level risk from the FSEIR’s health risk assessment is compared to this same threshold, we still find that the Project poses a significant health risk at three of the four sensitive receptors (see table below) (FSEIR, Table 5.4-11 Revised, p. 14-121).

FSEIR Health Risk Assessment			
Sensitive Receptor	Project Risk	Threshold	Exceed?
	<i>Excess Cancers in One Million</i>		
UCSF Hearst Tower Child Resident	18	10	Yes
UCSF Hearst Tower Adult Resident	8	10	No
UCSF Hospital Child Resident	12	10	Yes

¹ “California Environmental Quality Act Air Quality Guidelines.” BAAQMD, May 2011, available at: http://www.baaqmd.gov/~media/Files/Planning%20and%20Research/CEQA/BAAQMD%20CEQA%20Guidelines_May%202011_5_3_11.ashx, p. 5-3

² “Health Risk Assessments for Proposed Land Use Projects,” California Air Pollution Control Officers Association 2009, page 11, available at: http://www.capcoa.org/wp-content/uploads/2012/03/CAPCOA_HRA_LU_Guidelines_8-6-09.pdf.

The health risk posed to a child resident of 18 in one million at the UCSF Hearst Tower well exceeds the 10 in one million threshold, nearly doubling it. Therefore, even using these updated risk values, the Project will still, by itself, have a significant health risk impact.

Failure to Include All Local Sources in Cumulative Analysis

In our November 2, 2015 letter we explained that, by relying on citywide modeling that omits local impacts from new mobile-source emissions within the Project vicinity, the DSEIR’s cumulative health risk assessment is not representative of all foreseeable sources of diesel particulate matter. We pointed out that the Mission Bay EIR provides that, at buildout, the proposed developments are anticipated to generate approximately 218,549 vehicle trips per day, and approximately 2,684 truck trips per day.³ We demonstrated that a significant portion of that new development would occur within the 1,000 foot radius used by the SEIR to evaluate cancer risk. We also pointed out that construction emissions from major developments within the area, while analyzed, were not included in the citywide model. We concluded that the DSEIR greatly underestimated the cumulative health risk by omitting these foreseeable future sources.

The FSEIR’s new health risk assessment does not correct these omissions. The new assessment uses the same values, assumptions, and sources for the non-Project “2014 Background Risk” as the analysis in the DSEIR (see tables below).

DSEIR Background Cancer Risk (DSEIR, Volume 3, pdf p. 1225)

Source	UCSF Hearst Tower		UCSF Hospital Receptor
	Child Resident	Adult Resident	Child Resident
Background at the maximally impacted receptor	26	26	44

FSEIR Background Cancer Risk (FSEIR, Volume 6, pdf p. 412)

Scenario	Units	Dormitory Receptor		Hospital Child Receptor
		Child Resident	Adult Resident	
Diesel PM Cancer Potency Factor (CPF) ¹	[mg/kg-day] ⁻¹	1.1	1.1	1.1
Excess Cancer Risk from Uncontrolled Construction Emissions ^{2,3}	[in a million]	54 55	2.8 2.9	28
Excess Cancer Risk from Tier 4 Controlled Construction Emissions ^{2,3}	[in a million]	7.7 8.6	0.40 0.45	4.0 4.1
Excess Cancer Risk from Tier 2 + ARB NOx VDECS Controlled Construction Emissions ^{2,3}	[in a million]	9.2 11	0.48 0.55	4.8 4.9
Excess Cancer Risk from Operational Traffic Emissions ⁴	[in a million]	7.2	7.2	7.2
Excess Cancer Risk from Emergency Diesel Generators ⁴	[in a million]	30	30	30
Excess Cancer Risk from South Street Tower Emergency Diesel Generator ⁵	[in a million]	0.085	0.050	0.0045
Excess Cancer Risk from 16 th Street Tower Emergency Diesel Generator ⁵	[in a million]	0.033	0.019	0.013
Excess Cancer Risk from GSW Arena Emergency Diesel Generators ⁵	[in a million]	0.12	0.072	0.038
2014 Background Risk ⁶	[in a million]	26	26	44

Accordingly, the objection that this non-Project cumulative risk does not include all foreseeable sources as set out in our November 2 letter still applies.

³ “Final Mission Bay Subsequent Environmental Impact Report.” San Francisco Planning Department, September 17, 1998, available at: <http://www.sfocii.org/index.aspx?page=61>

Cumulative Analysis Omits Excess Cancers Caused by Regional TAC Sources

The SEIR states that it relies upon a radius of 1,000 feet from the Project fence line to assess cumulative risk (p. 5.4-17, 5.4-50, 5.4-56). This buffer distance is consistent with BAAQMD guidance,⁴ which requires the consideration of all “sources within 1,000 foot radius” when determining cumulative health risk impacts.⁵ The DSEIR also notes that this buffer distance is consistent with studies conducted by the California Air Resources Board (CARB), in which it found “ground-level TAC emissions to return to background levels” at a distance beyond 1,000 feet (p. 5.4-56).⁶ However, regardless whether a particular source attenuates at 1,000 feet, it is improper to ignore regional transport of TACs from sources beyond 1,000 feet where there is evidence that the combined effect of those sources would result in a substantial increase in cancer risk. Ignoring material levels of regional TAC sources that are generated from multiple sources beyond 1,000 feet results in a failure to assess the actual excess cancers attributable to all cumulative sources of TACs. Because the SEIR does in fact ignore the excess cancers attributable to regional or global background TACs, cumulative health risk impacts at the Project site are greatly underestimated.

The SEIR utilizes risk values from a local-scale citywide modeling effort conducted in 2012 to represent background ambient risk at the Project site (DSEIR p. 5.4-11 to 12), and then combines the Project’s health risk with this “background” risk to determine whether or not the Project would have a cumulatively considerable impact (DSEIR, App. AQ, Table 6.1-8; FSEIR, App. AQ2, Refined Table 6.1-8). This citywide model, however, is not representative of ambient background risks, as it only takes into account risk from local emission sources. According to *The San Francisco Community Risk Reduction Plan: Technical Support Documentation*, which describes the methods and specific emission sources used within this model, “...the dispersion modeling, from which the maps are derived, produced concentrations and risk estimates from direct emissions. The maps themselves therefore portray concentrations of directly emitted PM2.5 and cancer risk associated with directly emitted TAC at locations near the sources of these emissions. The results do not reflect regional or long-range transport of air pollutants. Nor do they include the effects of the chemical transformation (formation or loss) of pollutants.”⁷ As such, the “background” risk used by the SEIR, in combination with the Project-specific risk, does not accurately represent the cumulative risk within the Project area.

⁴ “California Environmental Quality Act Air Quality Guidelines.” BAAQMD, May 2011, p. 5-15

“The risk and hazards analysis for assessing potential cumulative impacts should follow the risk screening guidance described in *Recommended Methods for Screening and Modeling Local Risks and Hazards...*”

⁵ “Recommended Methods for Screening and Modeling Local Risks and Hazards.” BAAQMD, May 2011, *available at*:

<http://www.baaqmd.gov/~media/Files/Planning%20and%20Research/CEQA/BAAQMD%20Modeling%20Approach.ashx?la=en>, p. 6

⁶ See also California Environmental Quality Act Guidelines Update, Proposed Thresholds of Significance, May 3, 2010, BAAQMD, pp.41, 43 (finding that TAC concentrations from identified sources approach background levels at 1,000 feet).

⁷ “The San Francisco Community Risk Reduction Plan: Technical Support Documentation.” BAAQMD, December 2012, *available at*:

http://www.gsweventcenter.com/Draft_SEIR_References%5C2012_12_BAAQMD_SF_CRRP_Methods_and_Finding_s_v9.pdf, p. 37

The DSEIR attempts to justify limiting cumulative sources to those generated within 1,000 feet, stating that because “the contribution of project emissions would be greatly dispersed through both distance and intervening structures...their contribution would be expected to be minimal” (p. 5.4-56). This statement, however, addresses only the dispersal of a particular project’s emissions and the attenuated effect of that particular project on receptors beyond 1,000 feet. The statement provides no justification for ignoring the combined effects of multiple projects that may have impacts at a particular location even if they are not within 1,000 feet of the Project site. Considering such effects is one of the purposes of a cumulative analysis.

Other air districts, such as the South Coast Air Quality Management District (SCAQMD), and CARB recognize the importance of considering regional transport of TACs in cumulative analysis. According to CARB’s *Air Quality and Land Use Handbook: A Community Health Perspective*, (“Land Use Handbook”), “The broad concept of cumulative air pollution impacts reflects the combination of regional air pollution levels and any localized impacts. Many factors contribute to air pollution levels experienced in any location. These include urban background air pollution, historic land use patterns, the prevalence of freeways and other transportation corridors, the concentration of industrial and commercial businesses, and local meteorology and terrain.⁸ The Land Use Handbook continues on to state, “Urban background levels are a major contributor to the overall risk from air toxics in urban areas...When localized elevated air pollutant levels were measured, they were usually associated with local ground-level sources of toxic pollutants. The most common source of this type was busy streets and freeways. The impact these ground-level sources had on local air quality decreased rapidly with distance from the source. Pollutant levels usually returned to urban background levels within a few hundred meters of the source. These results indicate that tools to assess cumulative impacts must be able to account for both localized, near-source impacts, as well as regional background air pollution.”⁹ Therefore, it is extremely important that “both localized, near-source impacts, as well as regional background air pollution” be considered when assessing cumulative health risk impacts.

Simply because emission concentrations from individual sources significantly decrease with distance does not mean that these sources do not contribute to overall risk from air toxics in urban areas. As is explained in SCAQMD’s *Final Methodology to Calculate Particulate Matter (PM) 2.5 and PM2.5 Significance Thresholds*, “When fugitive dust enters the atmosphere, the larger particles of dust typically fall quickly to the ground, but smaller particles less than 10 microns in diameter may remain suspended for longer periods, giving the particles time to travel across a regional area and affecting receptors at some distance from the original emissions source. Fine PM2.5 particles have even longer atmospheric residency times.”¹⁰ Since diesel exhaust particulate matter, a known toxic air contaminant (TAC), is composed of

⁸ “Air Quality and Land Use Handbook: A Community Health Perspective.” CARB, April 2005, *available at:* <http://www.arb.ca.gov/ch/handbook.pdf>, p. 39

⁹ “Air Quality and Land Use Handbook: A Community Health Perspective.” CARB, April 2005, *available at:* <http://www.arb.ca.gov/ch/handbook.pdf>, Appendix C, p. C-3

¹⁰ “Final Methodology to Calculate Particulate Matter (PM) 2.5 and PM2.5 Significance Thresholds.” SCAQMD, October 2006, *available at:* <http://www.aqmd.gov/docs/default-source/ceqa/handbook/localized-significance->

both coarse (PM10) and fine particulate matter (PM2.5), impacts from regional, long-transporting PM should have been included in the SEIR's cumulative health risk assessment.¹¹

There is evidence to further support our conclusion that regional sources contribute substantially to background health risks, and that health risk from these regional sources were not included in the SEIR's cumulative analysis. First, the DSEIR states that "the 100 per million excess cancer cases is...consistent with the ambient cancer risk in the most pristine portions of the Bay Area based on BAAQMD regional modeling," which suggests that the regional contribution to background excess cancers at the Project site would, at the very least, be equal to approximately 100 in one million (p. 5.4-13). Furthermore, the FSEIR states that this background excess cancer risk is due to globally transported TACs (p. 13.13-27). Therefore, if the health risk from both regional and local sources were included in the SEIR's cumulative impact assessment, contributions from background sources alone would exceed the 100 in one million threshold. Since this is not the case with regards to the SEIR's analysis, it is clear that regional sources were not included.

Second, although the citywide model did not include health risk impacts from regional sources, the model did disclose a substantial citywide background concentration of PM2.5 from non-local sources.¹² This background PM2.5 concentration was determined by measuring the actual PM2.5 concentrations at each monitoring station, and then by subtracting the modeled PM2.5 concentrations from the measured value. This resulted in a regional background PM2.5 value of 8.06 µg/m³, which is an order of magnitude higher than the modeled PM2.5 values, which, on average, were equal to approximately 0.55 µg/m³. Based on the relation of modeled PM2.5 to measured PM2.5, it is evident that actual concentrations of PM2.5 are primarily derived from regional or global sources, not from local sources.. Diesel Particulate Matter (DPM), which is a known TAC, is largely composed of fine particulate matter (PM2.5); thus PM2.5 can be used as a proxy for DPM in health risk assessments. Based on the high levels of measured PM2.5 that are not accounted for in the local citywide model, we conclude that there may be substantial sources of regional DPM that are not accounted for.

Again, it is important to note that the citywide model used to determine Air Pollution Exposure Zones did not include the health risks from regional emission sources:

When discussing the maps and drawing conclusions from them, it is important to consider what they portray and how they were produced. Specifically, the dispersion modeling, from which the maps are derived, produced concentrations and risk estimates from direct emissions. The maps

[thresholds/particulate-matter-\(pm\)-2.5-significance-thresholds-and-calculation-methodology/final_pm2_5methodology.pdf?sfvrsn=2](http://www.arb.ca.gov/research/diesel/diesel-health.htm)

¹¹ Background on Diesel Health Effects, CARB, June 21, 2011, *available at*:
<http://www.arb.ca.gov/research/diesel/diesel-health.htm>

¹² "The San Francisco Community Risk Reduction Plan: Technical Support Documentation." BAAQMD, December 2012, *available at*:
http://www.gsweventcenter.com/Draft_SEIR_References%5C2012_12_BAAQMD_SF_CRRP_Methods_and_Finding_s_v9.pdf, p. 37

themselves therefore portray concentrations of directly emitted PM_{2.5} and cancer risk associated with directly emitted TAC at locations near the sources of these emissions. The results do not reflect regional or long-range transport of air pollutants. Nor do they include the effects of the chemical transformation (formation or loss) of pollutants.

The modeling results, in particular maps of impacts of all sources combined, are intended to aid local planning efforts by identifying areas where emission reductions or other efforts may be implemented to help protect current and future residents from major local sources of air pollution. Impacted areas were identified by comparing modeled results of local contributions to CRRP thresholds. For cancer risk, this local contribution was used directly for comparison to a CRRP threshold. For PM_{2.5}, the local contribution was added to a background concentration for comparison to a CRRP threshold.

To estimate the background concentration of PM_{2.5}, monitored levels from six locations (Figure 10) were compared to the value predicted from dispersion modeling for the base year (2010) at those locations. Monitoring data from a special study conducted in 2008 were used along with routinely collected data from the BAAQMD routine monitoring site at the Arkansas Street site for the same year.

Table 14. Measured and modeled PM_{2.5} concentrations (µg/m³) and their differences at San Francisco monitoring sites.

Monitoring Location	Measured Value (µg/m ³)	Modeled Value (µg/m ³)	Difference (µg/m ³)
BAAQMD Arkansas St	9.10	0.88	8.22
SFDPH Arkansas St	8.90	0.88	8.02
Southeast Community Center	9.30	0.84	8.46
Muni Maintenance Yard	8.90	0.44	8.46
Potrero Recreation Center	7.60	0.21	7.39
Malcolm X Academy	7.90	0.06	7.84
Average Difference			8.06

The average difference between the monitored and modeled values (8.06 µg/m³; Table 14) was used as the citywide ambient level for PM_{2.5}. This difference was added to the predicted value at each receptor site for comparison to the CRRP threshold for PM_{2.5}.¹³

In sum, the SEIR omits regional sources of TACs in its cumulative health risk assessment. This omission is material because regionally or globally transported TACs substantially contribute to health risk impacts. As such, the SEIR's cumulative health risk assessment is not representative of all cumulative sources, as the background health risks relied upon only account for local sources.

¹³ *Id.*

Failure to Utilize Values from Updated Health Risk Assessment Guidelines

As comments on the DSEIR objected, the DSEIR failed to incorporate recommended age specific inhalation rates set forth by OEHHA in their 2012 and 2015 guidance into their health risk assessment. We discussed the consequences of this failure in our November 2 letter; however, we relied upon information from the DSEIR's outdated health risk assessment. Therefore, in an effort to determine if this same conclusion can be made with regard to the new health risk assessment provided in the FSEIR, we reviewed that updated health risk assessment.

Review of both health risk assessments demonstrates that the DSEIR and the FSEIR fail to use these updated age-specific breathing rates for children and infants in their health risk assessments, and as a result, the Project's health risk impacts are greatly underestimated. We maintain that prior to certification of the FSEIR an updated health risk assessment should be prepared to include these updated values.

As was discussed in our November 2 letter, we conducted a simple analysis in an effort to demonstrate the effect that use of these updated breathing rates can have on estimated health risk values. Our analysis demonstrated that if all other exposure variables are held constant, the use of current recommended breathing rates would nearly double a child resident's health risk, when compared to a health risk that uses outdated breathing rates, such as in the DSEIR and FSEIR. This simple analysis did not use site specific information, and was intended to provide an example of the effect that adjustments to this critical parameter can have on health risk. In an effort to provide a more site-specific assessment, we conducted an additional analysis, as discussed herein.

The FSEIR uses the following default values and input parameters to estimate health risk (Volume 6, Table 6.1-7, pp. 411).

Exposure Parameter			Child Resident		Adult Resident		Hospital Child	
			Construction	Operation	Construction	Operation	Construction	Operation
DBR	Daily Breathing Rate	L/kg-day	581	302	302	302	581	581
ET	Exposure Time	hrs/24 hrs	1	1	1	1	1	1
EF	Exposure Frequency	days/year	350	350	350	350	365	365
ED	Exposure Duration	years	2	70	2	70	1	1
AT	Averaging Time	days	25550	25550	25550	25550	25550	25550
IF	Intake Factor	(m ³ /kg-day)	0.016	0.290	0.0083	0.290	0.0083	0.0083
ASF	Age Sensitivity Factor	-	10	1.7	1	1	10	10
MAF	Modeling Adjustment Factor	-	-	-	-	-	-	-

While the old OEHHA guidance allowed for only one breathing rate for a child (581 L/kg-day), and one breathing rate for an adult (302 L/kg-day), the updated OEHHA guidance requires that different

breathing rates be used for an infant from ages zero to two (1090 L/kg-day), for a child from ages two to sixteen (745 L/kg-day), and for an adult from ages sixteen to seventy (290 L/kg-day) (see table below).¹⁴

Table 3.1. Recommended Point Estimates for Long-Term Daily Breathing Rates

	3 rd Trimester	0<2 years	2<9 years	2<16 years	16<30 years	16<70 years
	L/kg-day					
Mean	225	658	535	452	210	185
95th Percentile	361	1090	861	745	335	290
	m³/day					
Mean	15.3	6.2	10.7	13.3	15.0	13.9
95th Percentile	23.4	11.2	16.4	22.6	23.5	22.9

Furthermore, the updated OEHHA guidance requires that an age sensitivity factor (ASF) of 10 be used for infant exposures, and an ASF of 3 be used for child exposures. Therefore, using these updated breathing rates and age sensitivity factors, calculating and summing age specific risks for each age bracket, and using the FSEIR’s other exposure parameters as listed in the table above, we estimated the following project-specific health risk (see table below).

Total Project Cancer Risk	Child Resident	Adult Resident	Hospital Child
FSEIR Assessment	18	8	12
BAAQMD Threshold	10	10	10
Exceed?	Yes	No	Yes
SWAPE Assessment	31	11	17
BAAQMD Threshold	10	10	10
Exceed?	Yes	Yes	Yes
Percent Increase	71%	42%	45%

As you can see, when age specific breathing rates from the updated OEHHA guidance are used, the Project’s health risk increases by as much as 71 percent.¹⁵ Furthermore, the adult resident health risk increases from 8 in one million to 11 in one million, which exceeds the 10 in one million threshold. By relying upon outdated breathing rates, the FSEIR is greatly underestimating the Project’s health risk.

¹⁴ “Risk Assessment Guidelines: Guidance Manual for Preparation of Health Risk Assessment.” Office of Environmental Health Hazard Assessment, February 2015, available at:

http://oehha.ca.gov/air/hot_spots/hotspots2015.html

¹⁵ We calculated a 70-year health risk in an effort to demonstrate the effects of the updated breathing rates compared to the breathing rates used in the FSEIR. When a 30-year exposure duration is used, as is recommended in the updated OEHHA guidance, changes to the health risk are negligible. For example, the health risk for a child resident for a 70-year exposure is 31 in one million and for a 30-year exposure is 30 in one million. Similarly, the adult resident health risk is 11 in one million for both exposure durations. This is due to the adjustment in breathing rates between the 16 to 30 year age bracket (335 L/kg-day) and the 16 to 70 year age bracket (290 L/kg-day).

We were unable to conduct an updated cumulative analysis due to lack of data available to us. As previously discussed, the background risks used in the SEIR were taken from a citywide modeling effort. However, neither the DSEIR nor the FSEIR provide the annual average concentrations these background risks were derived from. According to the FSEIR, the methods used in this citywide model follow “BAAQMD’s existing health risk assessment methodology protocols,” which means that the background risks were estimated using the same outdated breathing rates as the FSEIR (p. 13.13-50). Furthermore, the FSEIR relies upon the BAAQMD County Surface Street Screening Tables for San Francisco County to estimate emissions from mobile sources (Volume 6, Table 6.1-4, pp. 408). Similar to the citywide model, this screening tool also estimates a 70-year cancer risk using these outdated breathing rates. As such, the cancer risk from these mobile sources is also likely to increase when updated breathing rates are applied.

Even though we were unable to conduct a cumulative health risk assessment, our analysis demonstrates that when these updated breathing rates are applied, the health risk at each sensitive receptor substantially increases. As a result, when the background risk and risk from mobile-sources are estimated using OEHHA’s updated breathing rates, the cumulative risk at each sensitive receptor location will substantially increase, which may result in an exceedance of the 100 in one million cumulative health risk threshold.

Unjustified Rejection of Pier 80 Alternative Site Based on Health Risks

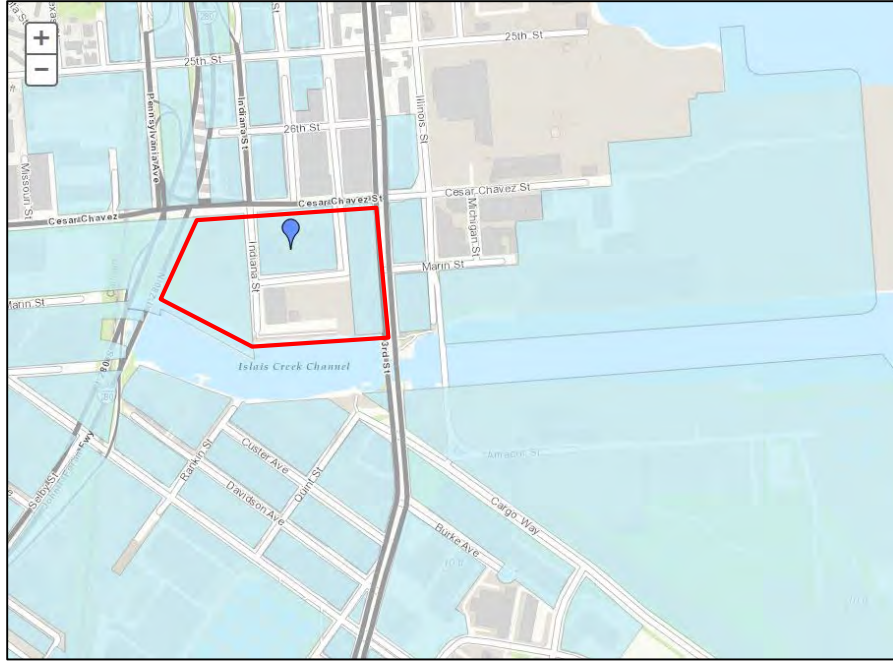
The Mission Bay Alliance submitted comments in which they identified an alternative site located near San Francisco’s Pier 80 that would both meet fundamental Project objectives and substantially reduce environmental impacts. The Project’s CEQA findings reject this site. The rejection is based in part on the finding that, because the MBA Alternative Site is located in an Air Pollution Exposure Zone, it would result in substantially more severe air quality health risk impacts than the Project.

Our analysis, based on available data from the City of San Francisco, demonstrates the contrary. Specifically, we evaluated the health risk impacts of the alternative location, and compared them to Project location’s impacts, as proposed in the FSEIR. Our findings demonstrate that the health risk impacts at the alternative location would be substantially less when compared to the health risk impacts at the proposed Project site.

The alternative location identified by the Mission Bay Alliance is an approximately 21-acre site located just east of Pier 80. Consistent with the methods used in the FSEIR to determine health risk impacts, we determined what portion of the Project site was located within an Air Pollutant Exposure Zone (APEZ). Using the San Francisco Property Information Map¹⁶ we found that approximately 75 percent of this site is located within an APEZ (see figure below).¹⁷

¹⁶ San Francisco Property Information Map, available at: <http://propertymap.sfplanning.org/?dept=planning>

¹⁷ Parcels located within an APEZ are highlighted in blue, and the alternative site is outlined in red in the figure below.



Even though the alternative site would place some portion of the Project within an APEZ, it is still the superior option when compared to the currently proposed location for several reasons.

First, the entire site is not located within an APEZ. Of the 21-acre site, approximately 15 acres are within an APEZ, and approximately 6 acres are not within an APEZ. The Project is much smaller than the alternative location, only taking up a portion of the site. For example, the arena would only require 7 acres of the 21-acre site. Therefore, if placed strategically, only a fraction of the arena would need to be located within an APEZ. The figure below demonstrates how this could be achieved.



Second, although the Project would be located within an APEZ at this alternative site, it would not be required to comply with the enhanced ventilation requirements set forth by Article 38, as it is not a sensitive use development.¹⁸ The purpose of Article 38 is to protect the public health and welfare by establishing an Air Pollutant Exposure Zone and imposing an enhanced ventilation requirement for all urban infill sensitive use development within the Air Pollutant Exposure Zone. Sensitive use developments are defined as any building or facility designed for residential use, or any facility containing child daycares, schools, and hospitals.¹⁹ Using this definition, the Project is not considered to be a sensitive use development, and as such, is not subject to the enhanced ventilation requirement under Article 38.

This conclusion is further supported by the San Francisco Planning Department. According to a July 29, 2015 Preliminary Project Assessment, when a “project site is located within an Air Pollutant Exposure Zone, as mapped and defined by Health Code, Article 38... Should the proposed project include new sensitive land uses (for example, day care facilities), those facilities would be subject to the requirements of Health Code Article 38.”²⁰

In addition to the enhanced ventilation requirement, projects located within an Air Pollutant Exposure Zone would also need to: (1) require that all stationary sources (i.e. backup diesel generators) meet Tier

¹⁸ Article 38 of the San Francisco Health Code, available at: <https://www.sfdph.org/dph/EH/Air/Article38.asp>

¹⁹ Article 38, Section 3804, available at:

[http://library.amlegal.com/nxt/gateway.dll/California/health/article38enhancedventilationrequiredforu?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco_ca](http://library.amlegal.com/nxt/gateway.dll/California/health/article38enhancedventilationrequiredforu?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca)

²⁰ Preliminary Project Assessment, San Francisco Planning Department, July 29, 2015 available at: <http://www.sf-planning.org/ftp/files/notice/2015-004256PPA.pdf>

4 requirements, and (2) quantify and minimize construction emissions. According to the FSEIR, the proposed diesel generators will already meet these Tier 4 requirements (p. 14-118). Furthermore, the FSEIR is proposing to implement multiple mitigation measures, such as the use of Tier 2 off-road equipment, to minimize construction emissions (p. 14-120). Therefore, relocating the Project at this alternative site would not require implementation of additional mitigation measures.

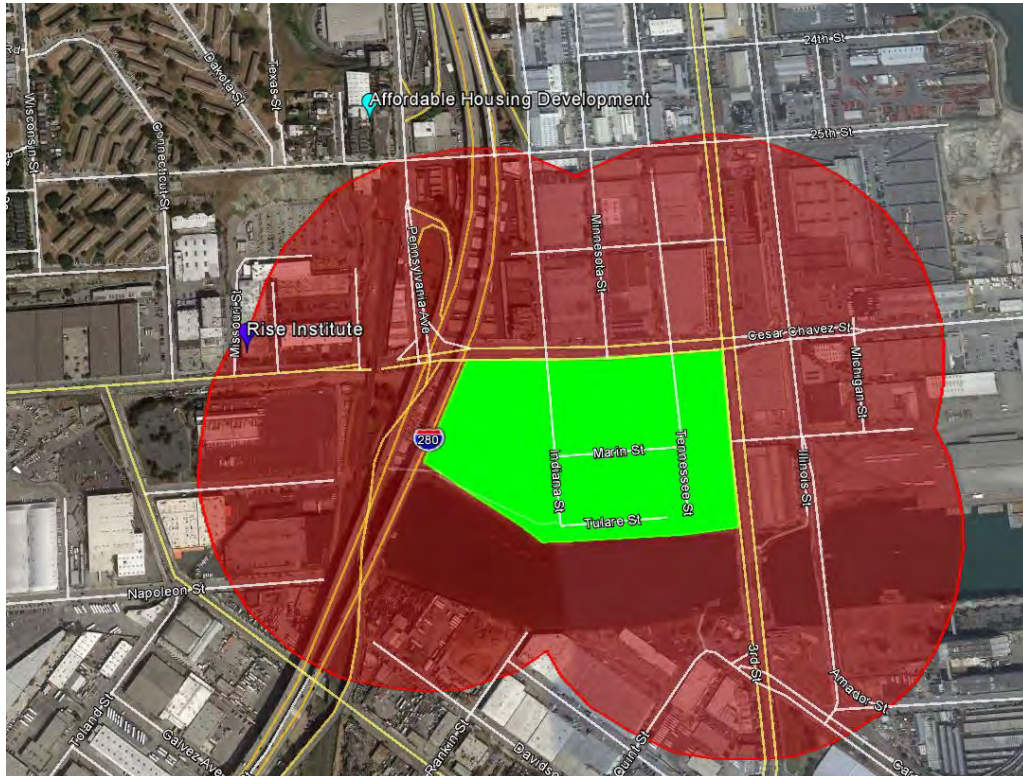
Third, because the proposed land uses would be farther from sensitive receptors, the MBA Alternative Site would reduce health risk impacts caused by the Project itself compared to the preferred location. The Project would generate new sources of toxic air contaminants including, diesel generators, on-road vehicles, and off-road equipment. Since the Project does not propose to locate sensitive receptors on-site, it would not expose on-site sensitive receptors to toxic air contaminants. Accordingly, we assessed the impacts to existing and foreseeable future off-site receptors. Based on the San Francisco July 2015 Zoning Map, the majority of the areas surrounding the alternative Project site are zoned for industrial, commercial, and other non-residential uses (see figure below).^{21, 22}



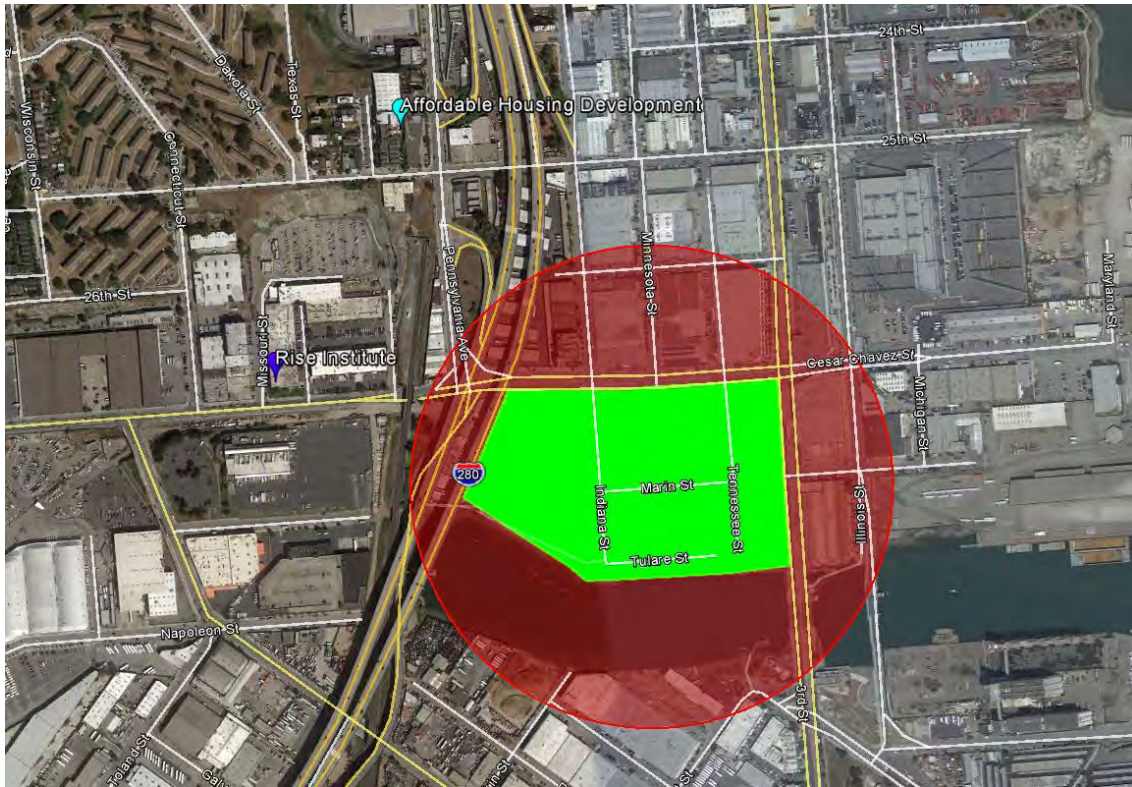
²¹ San Francisco Zoning Map, July 2015, available at: <http://www.sf-planning.org/modules/showdocument.aspx?documentid=9016>

²² The parcels colored in dark blue are zoned as Production, Distribution, and Repair Districts (PDR). According to Section 210.7 of Article 2 of the San Francisco Planning Code, PDR “districts provide space for a wide variety of PDR (production, distribution and repair) and other non-residential activities in districts where these uses are free from inherent economic and operational competition and conflicts with housing, large office developments, and large-scale retail, which are not permitted in these districts.”

As a result, there should be few, if any, sensitive receptors permitted in the future within the vicinity of this alternative site because residential use is not permitted. We relied upon resources provided by the San Francisco Planning Department to determine if there were existing sensitive receptors within the area. Utilizing the same 1,000-foot zone of influence as the FSEIR to assess health risks from Project emissions, we identified two sensitive receptors: (1) the Rise Institute approximately 760 feet northwest of the site; and (2) an affordable housing development approximately 1,020 feet north of the site (see figure below).



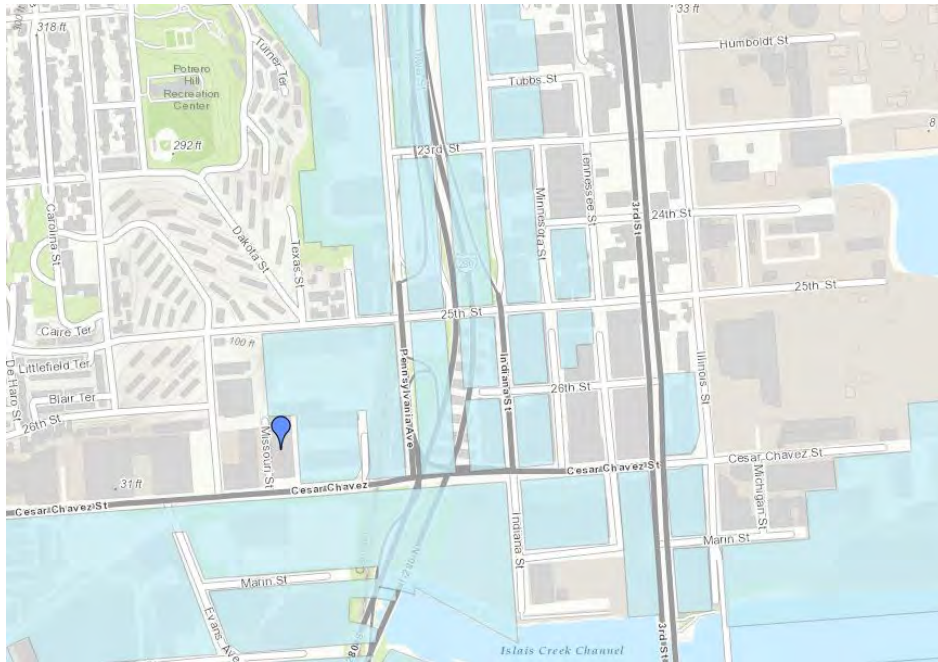
It should be noted that the two identified sensitive receptors would only be within or close to 1,000 feet of the alternative site if the Project were built directly adjacent to Interstate 280, which would most likely not occur. As demonstrated in the figure below, when a 1,000 foot radius is taken from the center of the site, both of the identified sensitive receptors are well out of range of the alternative site, with the Rise Institute approximately 1,600 feet away, and the affordable housing development approximately 1,800 feet away.



Assuming that the Project would not be developed directly adjacent to Interstate 280, we find that this alternative location would not expose sensitive receptors to substantial air pollutants because all would be beyond the 1,000 foot zone of influence used in the SEIR. Furthermore, even if the Project were developed directly adjacent to Interstate 280, the nearest sensitive receptor, the Rise Institute, would be 760 feet from the project, which is much farther from the Project than the nearest sensitive receptors are from the Project at the preferred location. For example, at the preferred location the Project is only 200 feet from sensitive receptors at the Hearst Tower and only 560 feet from the UCSF Hospital. Note that neither the DSEIR (p. 5.4-49) nor the FSEIR (p. 14-121) determines that the risk to sensitive receptors located 800 feet from the Project at the Madrone Mission Bay Residential Towers would be greater than 10 excess cancers. When compared to the health risk impact of the Project itself at the currently proposed site, which would exceed the project-level health risk threshold of 10 in one million at three of the four sensitive receptors, we find that the alternative location is the better option.

Fourth, the Rise Institute, the existing sensitive receptor that is potentially within the 1,000 foot zone of influence used by the SEIR to evaluate cumulative impacts is not itself within an APEZ (see figure below).²³

²³ San Francisco Property Information Map, available at: <http://propertymap.sfplanning.org/?dept=planning>



Thus, based on the SEIR's own approach to determining significance, there would be no significant impact to this receptor from the Project. Due to lack of available data, we were unable to conduct a full, site-specific health risk assessment to determine health risk impact values at this alternative location. However, even without a health risk assessment, based on the location of sensitive receptors and the APEZ we can still conclude that, when compared to the current Project site, the proposed alternative site would have a substantially reduced health risk impact.

Sincerely,

Paul Rosenfeld, PhD

Jessie Jaeger

EXHIBIT 2



DRAFT ENVIRONMENTAL IMPACT REPORT

801 Brannan and One Henry Adams Streets Project

PLANNING DEPARTMENT CASE NO. 2000.618E

STATE CLEARINGHOUSE NO. 2003112070

Draft EIR Publication Date:	June 22, 2011
Draft EIR Public Hearing Date:	July 28, 2011
Draft EIR Public Comment Period:	June 23, 2011 – August 8, 2011



**SAN FRANCISCO
PLANNING
DEPARTMENT**

Written comments should be sent to:
Environmental Review Officer | 1650 Mission Street, Suite 400 | San Francisco, CA 94103

IMPACTS

Air quality impacts from land development projects result from project construction and operation. Construction emissions, primarily dust generated by earthmoving activities and criteria air pollutants emitted by construction vehicles, would have a short-term effect on air quality. Operational emissions, generated by project-related traffic and by combustion of natural gas for building space and water heating, would continue to affect air quality throughout the lifetime of the project.

Significance Criteria

A project would have a significant air quality effect on the environment if it were to:

- Conflict with or obstruct implementation of the applicable air quality plan.
- Violate any air quality standard or contribute substantially to an existing or projected air quality violation.
- Result in a cumulatively considerable net increase of any criteria air pollutant for which the project region is non-attainment under an applicable federal, state, or regional ambient air quality standard (including releasing emissions that exceed quantitative thresholds for ozone precursors).
- Expose sensitive receptors to substantial pollutant concentrations.
- Create objectionable odors affecting a substantial number of people.

As stated above, in 2010 BAAQMD adopted new significance thresholds for air quality for CEQA analysis. Under the new BAAQMD *CEQA Air Quality Guidelines* and thresholds,¹⁵⁸ the significance thresholds for criteria air pollutant emissions from project construction and operations have generally been lowered. The new thresholds are as follows: for ROG, NO_x, and PM_{2.5}, a net increase of 54 pounds per day or 10 tons per year (tpy) would be considered significant, while for PM₁₀, a net increase of 82 pounds per day or 15 tpy would be considered significant. For CO, an increase would be considered significant if it leads to or contributes to CO concentrations exceeding the State Ambient Air Quality Standard (SAAQS). Quantification of the CO concentrations would not be required if a project is consistent with the local congestion management program and plans, and if traffic volumes at affected intersections are below 44,000 vehicles per hour, or below 24,000 vehicles per year in tunnel-like conditions. For construction-period impacts, the same thresholds apply for ROG, NO_x, PM_{2.5}, and PM₁₀, except that the thresholds for PM_{2.5} and PM₁₀ apply only to exhaust emissions. There are no quantitative thresholds for construction dust emissions; instead, impacts are considered less than significant if the

¹⁵⁸ BAAQMD, *California Environmental Quality Act (CEQA) Air Quality Guidelines*, June 2010; and adopted Thresholds of Significance, June 2010. Available online at <http://www.baaqmd.gov/Divisions/Planning-and-Research/CEQA-GUIDELINES/Updated-CEQA-Guidelines.aspx>, accessed May 2, 2011.

BAAQMD Best Management Practices are employed to control dust during construction activities, including demolition and excavation.

BAAQMD considers projects that exceed these criteria air pollutant standards also to result in a cumulatively considerable air quality impact upon the region. According to BAAQMD, no further cumulative analysis should be required beyond the analysis of whether a proposed project's impacts would contribute considerably to ambient levels of pollutants or GHGs,¹⁵⁹ with the exception of the following cumulative risk and hazard analysis for toxic air contaminants.

For health risks and hazards resulting from emissions of toxic air contaminants, BAAQMD recommends either that a project be found to be in compliance with a "qualified community risk reduction plan," or that significance thresholds be used for both construction and operational emissions based on commonly used standards employed in health risk assessment. The following are thresholds for project-specific impacts: (1) an increase in lifetime cancer risk of 10 chances in one million, (2) an increase in the non-cancer risk equivalent to a chronic or acute "Hazard Index" greater than 1.0,¹⁶⁰ or (3) an increase in the annual average concentration of PM_{2.5} in excess of 0.3 micrograms per cubic meter. BAAQMD also recommends cumulative thresholds of 100-in-one-million cancer risk, a Hazard Index greater than 10.0, and a PM_{2.5} concentration greater than 0.8 micrograms per cubic meter. Unlike the volume-based thresholds for criteria air pollutants noted above, the toxic air contaminant thresholds are used for specific receptor locations when a risk analysis is required for specific project components, such as stationary sources (common in industrial operations) or the use of diesel-powered equipment, including construction equipment.

Approach to Analysis

The URBEMIS model was used to determine the proposed project's criteria air pollutant emissions as well as those from the two variants. A Health Risk Assessment was also conducted to determine if the proposed project would expose sensitive receptors to substantial levels of pollution. The results of these analyses are presented in an Air Quality Technical Report for this project (AQTR).¹⁶¹ This methodology section summarizes the approaches, while more detail is provided in the impact analysis.

¹⁵⁹ *Ibid.*

¹⁶⁰ Hazard Index represents the ratio of expected exposure levels to an acceptable reference exposure levels.

¹⁶¹ Donald Ballanti, Certified Consulting Meteorologist, *Air Quality Impact Report and Health Risk Assessment for the 801 Brannan and One Henry Adams Project* (AQTR), San Francisco, March 4, 2011, p. 4-5. This analysis is available for public review at the San Francisco Planning Department, 1650 Mission Street, Fourth Floor, San Francisco as part of Case File 2000.618E.

- All contractors shall use equipment that meets ARB's most recent certification standard for off-road heavy-duty diesel engines.

The implementation of **Mitigation Measure M-AQ-7** could potentially reduce the construction health risk impacts. However, the effectiveness of these mitigation measures in reducing health risks is unknown at this time. Since it cannot be stated with certainty that cancer risk, non-cancer, or PM2.5 concentrations would be reduced to below the BAAQMD-recommended significance thresholds, this impact is conservatively judged as *significant and unavoidable with mitigation* for the proposed project, or either variant.

Impact AQ-8: Operation of the proposed project, or either variant, would expose sensitive receptors to substantial levels of air pollutants from roadway mobile sources and stationary sources, including PM2.5 and other TACs associated with cancer, and non-cancer health risks, which would exceed the BAAQMD project-level cancer risk threshold of significance of 10 in one million. (Significant and Unavoidable)

Mobile Sources

As discussed above, proximity to high traffic volume roadways creates exposure to toxic air contaminants. A Health Risk Assessment was conducted for the project and its variants to determine if the proposed project, or either variant, would expose sensitive receptors to substantial levels of pollution.¹⁶⁹ Mobile-source diesel particulate, PM2.5 and TOG (Total Organic Gases) concentrations on the two project sites were evaluated with the EPA approved dispersion model CAL3QHCR. The definition of links and traffic volumes were identical to those used by the San Francisco City and County Department of Public Health's preliminary analysis of mobile-source particulate impacts. The model was run on one year of meteorological data provided by the Bay Area Air Quality Management District from the Mission Bay monitoring site in San Francisco. Vehicle volumes from the SF CHAMP traffic model maintained by the San Francisco County Transportation Agency were used. Emission factors were determined using the CT-EMFAC program, the California Department of Transportation's emission model, for the County of San Francisco. Emission factors assumed a 2012 vehicle mix, which is conservative since construction ends in 2014.

Permitted Stationary Sources

The vicinity of the two project sites includes a number of existing sources of air pollutants. There are 21 sources of air pollutants permitted by the BAAQMD within the project sites' zone of influence for air

¹⁶⁹ Donald Ballanti, AQTR, *op. cit.*

quality analysis (1,000-ft). Based on toxic risk screening using data mandated by the BAAQMD, 10 permitted sources (backup diesel generators) in the project sites' zone of influence have associated cancer risk values greater than the individual source threshold of 10 in one million, the BAAQMD TAC screening level. For the 10 permitted sources that failed the screening procedure, the ISCST-PRIME air pollution model was used to analyze the impacts of these 10 permitted sources on the new residences at the two project sites.¹⁷⁰ Actual locations of the permitted sources were determined during a field reconnaissance.¹⁷¹ Two sources at the San Francisco Hall of Justice/County Jail complex could not be located so they were, as a worst-case assumption, assumed to be as located at the point of minimal distance to the project sites (i.e., at the southwest corner of that parcel). All sources utilized BAAQMD default stack parameters. Building wake effects were included. The ISCST-PRIME model was run for the same ground-based receptors defined for the CAL3QHCR model. The program was run on the same weather file used for the CAL3QHCR program. For all other permitted sources, BAAQMD permit HRAs, adjusted screening values or unadjusted screening values for cancer risk, non-cancer health hazards and PM2.5 concentration were used to assess health effects.

Health Risk Assessment for Mobile and Stationary Sources

The modeling procedures described above provided TOG, diesel PM and PM2.5 concentrations separately for mobile sources and for 10 permitted stationary sources (diesel generators) that were modeled using the ISCST-PRIME model. The risk components for each TAC were computed for each receptor point. The BAAQMD's screening cancer risk values for permitted sources not modeled were summed and added to the calculated risk for each receptor point. Data are shown for the receptor at each site with the maximum cancer risk for each source type (roadway or point source).

The BAAQMD *CEQA Guidelines* provide that a project would have a project-level significant air quality impact if any of the following thresholds to be exceeded:

1. Expose sensitive receptors to substantial levels of TACs such that the probability of contracting cancer for the maximally exposed individual (MEI) exceeds 10 in one million from an individual source within the 1,000-foot zone of influence.
2. Expose sensitive receptors to TACs from an individual source within the 1,000-foot zone of influence such that a non-cancer Hazard Index of 1.0 would be exceeded.
3. Expose sensitive receptors to, or incrementally increase localized annual average concentrations of PM2.5 exceeding 0.3 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$).

¹⁷⁰ *Ibid.*

¹⁷¹ Donald Ballanti site reconnaissance on December 6, 2010.

BAAQMD also recommends cumulative thresholds of 100-in-one-million cancer risk, a Hazard Index greater than 10.0, and a PM_{2.5} concentration greater than 0.8 micrograms per cubic meter from all sources within the zone of influence for those receptors within 1,000 feet of the project site. (Cumulative Roadways plus Cumulative Point Sources).

Particulate Matter (PM_{2.5})

Maximum predicted PM_{2.5} concentrations at the 801 Brannan site and One Henry Adams site are shown in Table 21 on the following page. The data in Table 21 is for Receptor 11, located at the Eighth Street/Brannan Street corner of the project site. Cumulative roadway concentrations represent the contribution of traffic within roughly 1,000 feet of the site.

801 Brannan Site

Table 21 indicates that the individual source project-level threshold of significance for PM_{2.5} would be exceeded at the 801 Brannan site by the contribution from the I-80 Freeway directly west of the project site, with a concentration of 0.33 µg/m³. All other roadways would be below the 0.3 µg/m³ standard. The cumulative concentration of PM_{2.5} from all point sources in the project vicinity is below the 0.3 µg/m³ threshold.¹⁷² Because at least one of the PM_{2.5} thresholds of significance would be exceeded at the 801 Brannan site, the proposed project, or either variant, would have a significant PM_{2.5} TAC impact as stated in the summary statement above, Impact AQ-8: Operational Health Risk – TACs, including PM_{2.5}.

One Henry Adams Site

Table 21 on the following page indicates that the individual source project-level threshold of significance for PM_{2.5} concentration would not be exceeded at the One Henry Adams site under the proposed project, or either variant. Therefore, sensitive receptors at the One Henry Adams site would not be exposed to elevated levels of PM_{2.5}. None of the individual roadways near the site was found to exceed the project-level 0.3 µg/m³ threshold. The cumulative PM_{2.5} concentration of 0.369 would not exceed the cumulative threshold of significance of 0.8 µg/m³.¹⁷³ Therefore, PM_{2.5} thresholds of significance would not be exceeded at the One Henry Adams site, and there would be no health risk impacts from exposure to PM_{2.5} at the One Henry Adams site.

¹⁷² Donald Ballanti, AQTR, *op. cit.*

¹⁷³ *Ibid.*

Table 21 PM2.5 Concentrations			
Source	Concentration ($\mu\text{g}/\text{m}^3$)	Threshold ($\mu\text{g}/\text{m}^3$)	Exceeds Threshold
801 Brannan site			
Cumulative Roadway	0.42	0.8	No
Individual Roadways > 0.3: I-80 (only exceedance)	0.33	0.3	Yes
Cumulative Point Sources	0.12	0.3	No
Individual Point Sources > 0.3: (no exceedances)	na	0.3	na
Total Cumulative PM2.5 (Cumulative Roadways + Cumulative Point Sources)	0.525	0.8	No
One Henry Adams site			
Cumulative Roadway	0.27	0.8	No
Individual Roadways > 0.3: (no exceedances)	None	0.3	na
Individual Point Sources > 0.3: (no exceedances)	None	0.3	na
Cumulative Point Sources	0.373	0.8	No

Source: Donald Ballanti, *Air Quality Impact Report and Health Risk Assessment for the 801 Brannan/One Henry Adams Project* (AQTR), San Francisco, March 2011, Tables 3 and 4.

Cancer and Non-Cancer Health Risks

Tables 22 and 23 on the following pages provide a summary of the results for cumulative and individual source of cancer and non-cancer health risks at the 801 Brannan and One Henry Adams sites, respectively. Cancer risks related to roadway sources are due to exposure to diesel particulate and TOG from vehicle exhaust. Point source cancer risks are almost exclusively due to exposure to diesel particulate emissions from back-up generators. Cumulative roadway cancer and non-cancer risks are based on CAL3QHCR modeling of emissions from nearby roads and freeways. The contributions of individual roads were also examined to determine which exceed the individual source thresholds. Cumulative point source cancer and non-cancer risks are based on ISTSC-Prime modeling of emissions and BAAQMD screening values for identified permitted sources within 1,000 feet of the project sites. By

Table 22				
Summary Cancer and Non-Cancer Health Risks for the 801 Brannan Site				
Source	TAC	Cancer Risk	Non-Cancer Acute Hazard Index	Non-Cancer Chronic Hazard Index
Cumulative Roadway	DPM	130/million	-	0.05
	TOG	12/million	0.006	0.02
	Total	142/million	0.006	0.07
Individual Roads: I-80	DPM	97.5/million	-	0.036
	TOG	9.3/million	0.008	0.008
	Total	106.8/million	0.008	0.044
Brannan St.	DPM	16/million	-	0.006
	TOG	2/million	0.002	0.002
	Total	18/million	0.002	0.008
Eighth Street	DPM	11/million	-	0.004
	TOG	1.4/million	0.002	0.002
	Total	12.4/million	0.002	0.006
Cumulative Point Sources	DPM	17/million	-	0.063
Individual Point Sources > 10/million: None				
Plant Number (See Figure 36)				
19722				
15296	DPM	2.84/million	-	0.001
9347	DPM	2.85/million	-	0.001
9347	DPM	5.96/million	-	0.002
19597	DPM	2.75/million	-	0.001
17695	DPM	0.006/million	-	0.00002
16399	DPM	0.006/million	-	0.00002
13853	DPM	0.67/million	-	0.0002
13781	DPM	0.20/million	-	0.00007
19701	DPM	0.005/million	-	0.00002
19701	DPM	0.07/million	-	0.00003
	DPM	0.003/million	-	0.00001
Total All Sources		159/million	0.006	0.133

Source: Donald Ballanti, *Air Quality Impact Report and Health Risk Assessment for the 801 Brannan/1Henry Adams Project* (AQTR), San Francisco, March 2011, Table 5.

Table 23				
Summary Cancer and Non-Cancer Health Risks for the One Henry Adams Site				
Source	TAC	Cancer Risk	Non-Cancer Acute Hazard Index	Non-Cancer Chronic Hazard Index
Cumulative Roadway	DPM	81/million	-	0.03
	TOG	9.5/million	0.004	0.01
	Total	90.5/million	0.004	0.04
Individual Roads: I-80	DPM	54/million	-	0.02
	TOG	4.5/million	0.006	0.005
	Total	58.5/million	0.006	0.0025
Cumulative Point Sources	DPM	15.7/million	-	0.051
Individual Point Sources > 10/million: None				
Plant Number (See Figure 36)				
19722				
15296	DPM	0.03/million	-	0.0001
9347	DPM	0.03/million	-	0.0001
9347	DPM	0.02/million	-	0.0001
19597	DPM	0.02/million	-	0.0001
17695	DPM	0.02/million	-	0.0001
16399	DPM	0.02/million	-	0.0001
13853	DPM	0.05/million	-	0.0002
13781	DPM	0.01/million	-	0.00003
19701	DPM	0.001/million	-	0.000006
19701	DPM	0.003/million	-	0.00001
	DPM	0.001/million	-	0.000004
Individual Point Sources > 10/million:	None			
Total All Sources		106/million	0.004	0.091

Source: Donald Ballanti, *Air Quality Impact Report and Health Risk Assessment for the 801 Brannan/1Henry Adams Project* (AQTR), San Francisco, March 2011, Table 6.

considering each source as a source group, the contributions of each individual source were also examined to determine which individual source thresholds are exceeded.

801 Brannan Site

Table 22, -page 282, indicates that the project level individual source threshold of significance for cancer risk (10 in one million) would be exceeded at the 801 Brannan site for three roadways: I-80, Brannan Street, and Eighth Street. The cumulative cancer risk threshold of significance of 100 in one million would also be exceeded at the 801 Brannan site. The individual source non-cancer hazard index of 1.0 (acute and chronic) would not be exceeded, nor would the cumulative non- cancer hazard index of 10 (acute and chronic). Because at least one threshold of TAC impact significance would be exceeded at the 801 Brannan site, the proposed project, or either variant, would have a significant operational health risk impact as stated in the summary above, Impact AQ-8: Operational Health Risks – TACs, including PM2.5. Mitigation Measure M-AQ-8, below, would reduce sensitive receptor exposure to TACs by reducing resident exposure through the improvement of indoor air quality. This would be achieved through the use of filtration systems as described above. However, because Mitigation Measure M-AQ-8 would not reduce impacts to a less-than-significant with certainty, the impact would remain significant and unavoidable after mitigation.

One Henry Adams Site

Table 23 on page 283 indicates that the project level individual source threshold of significance for cancer risk (10 in one million) would be exceeded at the One Henry Adams site due to emissions from the I-80 freeway. The cumulative cancer risk threshold of significance of 100 in one million would also be exceeded at the One Henry Adams site. The individual source non-cancer hazard index of 1.0 (acute and chronic) would not be exceeded, nor would the cumulative non-cancer hazard index of 10 (acute and chronic).

Because at least one threshold of TAC impact significance would be exceeded at the One Henry Adams site, the proposed project, or either variant, would have a *significant* operational health risk impact as indicated in the summary statement above, Impact AQ-8: Operational Health Risk – TACs, including PM2.5. Mitigation Measure M-AQ-8, below, would reduce sensitive receptor exposure to TACs. However, because Mitigation Measure M-AQ-8 would not reduce impacts to a less-than-significant level with certainty, the impact would remain *significant and unavoidable with mitigation*.

MITIGATION MEASURE M-AQ-8 (OPERATIONAL HEALTH RISK – TACs, INCLUDING PM2.5):

To minimize residents' exposure to TAC-related health risks while indoors, the project sponsor has indicated that the proposed project, or either variant, would install the filtration system as required by DPH with a system whose air intake is located on the roof of the buildings and capable of removing 80 percent of PM2.5. The intake for the filtered air handling systems for the three residential buildings at the 801 Brannan site and two buildings at the One Henry Adams site shall be located to minimize exposure of residents to diesel particulate, TOG and PM2.5. Minimum exposure will be accomplished by placing filters as close as possible to the northern corner of each structure at the 801 Brannan site (Brannan Street side, towards Seventh Street) and as close as possible to the northeast corner of each structure at One Henry Adams (Rhode Island Street side, towards Division Street). Based on the risk calculation results reflecting these locations for air intake, the cumulative cancer risk in at this location would range from 59/million to 96/million, which is 40-63% lower than the maximally exposed individual (MEI) risk of 159/million.

At the One Henry Adams site, the intake for the filtered air handling system will be designed such that it is located as close as possible to the northeast corners of buildings (Rhode Island Street side, towards Division Street). Based on the risk calculation results reflecting these locations for air intake, the cumulative cancer risk in at this location would range from 64/million to 77/million, which is 28-40 percent lower than the MEI risk of 106/million.

However, the mitigation measure would not improve outdoor air quality. The air filtration systems, together with strategic location of air intakes, would reduce the cancer risk for exposure while indoors substantially. When incorporating the implementation of air filtration systems at each site, indoor risks at the 801 Brannan site would decrease to 11.8-19.2/million for cancer after mitigation and at One Henry Adams around 12.7-15.4/million for cancer risk after mitigation. However, health risk impacts under either the proposed project, or either variant, are conservatively judged to remain significant after mitigation.

Impact C-AQ-9: Operation of the proposed project, or either variant, would expose sensitive receptors to substantial levels of air pollutants from roadway mobile sources and stationary sources, including PM2.5 and other TACs associated with cancer, and non-cancer health risks, which would exceed the BAAQMD cumulative cancer risk threshold of significance of 100 in one million. (Significant and Unavoidable with Mitigation)

EXHIBIT 3

**706 MISSION STREET •
THE MEXICAN MUSEUM AND
RESIDENTIAL TOWER PROJECT
VOLUME 1 - CHAPTERS I-VIII**



**CITY AND COUNTY OF SAN FRANCISCO
PLANNING DEPARTMENT: CASE NO. 2008.1084E
STATE CLEARINGHOUSE NO. 2011042035**

DRAFT EIR PUBLICATION DATE: JUNE 27, 2012

DRAFT EIR PUBLIC HEARING DATE: AUGUST 2, 2012

DRAFT EIR PUBLIC COMMENT PERIOD: JUNE 28, 2012 - AUGUST 13, 2012

Written comments should be sent to:

Environmental Review Officer
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, CA 94103



**SAN FRANCISCO
PLANNING
DEPARTMENT**

The engine would likely be located in the basement with vents for exhaust and intake being oriented toward the north property line at or above the first floor. Development of the proposed project would introduce additional vehicular traffic in the project vicinity.

APPROACH TO ANALYSIS

This section discusses the thresholds for determining whether a project would result in a significant air quality impact. Table IV.G.4: Air Quality Significance Thresholds, below, summarizes the air quality thresholds of significance. The table is followed by a discussion of each threshold.

Table IV.G.4: Air Quality Significance Thresholds

Pollutant	Construction Thresholds	Operational Thresholds	
	Average Daily Emissions (lb/day)	Average Daily Emissions (lb/day)	Annual Average Emissions (tons/year)
Criteria Air Pollutants			
ROG	54	54	10
NO _x	54	54	10
PM ₁₀	82	82	15
PM _{2.5}	54	54	10
CO	Not Applicable	9.0 ppm (8-hour average) or 20.0 ppm (1-hour average)	
Fugitive Dust	Construction Dust Ordinance or other Best Management Practices	Not Applicable	
Health Risks and Hazards for New Sources			
Excess Cancer Risk	10 per one million		
Chronic or Acute Hazard Index	1.0		
Incremental annual average PM _{2.5}	0.3 µg/m ³		
Health Risks and Hazards for Sensitive Receptors (Cumulative from Sources within 1,000-foot zone of influence) and Cumulative Thresholds for New Sources			
Excess Cancer Risk	100 per one million		
Chronic Hazard Index	10.0		
Annual Average PM _{2.5}	0.8 µg/m ³		

Although BAAQMD’s adoption of significance thresholds in 2010 and 2011 are the subject of recent judicial actions, the Planning Department has determined that Appendix D of the BAAQMD *CEQA Air Quality Guidelines*,²⁶ in combination with BAAQMD’s *Revised Draft*

²⁶ BAAQMD *Guidelines*, Appendix D.

Impact AQ-3: Construction of the proposed project would generate emissions of PM_{2.5} and toxic air contaminants, including diesel particulate matter, at levels that would expose sensitive receptors to substantial pollutant concentrations. (Less than Significant with Mitigation) (Criterion G.4)

As discussed above, a proposed project would result in a significant health risk and hazards impact if construction activities would result in the following at the maximally exposed individual sensitive receptor (MEI): excess cancer risk of 10 per million, chronic or acute HI of 1.0, or annual average PM_{2.5} concentrations in excess of 0.3 micrograms per cubic meter. Diesel-powered construction equipment generates emissions of PM_{2.5} that is by definition diesel particulate matter (DPM), which is identified as a TAC and carcinogen by ARB. Of the pollutants emitted by construction activities, DPM is a primary concern because many toxic compounds adhere to diesel exhaust particles. Diesel fuel use also results in non-cancer hazards due to other TACs that occur in the organic compounds of diesel exhaust. The proposed residential uses would only become occupied after construction is complete. However, existing off-site residential uses would be exposed to construction pollutant emissions. The sensitive receptor locations for the proposed project are presented in Table IV.G.6: Existing and Proposed Sensitive Receptors.

Table IV.G.6: Existing and Proposed Sensitive Receptors on or near the Project Site

Name of Land Use	Street Address	Elevation	Distance to Site (ft.)
Proposed Residential Units	706 Mission St	On Site, High-rise	On site
Four Seasons Hotel and Residences	757 Market St	High-rise	300
St. Regis Residences	125 Third St	High-rise	150
Paramount Residences	680 Mission St	High-rise	100
Ritz-Carlton Club & Residences	690 Market St	High-rise	650
Wolf House Apartments	801 Howard St	Mid-rise	1,000
Child Care (Day Care) Location			
Yerba Buena Gardens Child Development Center	790 Folsom Street	Second Floor	920

Source: Aspen Environmental Group, 706 Mission Street Air Quality Technical Report, February 2012

The *Air Quality Technical Report* prepared for the proposed project analyzed whether or not construction emissions during the three-year construction period could result in adverse health effects at nearby sensitive receptors. The analysis considered sensitive receptors within the 1,000-foot zone of influence and conservatively assumed the exposed population would be a resident child (see Table IV.G.6). To accomplish this, the cancer risks are weighted by age-sensitivity factors from the state Office of Environmental Health Hazard Assessment (OEHHA) to account for the possible differences in risk associated with a population that is early-in-life during the construction emissions. This analysis weighted the construction cancer risk by a factor of 10, consistent with OEHHA recommendations for exposures that occur from

the third trimester of pregnancy to 2 years of age. Mass emissions of construction-related PM_{2.5} in the diesel exhaust from on-site diesel-powered construction equipment were entered into the project-specific ISC dispersion model to estimate ambient concentrations of PM_{2.5} for all off-site sensitive receptors (residences and day care). Concentrations of TACs that occur in the diesel exhaust were also estimated, because of their potential to result in non-cancer health hazards. Construction emissions were modeled using average emission rates with adjustment factors to account for higher short-term rates because emissions would vary during the construction period. Emissions would diminish substantially during the final phase of interior and finishing activities. In the refined dispersion model, construction emissions were modeled as volume sources with a release height of 12 feet to correspond with typical equipment tailpipe locations. The offsite receptors were placed at 10-meter intervals with the receptor heights corresponding with the actual lowest upper-floor elevations occupied by residences. Receptors were not placed within areas covered by roadways or other nearby properties unless those properties were occupied by sensitive land uses (as in Table IV.G.6). Other details on source parameters, meteorological parameters, and receptor parameters for the refined modeling and risk calculations are discussed in the *Air Quality Technical Report*.

Table IV.G.7: Summary of Risk and Hazards, Unmitigated Construction Impacts to Sensitive Receptors, shows the results of refined modeling for the proposed construction-phase emissions.

Table IV.G.7: Summary of Risk and Hazards, Unmitigated Construction Impacts to Sensitive Receptors

Location	Excess Cancer Risk (per million)	Chronic Non-Cancer Hazard Index	Acute Non-Cancer Hazard Index	Incremental Annual Average PM_{2.5} (µg/m³)
Existing Resident Child (MEI) - Off-Site Residences	27.3	0.121	0.019	0.1998
Existing Day Care - Off-Site	1.6	0.013	0.002	0.0214
Significance Thresholds	10	1.0	1.0	0.3
Significant?	Yes	No	No	No

Source: Aspen Environmental Group, 706 Mission Street Air Quality Technical Report, February 2012. ISC modeling results.

Unmitigated emissions would result in an excess cancer risk of 27.3 at the project MEI. The compact project site and lack of buffer space between the site boundary and sensitive receptors limit the ability for construction-phase emissions to disperse. The MEI location and the highest pollutant concentrations would occur at the existing residential receptors across Third Street about 100 feet to the northeast. The pollutant concentrations experienced at the nearest day care location, approximately 920 feet to the south, would be substantially lower and would not exceed the thresholds for risk or hazards.

Construction-phase risk and hazards would be dominated by the emissions of DPM and PM_{2.5}. Incremental concentrations of PM_{2.5} in the ambient air from construction-phase activity would not exceed the project-level threshold for community risk from PM_{2.5} (0.3 µg/m³). However, maximum excess lifetime cancer risk would be 27.3 per one million at the nearest sensitive receptors, which exceeds the project-level threshold (10 per million). The non-cancer hazards would be below the hazard thresholds and minor in comparison to the potential cancer risk. Mitigation would be required to address the increased cancer risk from DPM.

Construction-phase cancer risk and PM_{2.5} concentrations could be substantially reduced with implementation of feasible mitigation measures to reduce construction-related emissions. Unmitigated construction-phase impacts (Table IV.G.7) could be reduced with aggressive control of diesel construction equipment emissions. Because unmitigated construction-phase cancer risk would exceed the thresholds of significance for the nearest off-site sensitive receptor and because construction-phase cancer risk would be dominated by risk due to exposure to DPM, feasible mitigation would be needed to reduce DPM emissions from the construction equipment used on site (including excavators, cranes, and generators). Construction impacts would need to be reduced by approximately 65 percent from the level shown in Table IV.G.7 to result in an impact that is below the cancer risk threshold. An analysis of possible methods to reduce construction emissions was undertaken, as reported in the *Air Quality Technical Report*. This analysis includes a project-specific review of controlling the proposed construction fleet. For example, certain equipment can be powered primarily by electricity distributed from the grid or by propane fuel, which eliminates DPM emissions from that equipment. Similarly if equipment were to meet Interim Tier 4 diesel engine standards, or were to be retrofitted with a Level 3 Verified Diesel Emissions Control Strategy (VDECS), DPM emissions from that equipment could potentially be reduced by as much as 85 percent, depending on the engine. As part of the *Air Quality Technical Report*,⁵⁵ the sponsor coordinated with likely construction equipment fleet owners and operators to determine project-specific levels of feasible emission controls for each type of equipment in the proposed construction fleet. Emission factors reflecting the feasible controls were applied to the inventory of equipment provided by the sponsor to analyze the effectiveness of emissions minimization approaches, and the results of that review are identified as mitigation. Accordingly, Mitigation Measure M-AQ-3: Construction Emissions Minimization, shown below, specifies the necessary and feasible controls required to reduce construction emissions by 65 percent in order to result in less-than-significant impacts to off-site receptors. Table IV.G.8: Summary of Risk and Hazards, Mitigated Construction Impacts to Sensitive Receptors, shows the mitigated construction air quality impact results for risk and hazards with implementation of the Construction Emissions Minimization Plan, delineated below.

⁵⁵ *Air Quality Technical Report*, pp. 25-26.

Table IV.G.8: Summary of Risk and Hazards, Mitigated Construction Impacts to Sensitive Receptors

Location	Excess Cancer Risk (per million)	Incremental Annual Average PM_{2.5} (µg/m³)
Existing Resident Child (MEI) - Off-Site Residences	9.7	0.071
Existing Day Care - Off-Site	0.6	0.008
Significance Thresholds	10	0.3
Significant?	No	No

Source: Aspen Environmental Group, *706 Mission Street Air Quality Technical Report*, February 2012. ISC modeling results, with a 65 percent reduction of DPM emissions.

Implementation of Mitigation Measure M-AQ-3 would reduce the estimated cancer risk impacts experienced by off-site receptors to below the project-level threshold of significance.

Mitigation Measure M-AQ-3: Construction Emissions Minimization

To reduce the potential health risk resulting from project construction activities, the project sponsor shall prepare a Construction Emissions Minimization Plan (included as Appendix G) designed to reduce construction-related diesel particulate matter emissions from off-road construction equipment used at the site by at least 65 percent as compared to the construction equipment list, schedule, and inventory provided by the sponsor on May 27, 2011.⁵⁶

The project sponsor shall include all requirements identified in the Construction Emissions Minimization Plan in contract specifications for the entire duration of construction activities.

The Construction Emissions Minimization Plan shall include the following requirements, which would achieve the required 65 percent reduction in construction period diesel particulate matter emissions:

- Limit idling times by either shutting equipment off when not in use or reducing the maximum idling time to two minutes.
- Prohibit use of diesel generators for electric power because on-site distribution of electricity is available.
- Require construction contractors to use electric or propane powered devices for the following types of equipment:
 - Tower Crane
 - Fork Lifts and Manlifts
 - Portable Welders
 - Concrete Placing Booms
- Require construction contractors to use portable compressors that are either electric powered or powered by gasoline engines or engines compliant with Tier 4 standards.

⁵⁶ *Air Quality Technical Report*, Attachment A08.

- Require use of Interim Tier 4 or Tier 4 equipment where such equipment is available and feasible for use. Use of Interim Tier 4 or Tier 4 equipment would be feasible for the following types of equipment:
 - Backhoes
 - Rubber-Tired Dozers
- Require use of Tier 2/Tier 3 equipment retrofitted with ARB Level 3 Verified Diesel Emissions Control System (VDECS, which includes diesel particulate filters). The following types of equipment are identified as candidates for retrofitting with ARB-certified Level 3 VDECS (which are capable of reducing DPM emissions by 85 percent or more), due to their expected operating modes (i.e., fairly constant use at high revolutions per minute):
 - Excavators
 - Concrete Boom Pumps
 - Concrete Trailer Pumps
- Use of Tier 3 equipment for the following types of equipment:
 - Portable Cranes
 - Soil Mix Drill Rigs
 - Soldier Pile Drill Rigs
 - Shoring Drill Rigs

If the foregoing requirements are implemented, no further quantification of emissions shall be required. Alternatively, the project sponsor may elect to substitute alternative measures in the Construction Emissions Minimization Plan for review and approval by the Environmental Review Officer (ERO). Such alternative measures would be subject to demonstrating that the alternative measures would achieve the required 65 percent reduction in construction period diesel particulate matter emissions, including without limitation the following:

- Use of other late-model engines, low-emission diesel products, alternative fuels, engine retrofit technology, after-treatment products, and add-on devices such as particulate filters; and
- Other options as such become available.

The project sponsor shall submit the Construction Emissions Minimization Plan to the ERO for review and approval by an Environmental Planning Air Quality Specialist prior to the commencement of construction activities.

Level of Significance with Mitigation

Feasible control strategies to reduce DPM emissions were identified in the *Air Quality Technical Report*.⁵⁷ Mitigation Measure M-AQ-3: Construction Emissions Minimization would require on-site construction equipment to be powered primarily by electricity distributed from the grid,

⁵⁷ *Air Quality Technical Report*, pp. 25-26.

propane fuel, or the lowest-emitting engines found feasible, including engines retrofitted with diesel particulate filters. Use of an alternative fuel like propane, which is a consumer-quality gaseous fuel, would result in some TAC emissions; however, because emissions and health effects from alternative fuel use would be minor compared to the adverse effects of DPM, substantially reducing or eliminating DPM emissions would be the primary risk management strategy. By requiring that the equipment specified in the measure like cranes, excavators, forklifts, backhoes, and pumps avoid diesel fuel use or use the lowest-emitting diesel powered engines available, this construction mitigation measure would avoid 65 percent of the DPM and PM_{2.5} emissions that would otherwise occur with a comparable baseline fleet of Tier 2/Tier 3 equipment. The proposed construction fleet, emissions factors for equipment with and without controls, and the effectiveness of these controls for the project-specific construction fleet appear in the *Air Quality Technical Report*.⁵⁸

Implementation of Mitigation Measure M-AQ-3 would result in the maximum feasible emissions reductions, thereby reducing the cancer risk and PM_{2.5} concentrations to which sensitive receptors would be exposed. With the mix of diesel-powered construction equipment specified by this measure, the construction air quality impact related to health risks and hazards would be reduced to a less-than-significant level.

Operational Air Quality Impacts

Impact AQ-4: Operation of the proposed project would not violate an air quality standard or contribute substantially to an existing or projected air quality violation; nor would it result in a cumulatively considerable net increase of any criteria air pollutant for which the project region is in nonattainment under an applicable ambient air quality standard. (*Less than Significant*) (Criteria G.2 and G.3)

The potential for project-related operational emissions to violate any air quality standard or contribute substantially to an existing or projected violation is described below.

The emissions increases attributable to operation of the proposed project would be from the total of project-related stationary sources (a diesel-fueled back-up emergency generator engine and natural-gas-fired mechanical systems or boilers), operational vehicle trips generated by onsite project uses, and area sources such as use of natural gas for heating and cooking. Emissions were quantified for operation of the proposed land uses using URBEMIS, which provides average daily and annual emission rates based on the expected vehicle trip generation rates and overall land use characteristics. Project-specific details are shown in the *Air Quality Technical Report*.

⁵⁸ *Air Quality Technical Report*, Attachment A08.

Project-related stationary source emissions are based upon the following regulatory requirements:

- Back-up emergency generator engine compliant with USEPA Tier 2 emission standards, or higher, and compliant with Airborne Toxic Control Measure (ATCM) and Best Available Control Technology (BACT) in compliance with current regulations.
- Natural gas-fired mechanical systems compliant with BAAQMD Regulation 9, Rule 7 and BACT.

Total criteria pollutant emissions from the anticipated operation-related sources are quantified in Table IV.G.9: Operation-Related Daily Emissions of Criteria Air Pollutants, and Table IV.G.10: Operation-Related Annual Emissions of Criteria Air Pollutants. These tables show that the criteria air pollutant emissions would be below the applicable significance thresholds.

Table IV.G.9: Operation-Related Daily Emissions of Criteria Air Pollutants (lb/day)

Sources	ROG	NOx	Exhaust PM ₁₀	Exhaust PM _{2.5}
Proposed Back-up Generator	0.58	1.57	0.07	0.07
Proposed Mechanical Systems	1.68	4.80	1.680	1.680
Area Sources (e.g., natural gas, domestic)	14.47	4.88	< 0.005	< 0.005
Mobile Sources (vehicle trips)	8.33	7.62	< 16.82	< 3.18
Total Average Daily Emissions	25.1	18.9	18.6	4.9
Significance Thresholds (lb/day)	54	54	82	54
Significant?	No	No	No	No

Note: lb/day = pounds per day, average.

Source: Aspen Environmental Group, 706 Mission Street Air Quality Technical Report, February 2012. URBEMIS results and supporting calculations.

Table IV.G.10: Operation-Related Annual Emissions of Criteria Air Pollutants (tons per year)

Sources	ROG	NOx	Exhaust PM ₁₀	Exhaust PM _{2.5}
Proposed Back-up Generator	0.11	0.29	0.01	0.01
Proposed Mechanical Systems	0.31	0.88	0.31	0.31
Area Sources (e.g., natural gas, domestic)	2.64	0.89	< 0.005	< 0.005
Mobile Sources (vehicle trips)	1.52	1.39	< 3.07	< 0.58
Total Annual Emissions	4.6	3.5	3.4	0.9
Significance Thresholds (tons per year)	10	10	15	10
Significant?	No	No	No	No

Source: Aspen Environmental Group, 706 Mission Street Air Quality Technical Report, February 2012. URBEMIS results and supporting calculations.

Emissions from traffic at congested intersections can, under certain circumstances, cause a localized build-up of CO concentrations. However, the proposed project would be consistent with an applicable congestion management program established by the county congestion management agency for designated roads or highways, regional transportation plan, and local congestion management agency plans. The project traffic from the proposed project would not increase traffic volumes at affected intersections to more than 44,000 vehicles per hour. Nor would project traffic from the proposed project increase traffic volumes at affected intersections to more than 24,000 vehicles per hour where vertical and/or horizontal mixing is substantially limited (e.g., tunnel, parking garage, bridge underpass, natural or urban street canyon, below-grade roadway). Because these criteria would be met for the proposed project, there would be no violation of ambient air quality standards with respect to localized CO. Therefore, no further analysis would be required, and there would be no significant impact related to CO concentrations.

The unmitigated criteria air pollutant emissions during the operational phase would be below the thresholds of significance. Project operational criteria air pollutant emissions that are at levels below the applicable thresholds would not violate an existing ambient air quality standard, contribute substantially to an existing or projected air quality violation, or result in a cumulatively considerable net increase in emissions of any criteria air pollutant. Therefore, effects related to operational criteria air pollutant emissions would be less than significant, and no mitigation measures are necessary.

Impact AQ-5: Operation of the proposed project would not generate emissions of PM_{2.5} and toxic air contaminants, including diesel particulate matter, at levels that would expose sensitive receptors to substantial pollutant concentrations. (*Less than Significant*) (Criterion G.4)

The proposed project would introduce new stationary sources to the project vicinity, including a diesel-fueled compression-ignition internal combustion engine for use as a back-up generator. Table IV.G.11: Summary of Risk and Hazards, Proposed Project New Sources, shows the results of refined modeling for the proposed new back-up generator engine. Impacts from the back-up generator were analyzed with the project-specific air dispersion modeling and risk assessment using the ISC3-Prime dispersion model. Both proposed on-site and existing off-site receptors (residences and day care) were included in the modeling and risk calculations. For on-site and off-site receptors, the analysis conservatively assumed that the exposed population would begin as a resident child and experience continuous lifetime (70-year) exposure to operational emissions. To accomplish this, the cancer risks were weighted by age-sensitivity factors from the state OEHHA for infants, children through 15 years of age, and adults aged to 70 years. The refined dispersion modeling considered the worst-case emissions release parameters with a horizontal engine exhaust outlet near ground level to correspond with typical equipment tailpipe locations for the backup generator. Other details on source parameters, meteorological

Table IV.G.11: Summary of Risk and Hazards, Proposed Project New Sources

Project Source, Impact to Maximally Exposed Individual	Excess Cancer Risk (per million)	Chronic Non-Cancer Hazard Index	Acute Non-Cancer Hazard Index	Incremental Annual Average PM_{2.5} (µg/m³)
On-site Diesel Back-up Generator (1,490 hp) - On-Site Residences (MEI)	5.6	0.0063	0.0010	0.0104
Significance Thresholds	10	1.0	1.0	0.3
Significant?	No	No	No	No

Source: Aspen Environmental Group, *706 Mission Street Air Quality Technical Report*, February 2012. ISC modeling results.

parameters, and receptor parameters for the refined modeling and risk calculations are discussed in the *Air Quality Technical Report*.

The proposed project would also add natural gas-fired systems for heating, ventilation, and hot water, but the natural gas-fired systems would be “minor, low-impact sources” and unlikely to pose a significant community risk or hazard or adverse health impact.⁵⁹ In addition, there would be some incremental risk associated with emissions from project-related traffic. However, project trip generation rates would be less than 1,200 vehicle trips per day, and because this level of traffic would be well below 10,000 vehicles per day (the level for a “minor, low-impact” road, according to BAAQMD),⁶⁰ project traffic would not substantially contribute to incremental risk.

The location of the MEI for the proposed back-up generator engine would be a new project resident on the fourth floor of the north side of the project site, the lowest elevation where outdoor air could be drawn into residences. The maximum excess lifetime cancer risk due to this individual source would be 5.6 per one million. Other existing offsite residential receptors in the project area would be further from the proposed source so that risk and hazards would be lower than those shown in Table IV.G.11. Compared with the proposed new back-up generator engine, negligible contributions to incremental risk would occur with the proposed “minor, low-impact” natural-gas-fired systems and project traffic on surrounding roadways. No existing or proposed receptors would experience increased cancer risk or hazards exceeding the significance threshold for new sources, and the threshold for incremental PM_{2.5} concentrations would not be exceeded at any receptor. Because the proposed new back-up generator engine, proposed “minor, low-impact sources,” and project traffic would not cause potentially significant levels of increased cancer

⁵⁹ BAAQMD, *Recommended Methods for Screening and Modeling Local Risks and Hazards*, May 2011, (hereinafter referred to as “BAAQMD, *Recommended Methods*”). Available online at: <http://www.baaqmd.gov/Divisions/Planning-and-Research/CEQA-GUIDELINES/Tools-and-Methodology.aspx>. Accessed February 8, 2012.

⁶⁰ BAAQMD, *Recommended Methods*, p. 12, p. 84.

risk, hazards, or PM_{2.5} concentrations, this impact would be less than significant, and no mitigation measures are necessary.

Impact AQ-6: Operation of the proposed project would not expose new on-site sensitive receptors to substantial pollutant concentrations. (Less than Significant) (Criterion G.4)

The proposed project would introduce new residential receptors to an area affected by emissions from various existing permitted stationary sources, major roadways, and the new proposed back-up generator. In addition to the proposed generator engine, on-site sensitive receptors (residences) would be exposed to TACs emitted by the existing stationary sources and traffic on the roadways. As discussed in the “Approach to Analysis” on p. IV.G.25, the analysis for new receptors exposed to health risks and hazards considers all potential sources of TACs within a 1,000-foot zone of influence that may pose a significant health risk, and therefore represents a cumulative impact to new sensitive receptors.⁶¹

BAAQMD records indicate that there are 24 existing BAAQMD-permitted stationary sources of air pollutants within or near the recommended 1,000-foot radius; these are shown in Table IV.G.12: Stationary Emission Sources Within or Near a 1,000-Foot Radius of the Project Site, and in Figure IV.G.1, p. IV.G.12.

The permitted facilities in the vicinity are made up of stationary diesel engines for back-up power generators or fire water pump engines, that are for emergency use only, with some additional permitted natural gas-fired (non-diesel) heating systems. Each facility with a stationary diesel engine was included in the refined modeling as a point source of PM_{2.5}, DPM, and other contaminants. Because the BAAQMD considers non-diesel-fueled sources to be “minor, low-impact” and unlikely to pose a significant health impact,⁶² only facilities with diesel-fueled sources were modeled as stationary sources. Field observations and aerial photos were used to determine the height of the emitting sources for modeling with exhaust points on roof tiers or mezzanine levels, and emission rates were provided by the BAAQMD inventory. Each of the existing facilities with diesel sources was analyzed for the potential to cause health risks and hazards for new receptors.

⁶¹ As used in this discussion, “cumulative” means the accumulation of multiple sources of emissions on new sensitive receptors at the project site, rather than the cumulative impact of past, present, and reasonably foreseeable future projects as the term “cumulative impacts” is explained in CEQA Guidelines Sections 15065(a)(3) and 15130.

⁶² BAAQMD, *Recommended Methods*, p. 12.

Table IV.G.12: Stationary Emission Sources Within or Near a 1,000-Foot Radius of the Project Site

BAAQMD Site #	Facility Name	Street Address	Approx. Distance to Site (ft.)
9310	San Francisco Marriott Hotel	55 4th Street	400
9341	Sheraton Palace Hotel	2 New Montgomery Street	560
10110	Center for the Arts at Yerba Buena	701 Mission Street	110
13346	Third & Mission Associates	680 Mission Street	240
13843	Seagate Properties Inc.	44 Montgomery Street	1,190
13989	CFRI Market Street Corp.	799 Market Street	860
14119	Westfield Metreon LLC	101 4th Street	730
14222	Crocker Plaza Co.	1 Post Street	1,080
14223	G&G Martco LP	201 3rd Street	780
14427	Cushman & Wakefield of California, Inc.	88 Kearny Street	1,000
15560	Four Seasons Hotel and Residences	757 Market Street	200
15624	199 New Montgomery Owners Assoc.	199 New Montgomery Street	1,050
16526	Hines 55 Second Street LP	55 2nd Street	1,110
16708	San Francisco Museum of Modern Art	151 3rd Street	470
16743	Neiman Marcus	150 Stockton Street	1,150
16795	Westfield San Francisco Center	835 Market Street	960
16798	SF Museum Tower LLC	125 3rd Street	310
16974	Patelco Credit Union	156 2nd Street	1,040
18609	Stockbridge 140 New Montgomery LLC	140 New Montgomery Street	750
18763	Glenborough New Montgomery, LLC	33 New Montgomery Street	890
18804	Contemporary Jewish Museum	736 Mission Street	130
19153	Ritz-Carlton Club & Residences, San Francisco	690 Market Street	630
19929	The Moscone Center	747 Howard Street	900 to 1,300
19990	Woolf House	801 Howard Street	1,000

Source: BAAQMD, CEQA Tools & Methodology, Stationary Source Screening Analysis Tool, for San Francisco County. Available at: <http://www.baaqmd.gov/Divisions/Planning-and-Research/CEQA-GUIDELINES/Tools-and-Methodology.aspx>. Accessed March 2011.

Motor vehicle traffic flows on arterial streets in the existing local roadway system are modeled as sources of PM_{2.5}, DPM, and other TACs. The major roadways that may contribute to elevated concentrations of pollutants in the vicinity are the 10 nearby streets that have at least 10,000 vehicles in annual average daily traffic, as identified in Table IV.G.13: Major Roadways Within a 1,000-Foot Radius of the Project Site. In the refined modeling, all mobile sources on each roadway were grouped into adjacent volume sources within the public right-of-way for each street in the vicinity, and emission rates were based on San Francisco County fleet-wide average emissions per vehicle-mile-traveled within each segment. The emission rates for each stationary source and traffic on each major roadway, along with details of the source release parameters, meteorological parameters, and receptor parameters are discussed in the *Air Quality Technical*

Table IV.G.13: Major Roadways Within a 1,000-Foot Radius of the Project Site

Street Name	Annual Average Daily Traffic
Third Street	32,100
Mission Street	13,200
Fourth Street	22,810
Market Street	41,000
Kearny Street	21,100
Grant Avenue	20,900
Howard Street	23,940
New Montgomery Street	23,100
O'Farrell Street	19,700
Second Street	22,400

Source: Roadway Segment Volumes, San Francisco County Transportation Authority CHAMP Model data provided by Planning Department as of 3/2/2011

Report. All segments of the 10 major roadways within 1,000 feet of the project site were analyzed for the potential to cause health risks and hazards for new receptors.

The project would result in negligible contributions to incremental risk with the proposed “minor, low-impact” natural-gas-fired systems, and from the addition of project traffic on surrounding roadways. Therefore, these sources are not considered further in this analysis, as explained in Impact AQ-5 on pp. IV.G.38-IV.G.40.

The proposed project would include emissions from a new stationary source, the proposed back-up generator. As discussed under Impact AQ-5, the maximum excess lifetime cancer risk for new residents due to this individual source would be 5.6 in one million. The health risks and hazards found for the proposed back-up generator (Impact AQ-5) were included in this evaluation of risks and hazards for new receptors.

The individual contributions of each of the existing sources and roadways, along with the proposed back-up generator, were added together to arrive at the total health risks and hazards for the proposed new receptors, and these results were compared with the cumulative thresholds for new receptors in Table IV.G.4, p. IV.G.20. To determine whether proposed on-site residences would be exposed to substantial pollutant concentrations the analysis considers exposure from all of the existing and proposed sources that may pose a significant risk or hazard within the 1,000-foot zone of influence for the project site.

Table IV.G.14: Summary of Risk and Hazards, Proposed Project New Receptors, shows the results of refined modeling for sources potentially affecting the proposed new receptors.

Table IV.G.14 shows that the existing and proposed sources would not expose the proposed new receptors to substantial pollutant concentrations of PM_{2.5} or TACs because new receptors would

Table IV.G.14: Summary of Risk and Hazards, Proposed Project New Receptors

Individual Source, Impact to New On-Site Residences	Excess Cancer Risk (per million)	Chronic Non-Cancer Hazard Index	Incremental Annual Average PM_{2.5} (µg/m³)
On-site Diesel Back-up Generator (1,490 hp) - On-Site Residences (MEI)	5.6	0.0063	0.0104
San Francisco Marriott Hotel	2.7	0.0030	0.0050
Sheraton Palace Hotel	0.4	0.0005	0.0008
Third & Mission Associates	0.3	0.0004	0.0006
Seagate Properties Inc	0.2	0.0002	0.0004
CFRI Market Street Corp	0.3	0.0003	0.0006
Westfield Metreon LLC	0.1	0.0001	0.0002
Crocker Plaza Co	0.0	0.0000	0.0000
G&G Martco LP	0.0	0.0000	0.0001
Cushman & Wakefield of California, Inc	0.1	0.0001	0.0002
Hines 55 Second Street LP	0.1	0.0001	0.0001
San Francisco Museum of Modern Art	0.9	0.0010	0.0016
Neiman Marcus	0.0	0.0000	0.0001
Westfield San Francisco Center	3.2	0.0035	0.0058
SF Museum Tower LLC	2.7	0.0030	0.0049
Glenborough New Montgomery, LLC	0.2	0.0002	0.0003
Ritz-Carlton Club & Residences San Francisco	0.1	0.0001	0.0001
The Moscone Center	0.5	0.0006	0.0010
Wolf House	0.1	0.0001	0.0001
Third Street	3.0	0.0035	0.0373
Mission Street	2.2	0.0026	0.0276
Fourth Street	2.2	0.0025	0.0267
Market Street	6.1	0.0070	0.0743
Kearny Street	0.2	0.0002	0.0021
Grant Avenue	0.5	0.0005	0.0057
Howard Street	1.5	0.0018	0.0189
New Montgomery Street	0.8	0.0009	0.0099
O'Farrell Street	1.1	0.0013	0.0135
Second Street	0.6	0.0007	0.0080
Total	35.7	0.041	0.256
New Receptors Significance Thresholds	100	10	0.8
Significant?	No	No	No

Note: µg/m³ = micrograms per cubic meter

Source: Aspen Environmental Group, 706 Mission Street Air Quality Technical Report, February 2012. ISC modeling results.

experience excess cancer risk less than 100 per one million; a chronic non-cancer HI of less than 10.0; and an incremental PM_{2.5} concentrations less than 0.8 µg/m³. Therefore, the impact would be less than significant, and no mitigation measures are necessary.

Impact AQ-7: Construction and operation of the proposed project would not conflict with or obstruct implementation of the Bay Area 2010 Clean Air Plan (CAP), the applicable air quality plan. (*Less than Significant*) (Criterion G.1)

The most recently adopted air quality plan for the San Francisco Bay Area Air Basin is the *2010 Clean Air Plan*. The *2010 Clean Air Plan* is a road map showing how the San Francisco Bay Area will achieve compliance with the state ozone standards as expeditiously as practicable and how the region will reduce transport of ozone and ozone precursors to neighboring air basins. In determining consistency with the *2010 Clean Air Plan*, this analysis considers whether the project would (1) support the primary goals of the CAP, (2) include applicable control measures from the CAP, and (3) avoid disrupting or hindering implementation of control measures identified in the CAP.

The primary goals of the *2010 Clean Air Plan* are to attain air quality standards, reduce pollutant exposure and protect public health, and reduce greenhouse gas (GHG) emissions. The discussion of project GHG emissions appears in Section IV.H, which demonstrates that the proposed project would comply with the applicable provisions of the City's Greenhouse Gas Reduction Strategy.

The proposed project would be a high-density mixed-use infill development in a transit-oriented area that would intensify the density of land uses on the site. Development of the proposed project would generate emissions during construction (see Table IV.G.5, p. IV.G.29) and would cause an increase in emissions from mobile sources due to motor vehicle trips and from other sources (area sources and the proposed stationary sources) during the operation of the project (see Table IV.G.9 and Table IV.G.10, p. IV.G.37); as shown above, the emission increases would not exceed the applicable significance thresholds.

The analysis above illustrates that neither project construction nor operation would contribute substantial levels of emissions, and that project-related emissions would not be likely to impede attainment of the air quality standards. As the proposed project would not result in substantial, long-term increases in criteria air pollutants, the proposed project would support the primary goal of the *2010 Clean Air Plan* to attain the air quality standards.

Project sources could increase exposure of sensitive receptors to pollutants that increase public health risks. Diesel-powered construction equipment emissions would increase exposure of sensitive receptors to TACs temporarily during construction, but mitigation identified above would reduce these emissions to the maximum extent feasible and would reduce the impact to be less than significant with mitigation. The incremental exposure of receptors to TACs during

operation would be due to the presence of existing sources, one new stationary source (the proposed back-up generator), area sources, and mobile sources, but these sources would not expose receptors to substantial pollutant concentrations. As the proposed project would not expose receptors to substantial pollutant concentrations, the proposed project would support the primary goal of the *2010 Clean Air Plan* to reduce pollutant exposure and protect public health.

In summary, as the proposed project would not result in substantial, long-term increases in criteria air pollutants, TAC, or GHG emissions, the proposed project would be considered to support the primary goals of the *2010 Clean Air Plan*.

To meet the primary goals, the CAP recommends specific control measures and actions. These control measures are grouped into various categories and include stationary and area source measures, mobile source measures, transportation control measures, land use measures, and energy and climate measures. The CAP recognizes that to a great extent, community design dictates individual travel mode and that a key long-term control strategy to reduce emissions of criteria pollutants, air toxics, and GHGs from motor vehicles is to channel future Bay Area growth into vibrant urban communities where goods and services are close at hand, and people have a range of viable transportation options. To this end, the *2010 Clean Air Plan* includes 55 control measures aimed at reducing air pollution in the SFBAAB.

The measures most applicable to the proposed project are transportation control measures and energy and climate control measures. The proposed project would be consistent with energy and climate control measures as discussed in Section IV.H, Greenhouse Gas Emissions, which demonstrates that the proposed project would comply with the applicable provisions of the City's Greenhouse Gas Reduction Strategy.

The compact development of the proposed project and high availability of viable transportation options ensure that visitors could bicycle, walk, and ride transit to and from the project site instead of taking trips via private automobile. These features ensure that the project would avoid substantial growth in transportation demand of automobile trips and vehicle miles traveled. The proposed project would require an amendment to the Planning Code Zoning Map to increase the height limit at the project site, and the project would be generally consistent with the *San Francisco General Plan* as discussed in Chapter III, Plans and Policies. Transportation control measures that are identified in the *2010 Clean Air Plan* are implemented by the *San Francisco General Plan* and the Planning Code, for example, through the City's Transit First Policy, bicycle parking requirements, and transit impact development fees applicable to the proposed project. By complying with these applicable requirements, the project would include relevant transportation control measures specified by the *2010 Clean Air Plan*.

Examples of a project that could cause the disruption or delay of CAP control measures are projects that would preclude the extension of a transit line or bike path, or projects that propose excessive parking beyond parking requirements. The proposed project would add residential and other uses to a dense, walkable urban area near a concentration of regional and local transit service, services and other attractions. It would not preclude the extension of a transit line or a bike path or any other transit improvement, and as such, the proposed project would avoid disrupting or hindering implementation of control measures identified in the CAP.

For the reasons described above, the proposed project would not interfere with implementation of the *2010 Clean Air Plan*, and because the proposed project would be consistent with the air quality plan that shows how the region will improve ambient air quality and achieve the state and federal ambient air quality standards, this impact would be less than significant. No mitigation measures are necessary.

Impact AQ-8: Construction and operation of the proposed project would not expose a substantial number of people to objectionable odors. (*Less than Significant*) (Criterion G.5)

No notable odor sources would occur as part of the proposed project. There may be some potential for small-scale, localized odor issues to emerge as a result of construction activities or sources common to the proposed residential and commercial uses, such as solid waste collection or food preparation, etc. However, substantial odor sources and consequent effects to on-site and off-site sensitive receptors would be unlikely. Exposure to odors would be significant if sensitive receptors would be introduced to a location with more than five confirmed complaints per year averaged over three years. Because no confirmed odor complaints have occurred near the project site in the previous three years reported by BAAQMD, this impact would be less than significant, and no mitigation measures are necessary.

CUMULATIVE IMPACT EVALUATION

As discussed above, regional air pollution is by its very nature largely a cumulative impact. Emissions from past, present and future projects contribute to the region's adverse air quality on a cumulative basis. No single project by itself would be sufficient in size to result in regional nonattainment of ambient air quality standards. Instead, a project's individual emissions contribute to existing cumulative adverse air quality impacts.⁶³ The project-level thresholds for criteria air pollutants are based on levels by which new sources are not anticipated to contribute to

⁶³ BAAQMD, *California Environmental Quality Act (CEQA) Air Quality Guidelines*, June 2010; and adopted Thresholds of Significance, June 2010, p. 2-1. Available online at <http://www.baaqmd.gov/Divisions/Planning-and-Research/CEQA-GUIDELINES/Updated-CEQA-Guidelines.aspx>. Accessed April 18, 2012.

an air quality violation or result in a considerable net increase in criteria air pollutants. Therefore, because the proposed project's construction (Impact AQ-1) and operational (Impact AQ-4) emissions would not exceed the project-level thresholds for criteria air pollutants, the proposed project would not be considered to result in a cumulatively considerable contribution to regional air quality impacts.

Impact C-AQ-1: Construction and operation of the proposed project, in combination with other past, present, and reasonably foreseeable future projects, would not result in a cumulatively considerable contribution to exposure of sensitive receptors to significant cumulative substantial pollutant concentrations. (*Less than Significant*) (Criterion G.4)

The cumulative air quality impact analysis for health risks and hazards considers all potential sources of TACs within a 1,000-foot zone of influence that may pose a significant health risk to sensitive receptors. The methodology and assumptions used for assessing construction and operational health risks and hazards are described above (under Impact AQ-3, Impact AQ-5, and Impact AQ-6), with additional details provided in the *Air Quality Technical Report* prepared for the proposed project.⁶⁴

The proposed project's construction activities would contribute to cumulative health risks and hazards at the construction MEI. To determine the maximum potential cumulative risks and hazards during construction, the effects at the MEI for construction were added to the effects at the on-site project MEI for existing permitted sources and major roadways. This conservatively over-estimates the cumulative risk because the increased risk and hazards experience by the on-site MEI would be greater than those at the construction MEI. Cumulative sources, in addition to project construction activities, include the contribution from roadways with greater than 10,000 vehicles per day, construction of other projects, and permitted stationary sources, as well as project-generated emissions. Combining unmitigated emissions from construction, permitted sources, and roadways results in an estimated cumulative cancer risk of 77.8 in one million, less than the cumulative significance threshold of 100 in one million. The cumulative chronic Hazard Index would be less than 0.3, below the significance threshold of 10. The cumulative incremental annual average PM_{2.5} concentration would be 0.55 micrograms per cubic meter, less than the significance threshold of 0.8 micrograms per cubic meter.

Furthermore, the proposed project would be required to implement Mitigation Measure M-AQ-3, which would reduce construction emissions by approximately 65 percent. This mitigation measure is based on strategies developed by the project sponsor to control diesel construction equipment emissions and was determined to be feasible based on information obtained by the project sponsor from likely construction equipment fleet owners and operators. Therefore,

⁶⁴ *Air Quality Technical Report*, pp. 16-24.

cumulative health risks and hazards would be further reduced, and incorporation of Mitigation Measure M-AQ-3 would result in an estimated cumulative cancer risk of 60.2 in one million, less than the cumulative significance threshold of 100 in one million. The cumulative chronic Hazard Index would be less than 0.3, well below the significance threshold of 10. The annual average PM_{2.5} concentration would be 0.42 micrograms per cubic meter, less than the cumulative significance threshold of 0.8 micrograms per cubic meter.

To determine cumulative construction-phase impacts, the effects of project construction were combined with the impacts of the construction of reasonably foreseeable nearby development projects, where information about construction emissions from these projects exists or can be estimated. Reasonably foreseeable projects for purposes of the cumulative construction-phase air quality analysis are those that have filed formal applications or have construction schedules that may overlap with construction of the proposed project. The construction MEI at existing residential receptors about 100 feet to the northeast of the project site would be far enough away from most other nearby construction activities such that they would not be exposed cumulative impacts from the other construction; however, the two construction projects nearest the MEI, the Palace Hotel Project (2 New Montgomery Street) and SFMOMA Expansion (151 Third Street), could contribute to cumulative risks and hazards. These nearby construction activities are further discussed below.⁶⁵

The pollutants generated during construction of the Palace Hotel Project and SFMOMA Expansion projects would contribute to temporarily increased concentrations of air pollutants and adverse impacts on ambient air quality, concurrent with those of the proposed project if construction occurs at the same time. The results assume concurrent construction of the proposed project and these other two projects. This is a conservative assumption because the projects have different development schedules and concurrent construction may not occur.

Table IV.G.15: Summary of Cumulative Health Risk and Hazards, below, shows the result of modeling for cumulative sources, for a child resident at the construction MEI (see also Table IV.G.7, p. IV.G.32, and Table IV.G.8, p. IV.G.34). In conjunction with the impacts of construction of reasonably foreseeable nearby development projects and other stationary and mobile sources in the area (from Table IV.G.11, p. IV.G.39), project construction would contribute to temporarily increased concentrations of air pollutants and adverse impacts on ambient air

⁶⁵ Two other construction projects that would be within the BAAQMD “minimum offset distance” are the interior renovation of an existing building at 134-140 New Montgomery Street and the underground construction of the Central Subway Project along Fourth Street. As explained in the *Air Quality Technical Report* (pp. 30-31), these projects would not be likely to contribute substantially to cumulative construction-related air quality impacts.

Table IV.G.15: Summary of Cumulative Health Risk and Hazards

Sources	Excess Cancer Risk (per million)	Chronic Non-Cancer Hazard Index	Incremental Annual Average PM_{2.5} (µg/m³)
Project Construction (Offsite MEI), Unmitigated	27.3	0.121	0.1998
Palace Hotel Project, Cumulative Construction Project	Up to 20	Up to 0.1	Up to 0.1
SFMOMA Expansion Project, Cumulative Construction Project	0.4	0.001	0.0003
Existing Permitted Sources - On-Site Residences (MEI)	11.8	0.013	0.0218
Existing Major Roadway Sources - On-Site Residences (MEI)	18.3	0.021	0.2239
On-site Diesel Back-up Generator (1,490 hp) - On-Site Residences (MEI)	5.6	0.0063	0.0104
Total Sum, Project Unmitigated	77.8	0.256	0.55
Project Construction (Offsite MEI), Mitigated	9.7	0.121	0.071
Total Sum, Project Mitigated	60.2	0.256	0.42
Cumulative Significance Thresholds	100	10.0	0.8
Significant?	No	No	No

Source: Aspen Environmental Group, 706 Mission Street Air Quality Technical Report, February 2012. ISC modeling results.

quality but would not exceed the cumulative thresholds for risk and hazards for the construction MEI.

Cumulative construction-phase risk and hazards would not exceed the cumulative thresholds, and therefore would not be cumulatively considerable. Although no mitigation measures are necessary for reducing cumulative construction-phase risk and hazards, the cumulative construction-phase impact would be further reduced with implementation of Mitigation Measure M-AQ-3 identified above for project construction emissions (Impact AQ-3).

Sensitive receptors would be exposed to air pollutant concentrations from the new sources related to operation of the proposed project, including the proposed back-up diesel engine and project-related traffic, plus sources that are reasonably foreseeable, along with existing sources including major roadways. To determine the maximum potential cumulative risks and hazards during operation, the effects of these new and existing sources at the project on-site MEI were added together. The currently proposed Palace Hotel Project could include additional emergency generators, but without a specific proposal, it would be speculative to assume the presence of any new or modified stationary sources. As such, existing sources were modeled (with results in Table IV.G.14, p. IV.G.43). Any new or modified stationary source associated with the Palace Hotel Project (or any other project) would be subject to BAAQMD permitting requirements, which would require a pre-construction review of toxic air contaminant impacts and would

require the source to minimize and avoid substantial health risks. Table IV.G.15 shows the result of refined modeling for foreseeable cumulative sources as they would affect the MEI receptors. Impacts from the project sources, including the on-site back-up generator, combined with other permitted sources and roadways results in an estimated cumulative cancer risk of 35.7 in one million, less than the cumulative significance threshold of 100 in one million. The cumulative chronic Hazard Index would be 0.04, below the significance threshold of 10. The cumulative incremental annual average PM_{2.5} concentration would be 0.256 µg/m³, less than the significance threshold of 0.8 µg/m³.

The combined effects of the sources would not expose sensitive receptors to an increased cancer risk above the significance threshold for cumulative risk, and receptors would not be exposed to incremental PM_{2.5} concentrations in excess of the cumulative-level PM_{2.5} threshold. The chronic non-cancer hazard would be minor in comparison to the potential cancer risk. Because sensitive receptors would not be exposed to increased cancer risk, hazards, or PM_{2.5} concentrations from nearby major roadways and stationary sources at levels exceeding the significance thresholds for cumulative impacts, the proposed project's contribution to significant impacts would not be cumulatively considerable, and no mitigation measures are necessary.

EXHIBIT 4

Environmental Health

Article 38 of the San Francisco Health Code

Scientific studies consistently show an association between exposure to air pollution and significant human health problems. In 2008, San Francisco Health Code (HC) Article 38 was adopted to require new residential construction projects located in areas where models show poor air quality and pollution from roadways must install enhanced ventilation to protect residents from the respiratory, heart, and other health effects of living in a poor air quality area. The law was updated in 2014 to improve consistency with CEQA and streamline implementation.

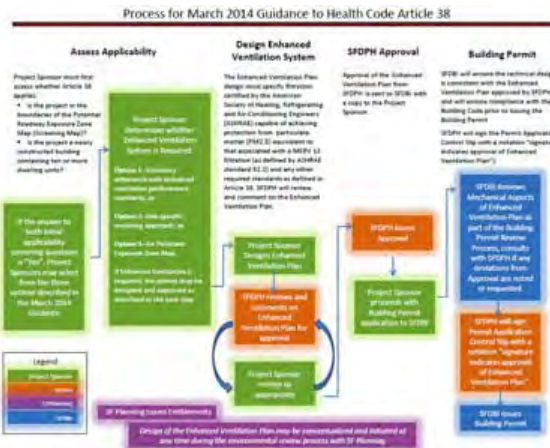
The 2014 amendments included revisions to the underlying map of the city's Air Pollution Exposure Zone--the end result of a collaborative effort with the Bay Area Air Quality Management District. The amendments codify the implementation strategy that was formalized in July 2013, when the Air Quality Program began providing several options for determining compliance with Article 38, described in our **Guidance for Project Sponsors**. New rules and regulations consistent with the 2014 amendments will be forthcoming.

Article 38 states that those buildings requiring enhanced ventilation "design a system capable of achieving the protection from particulate matter (PM2.5) equivalent to that associated with MERV 13 filtration (as defined by ASHRAE standard 52.2)". Building engineers and designers may choose the ventilation design that works best for their setting, as exemplified by **some of these examples of enhanced ventilation designs that comply with the requirements of Article 38**.

Project sponsors may refer to the **Air Pollutant Exposure Zone Map*** to determine whether their project will be required to install enhanced ventilation.

Projects located within the Air Pollutant Exposure Zone must first **submit an application** to DPH prior to or at the beginning of the CEQA entitlement process with SF Planning.

The Ventilation Plan demonstrating compliance with Article 38 must be submitted to DPH for approval prior to submittal of plans to DBI for Mechanical Permit approval. Ventilation plans should include specific information as detailed in the guidance and should include: (1) Project location (address and parcel number); (2) Map of project including all surrounding streets within 500 feet; (3) Name of assigned planner to the project from the Planning Department; and (4) The **appropriate fee** in the form of a check payable to the San Francisco Environmental Health Section. Mail all requests to: Article 38 Air Quality Assessment Manager, 1390 Market Street, Suite 210, San Francisco, CA 94102.



HELPFUL LINKS

San Francisco Health Code:

- Article 22B** Construction Dust
- Article 31** Hunters Point Shipyard
- Article 38** Enhanced Ventilation

San Francisco Public Works Code:

- Article 21** Construction Dust

California Codes

Title 17 Chapter 1

Other Websites

- California Air Resources Board
- SF Air Quality Element
- Community Air Risk Evaluation (CARE) Program

Related Documents

- Article 38 Guidance (pdf)
- Article 38 Application (pdf)
- SFDPH Fee Schedule

For buildings subject to the requirements of Article 38, enhanced ventilation must be provided to all units in a building, even those on the upper floors, as there is **compelling evidence that outdoor air quality at higher elevations is not consistently improved over air quality at street level**. In addition, a purpose of the local law is to align with CEQA mitigation requirements for new residential and sensitive uses in poor air quality areas.

*Air Pollutant Exposure Zone information may also be found by visiting the Planning Department's **Property Information Page**; if Article 38 is applicable, an entry stating that will appear at the end of the list under "Other Information" on the "Zoning" tab as shown below:

San Francisco Property Information Map
Public Access to Useful Property Information & Resources at the Click of a Mouse

Step 1: Search or Click on the Map
Search Examples: 420 Van Ness Ave. 17978017
Mission and Van Ness 2011 0218
Ferry Building

1 Dr Carlton B Goodlett Pl

Map, Map, Year, E, Link

Step 2: Review Property Information
Click tabs below to view property or parcel information.

Property Zoning: Preservation **Planning Apps** Building Permits Other Permits Complaints Appeals BBFs

Added: 8/20/2012

Control: Fringe Financial Service 1/4-mile buffer
Description: No new fringe financial service shall be permitted as a principal or accessory use within 1/4 mile of an existing fringe financial service
[Read more about this regulation](#)

Added: 8/20/2012

Control: Maher Ordinance (Health Code Article 22A)
Description: Projects that are located on sites with known or suspected soil and/or groundwater contamination are subject to the provisions of Health Code Article 22A, which is administered by its Department of Public Health (DPH). Submittal of the Maher Application *
[Read more about this regulation](#)

Added: 8/24/2013

Control: Health Code Article 36 Air Pollutant Exposure Zone
Description: Site is located in an area with elevated pollutant concentrations. Sensitive use buildings, as defined in the Applicability section of the Ordinance, must comply with Health Code Article 36. CEQA Impact: An Environmental Evaluation Application may be required for projects that generate air pollutants.
[Read more about this regulation](#)

Added: 12/7/2014


PLANNING AREAS:
Planning Area: Civic Center

MAYOR'S INVEST IN NEIGHBORHOOD INITIATIVE AREA:
None

COMMUNITY BENEFIT DISTRICT:
Within a Community Benefit District: Civic Center - SA 31

SCHOOLS:
Within 1,000ft of: Civic Center Secondary School
Within 1,000ft of: Tenderlon Elementary/Early Education

NOTICE OF SPECIAL RESTRICTIONS:



Carroll, John (BOS)

From: Tom Lippe <lippelaw@sonic.net>
Sent: Monday, November 30, 2015 9:59 AM
To: BOS Legislation, (BOS)
Cc: Carroll, John (BOS); dkelly@warriors.com; CPC-WarriorsAdmin; Givner, Jon (CAT); Stacy, Kate (CAT); Malamut, John (CAT); Nuru, Mohammed (DPW); Sanguinetti, Jerry (DPW); Sweiss, Fuad (DPW); Storrs, Bruce (DPW); Sanchez, Scott (CPC); Jones, Sarah (CPC); Rodgers, AnMarie (CPC); Starr, Aaron (CPC); Pearson, Audrey (CAT); Rahaim, John (CPC); Bollinger, Brett (CPC); Ionin, Jonas (CPC); kaufhauser@warriors.com; CMiller@stradasf.com; BOS-Supervisors; BOS-Legislative Aides; Calvillo, Angela (BOS); Somera, Alisa (BOS); Patrick Soluri; Osha Meserve; Susan Brandt-Hawley
Subject: Re: Mission Bay Alliance, Warriors EIR CEQA Appeal; Appellants' Partial Brief, 2nd of 4 emails
Attachments: Exhs 5-7 SENT Appeal EIR Brf Exhs 5-7.pdf
Categories: 150990

Dear Clerk of the Board of Supervisors,

This email is the second of four. Attached are

- Exhibits 5-7 of 15 to Appellant's Partial Brief Re: Public Comment, Air Quality, Transportation, Water Quality, Biological, and Noise

Tom Lippe
Law Offices of Thomas N. Lippe APC
201 Mission St., 12th Floor
San Francisco, CA 94105
Tel 415 777-5604 x 1
Fax 415 777-5606
e-mail: lippelaw@sonic.net
Web: www.lippelaw.com

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On 11/30/2015 9:57 AM, Tom Lippe wrote:

Dear Clerk of the Board of Supervisors

Attached, in .pdf format please find the above referenced appeal brief with exhibits.

Due to the size of the files, the brief and exhibits it will be transmitted in four (4) separate emails.

This email is the first of four. Attached are

- Appellant's Partial Brief Re: Public Comment, Air Quality, Transportation, Water Quality, Biological, and Noise

- Exhibits 1-4 of 15

Eighteen hard copies of same will be hand delivered to your office today by 12noon.

Thank you for your attention to this matter.

Tom Lippe
Law Offices of Thomas N. Lippe APC
201 Mission St., 12th Floor
San Francisco, CA 94105
Tel 415 777-5604 x 1
Fax 415 777-5606
e-mail: lippelaw@sonic.net
Web: www.lippelaw.com

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On 11/24/2015 9:25 AM, Carroll, John (BOS) wrote:

Good morning,

I am resending this message in order to update the recipients list for this and future document distributions. If you received this message previously, feel free to ignore these links; I have not updated them.

The Office of the Clerk of the Board has scheduled a hearing date for Special Order before the Board of Supervisors on **December 8, 2015, at 3:00 p.m.** Please find linked below a letter regarding the Final Subsequent Environmental Impact Report certification and Tentative Map appeals for the proposed Golden State Warriors Event Center Project, as well as direct links to the Office of Community Investment and Infrastructure's timely filing determination for the CEQA appeal.

[Clerk of the Board Letter Re: FSIER Appeal - November 23, 2015](#)

[OCII Memo Re: FSEIR Appeal - November 16, 2015](#)

[Clerk of the Board Letter Re: Tentative Map Appeal - November 23, 2015](#)

I invite you to review the entirety of both matters on our [Legislative Research Center](#) by following the links below.

[Board of Supervisors File No. 150990 - FSEIR Appeal](#)

[Board of Supervisors File No. 151204 - Tentative Map Appeal](#)

Thank you,

John Carroll
Legislative Clerk
Board of Supervisors
San Francisco City Hall, Room 244
San Francisco, CA 94102
(415)554-4445 - Direct | (415)554-5163 - Fax
john.carroll@sfgov.org | bos.legislation@sfgov.org



Click [here](#) to complete a Board of Supervisors Customer Service Satisfaction form.

The [Legislative Research Center](#) provides 24-hour access to Board of Supervisors legislation and archived matters since August 1998.

***Disclosures:** Personal information that is provided in communications to the Board of Supervisors is subject to disclosure under the California Public Records Act and the San Francisco Sunshine Ordinance. Personal information provided will not be redacted. Members of the public are not required to provide personal identifying information when they communicate with the Board of Supervisors and its committees. All written or oral communications that members of the public submit to the Clerk's Office regarding pending legislation or hearings will be made available to all members of the public for inspection and copying. The Clerk's Office does not redact any information from these submissions. This means that personal information—including names, phone numbers, addresses and similar information that a member of the public elects to submit to the Board and its committees—may appear on the Board of Supervisors website or in other public documents that members of the public may inspect or copy.*

EXHIBIT 5

[Print](#)

San Francisco Health Code

ARTICLE 38: ENHANCED VENTILATION REQUIRED FOR URBAN INFILL SENSITIVE USE DEVELOPMENTS

- Sec. 3801. Short Title.
- Sec. 3802. Findings.
- Sec. 3803. Purposes and Goals.
- Sec. 3804. Definitions.
- Sec. 3805. Applicability of Article.
- Sec. 3806. Air Pollutant Exposure Zone and Air Pollutant Exposure Zone Map.
- Sec. 3807. Enhanced Ventilation Requirement.
- Sec. 3808. Maintenance of Documents by Department.
- Sec. 3809. Rules and Regulations.
- Sec. 3810. Maintenance and Disclosure Requirements.
- Sec. 3811. Fees.
- Sec. 3812. No Conflict with Federal or State Law.
- Sec. 3813. Severability.
- Sec. 3814. Undertaking for the General Welfare.

SEC. 3801. SHORT TITLE.

This Article shall be entitled Enhanced Ventilation Required for Urban Infill Sensitive Use Developments.

(Added by Ord. 281-08, File No. 080934, 12/5/2008; amended by Ord. [224-14](#), File No. 140806, App. 11/7/2014, Eff. 12/7/2014)

SEC. 3802. FINDINGS.

- (a) Scientific studies show that exposure to particulate matter from air pollution leads to significant human health problems, including: aggravated asthma; chronic bronchitis; reduced lung function; irregular heartbeat; heart attack; and premature death in people with heart or lung disease. Exposure to air pollutants that are carcinogens can also have significant human health consequences. For example, exposure to diesel exhaust is an established cause of lung cancer.
- (b) Heart disease and stroke are the first and fourth leading causes of death in the U.S. respectively. Air pollution affects heart health and can trigger or contribute to heart attacks and strokes. One in three Americans has heart or blood vessel disease and is at higher risk from air pollution. Impacts on the lungs may take several forms. Short-term effects include deficits in lung function that can limit breathing, especially during exercise. Irritants from air pollution may cause airway constriction or chest tightening that is uncomfortable or limiting to normal activity. These changes in lung function are sometimes accompanied by underlying lung tissue inflammation which over the long term may lead to chronic lung disease. Exposure to air pollutants may be a contributing factor to leading causes of death recorded for San Francisco's population (ischemic heart disease; lung, bronchus and tracheal cancers; cerebrovascular disease; chronic obstructive pulmonary disease; hypertensive heart disease and lower respiratory infection).
- (c) Persons living in close proximity to air pollution sources, such as freeways or busy roadways, have poorer lung functions and are more susceptible to developing asthma and other respiratory problems, compared with persons living at a greater distance from such sources. The California Air Resources Board's 2005 Land Use Guidance document, "Air Quality and Land Use Handbook: A Community Health Perspective," reviewed traffic-related air pollution studies and found that particulate matter pollution levels decrease by about 70 percent at 500 feet from freeways and high-traffic roadways, defined as urban roads with 100,000 vehicles/day or rural roads with 50,000 vehicles/day.
- (d) Proximity to sources of air pollution increases exposure, and proximity to sources is established to be more common for the poor and for certain ethnic minorities.
- (e) Consequently, health vulnerability varies among neighborhoods and populations within San Francisco, as measured by population health records of air pollution-associated hospital discharges and emergency room visits, and non-accident mortality. Health vulnerable populations are likely to have more significant health consequences from air pollutant exposure compared to populations that are less vulnerable.
- (f) Existing regulatory control measures, often focused on new stationary sources of emissions and average regional air pollution concentrations, are not sufficient to address all local sources of exposure or disparities in exposure.
- (g) "Sensitive Use" buildings have the highest proportion of individuals who are most vulnerable to air pollutant exposures.
- (h) Available technologies exist to protect sensitive uses from air pollution health effects. Available and accepted air pollution modeling technology allows for the estimation of certain air pollutant concentrations for individual land parcels. Furthermore, available building ventilation and engineering technologies provide mechanisms to protect indoor environments from the infiltration of ambient air pollutants.

(Added by Ord. 281-08, File No. 080934, 12/5/2008; amended by Ord. [224-14](#), File No. 140806, App. 11/7/2014, Eff. 12/7/2014)

SEC. 3803. PURPOSES AND GOALS.

(a) The purpose of this Article 38 is to protect the public health and welfare by establishing an Air Pollutant Exposure Zone and imposing an enhanced ventilation requirement for all urban infill sensitive use development within the Air Pollutant Exposure Zone.

(b) The goals of this Article 38 are to maintain and increase the stock of infill housing and other sensitive use development in the City while reducing the risk to human health from air pollutants among occupants of, and visitors to, buildings in the Air Pollutant Exposure Zone.

(Added by Ord. [224-14](#), File No. 140806, App. 11/7/2014, Eff. 12/7/2014)

(Former Sec. 3803 redesignated as Sec. 3804 and amended by Ord. [224-14](#), File No. 140806, App. 11/7/2014, Eff. 12/7/2014)

SEC. 3804. DEFINITIONS.

For the purposes of this Article 38, the following words shall have the following meanings:

"Air Pollutant Exposure Zone" means those areas within the City which, by virtue of their proximity to air pollution emissions sources, including Freeways, have substantially greater concentrations of air pollutants. The Air Pollutant Exposure Zone shall be modeled according to specific risk factors defined in the Rules and Regulations, and will include at a minimum, criteria for maximum allowed excess cancer risks and maximum PM_{2.5} concentrations; these criteria shall be more stringent in Health Vulnerable Locations, as defined below.

"Building" means a building that contains a "Sensitive Use" and that is either:

- (1) a new building; or
- (2) a building undergoing a "Major Alteration to Existing Building" as defined by the San Francisco Green Building Code; or
- (3) a building undergoing a Planning Department permitted change of use.

"City" means the City and County of San Francisco.

"Department" means the San Francisco Department of Public Health.

"Director" means the Director of the San Francisco Department of Public Health or the Director's designee.

"Enhanced Ventilation" means a ventilation system capable of achieving the protection from particulate matter (PM_{2.5}) equivalent to that associated with a Minimum Efficiency Reporting Value (MERV) 13 filtration (as defined by American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) standard 52.2).

"Freeway" refers to freeways as defined in the San Francisco General Plan, Transportation Element.

"Health Vulnerable Locations" means those San Francisco zip codes, census tracts or other defined locations having the highest percentage of health vulnerable residents, based on criteria such as State discharge data from respiratory and cardiovascular related hospitalizations, non-accident mortality, or other criteria as determined by the Director and specified in the Rules and Regulations enacted under this Article.

"PM_{2.5}" means solid particles and liquid droplets found in the air, that are less than or equal to 2.5 micrometers (µm) in diameter.

"Sensitive Use" means:

(1) any building or facility designed for residential use, including but not limited to those defined by City, state or federal law and regulations, excluding Tourist Hotels;

(2) any facility serving specific populations, including but not limited to California Department of Social Services (CDSS)-licensed Adult Day Care Centers, Adult Support Centers, Child Care Centers, Family Child Care Homes, Infant Care Centers, School-Aged Child Care Centers, and Community Treatment Centers;

(3) any California Department of Education (CDE)-licensed schools;

(4) any California Department of Public Health (CDPH)-licensed Health Care Facilities with 24-hour care, except for CDPH-licensed hospitals, which are subject to specific regulations;

(5) any California Building Code Section 305-defined occupancies of Educational Group E;

(6) any California Building Code Section 308-defined occupancies of Institutional Group I; and

(7) any California Building Code Section 310-defined occupancies of Residential Group R.

"Site" means a parcel of land as defined in the San Francisco Building Code.

(Added as Sec. 3803 by Ord. 281-08, File No. 080934, 12/5/2008; redesignated and amended by Ord. [224-14](#), File No. 140806, App. 11/7/2014, Eff. 12/7/2014)

(Former Sec. 3804 redesignated as Sec. 3805 and amended by Ord. [224-14](#), File No. 140806, App. 11/7/2014, Eff. 12/7/2014)

SEC. 3805. APPLICABILITY OF ARTICLE.

This Article 38 shall apply to Sensitive Use buildings located on a site identified as within the Air Pollutant Exposure Zone that are either:

(a) Newly constructed; or

(b) Undergoing a "Major Alteration to Existing Building" as defined by the San Francisco Green Building Code; or

(c) The subject of an application for a Planning Department-permitted Change of Use.

(Added as Sec. 3804 by Ord. 281-08, File No. 080934, 12/5/2008; redesignated and amended by Ord. [224-14](#), File No. 140806, App. 11/7/2014, Eff. 12/7/2014)

(Former Sec. 3805 redesignated as Sec. 3806 and amended by Ord. [224-14](#), File No. 140806, App. 11/7/2014, Eff. 12/7/2014)

SEC. 3806. AIR POLLUTANT EXPOSURE ZONE AND AIR POLLUTANT EXPOSURE ZONE MAP.

(a) The Director shall create an Air Pollutant Exposure Zone Map according to Rules and Regulations as authorized by Section 3809. The Air Pollutant Exposure Zone Map shall depict all locations in the City where the estimated cumulative PM_{2.5} concentration is greater than 10 µg/m³ or where the estimated cumulative excess risk of cancer from air pollutants resulting from lifetime (70 year) exposure is greater than 100 in a million. Additionally, the Air Pollutant Exposure Zone Map shall include all locations within 500 feet of any Freeway, if those locations were not otherwise captured by modeling estimates. Within Health Vulnerable Locations, the Air Pollutant Exposure Zone Map shall depict all locations where the estimated cumulative PM_{2.5} concentration is greater than 9 µg/m³ or where the estimated cumulative excess risk of cancer from air pollutants resulting from lifetime (70 year) exposure is greater than 90 in a million. The Director shall update the Air Pollutant Exposure Zone Map to identify new sources, updated pollutant standards, additional pollutants and standards for those pollutants, and updated methodologies in accordance with Section 3809 and the accompanying Rules and Regulations for this Article 38.

(b) The Director shall, at least once every five years, update the Rules and Regulations governing creation of the Air Pollutant Exposure Zone Map to account for changes in information including, but not limited, to:

- (1) Information available to estimate air pollutants of health concern;
- (2) Information available to determine Health Vulnerable Locations; and
- (3) Information that may affect delineation of the Air Pollutant Exposure Zone, including, but not limited to:
 - (A) Construction, expansion or modification of major roadways;
 - (B) Changes in traffic patterns in the City's roadway system;
 - (C) Changes in area sources or siting of industrial or commercial sources of air pollution; and
 - (D) Climatic factors for which there is evidence of changes to air quality.

(c) The Director shall post the Air Pollutant Exposure Zone Map on the Department's website, and make paper copies of the map available to the public upon request.

(d) In creating and updating the Air Pollutant Exposure Zone Map, the Director shall follow the procedures specified in Section

3809.

(e) The Air Pollutant Exposure Zone Map that is operative as of the effective date of Ordinance No. [224-14](#) amending this Article 38, is on file with the Clerk of the Board of Supervisors in File No. 140806.

(Added as Sec. 3805 by Ord. 281-08, File No. 080934, 12/5/2008; redesignated and amended by Ord. [224-14](#), File No. 140806, App. 11/7/2014, Eff. 12/7/2014)

(Former Sec. 3806 added by Ord. 281-08, File No. 080934, 12/5/2008; repealed by Ord. [224-14](#), File No. 140806, App. 11/7/2014, Eff. 12/7/2014)

SEC. 3807. ENHANCED VENTILATION REQUIREMENT.

(a) Any person or entity to whom this Article 38 applies, as defined in Section 3805, shall submit to the Director an Enhanced Ventilation Proposal, prepared by, or under the supervision of, a licensed mechanical engineer or other individual authorized by the California Business and Professions Code Sections 6700-6799 (Professional Engineers Act) to design mechanical ventilation systems that meet the requirements of this Article 38 and San Francisco Building Code Section 1203.5. An Enhanced Ventilation Proposal shall include the name, title and license number of the person submitting such proposal.

(b) The Enhanced Ventilation Proposal shall explain how the project will achieve the standards mandated by this Article 38 and accompanying the Rules and Regulations as described and updated according to Section 3809, San Francisco Building Code Section 1203.5, and any relevant amendments or revisions thereto. The Enhanced Ventilation Proposal shall include a statement signed by the person who prepared it, in accordance with the requirements of Section 3807(a), certifying that in his or her judgment the ventilation system proposed will be capable of achieving the protection from particulate matter (PM_{2.5}) equivalent to that associated with MERV 13 filtration (as defined by ASHRAE standard 52.2). In updates to the Rules and Regulations, the Director may specify additional or alternative protective equivalents as technology and research dictate.

(c) The Director shall review the Enhanced Ventilation Proposal and may require additional modification or justification prior to the Director's approval. The Director shall issue a letter to the Department of Building Inspection Permit Services Energy/Mechanical Plan Review Section identifying and attaching the letter describing the approved Enhanced Ventilation Proposal.

(d) Building permit documents submitted to the Department of Building Inspection shall incorporate all designs and details necessary for the construction of the approved Enhanced Ventilation system. The Department of Building Inspection shall review submitted plans to assure compliance with the Director-approved Enhanced Ventilation proposal and shall not issue permits for the construction, installation, or modification of the Enhanced Ventilation systems unless it is in compliance with the approved proposal.

(Added by Ord. 281-08, File No. 080934, 12/5/2008; amended by Ord. [224-14](#), File No. 140806, App. 11/7/2014, Eff. 12/7/2014)

SEC. 3808. MAINTENANCE OF DOCUMENTS BY DEPARTMENT.

The Enhanced Ventilation Proposal, Certification and related documents shall become part of the file maintained by the Department. Such file shall be available to the public upon request.

(Added by Ord. 281-08, File No. 080934, 12/5/2008; amended by Ord. [224-14](#), File No. 140806, App. 11/7/2014, Eff. 12/7/2014)

SEC. 3809. RULES AND REGULATIONS.

- (a) Within 90 days after the effective date of Ordinance No. [224-14¹](#), amending Article 38, the Director shall issue Rules and Regulations necessary to effectuate the purposes of this Article and to protect public health and safety. Any person or entity as defined in Section 3805 shall comply with this Article, the Rules and Regulations, and all applicable local, state, and federal laws.
- (b) The Director shall consult with the Planning Department's Environmental Review Officer at least 30 days prior to initiating any amendments or modifications to the Rules and Regulations.
- (c) The Director shall consult with the Municipal Green Building Task Force, as established in Environment Code Sec. 702, or any successor body, to coordinate and resolve any potential conflicts that may arise between the San Francisco Green Building Code and this Article 38.
- (d) Rules and Regulations shall, at a minimum, meet the following standards and criteria:
- (1) The criteria used for the definition of "Health Vulnerable Locations" shall be at least as health-protective as that of the Bay Area Air Quality Management District (BAAQMD) methodology. BAAQMD methodology defines those zip codes in San Francisco in the worst quintile of Bay Area health vulnerability scores based on two years of statewide hospitalization and emergency room visit records, and estimated costs, for the following air pollution related conditions per zip code: Chronic Obstructive Pulmonary Disease (COPD) Hospital Admissions, Pneumonia Hospital Admissions, Myocardial Infarction (MI, Heart Attack) Hospital Admissions and Emergency Room Visits, Cardiovascular Hospital Admissions (less MI), Asthma Emergency Hospital Admissions and Emergency Room Visits, Asthma Hospital Admissions, Hospital Admissions for Respiratory Diseases, combined with the non-accident mortality rate per zip code. For San Francisco, based on 2009-2011 health records, the zip codes in the worst quintile of Bay Area health vulnerability scores are 94102, 94103, 94105, 94124, and 94130. In updates to the Rules and Regulations, the Director may modify the methodology to identify Health Vulnerable Locations as required to ensure the Air Pollutant Exposure Zone Map is consistent with current scientific evidence.
 - (2) The criteria for creating and updating the Air Pollutant Exposure Zone Map and the models underlying this map shall include, but not be limited to:
 - (A) Identification of parcels with lifetime excess cancer risk due to air pollution greater than 100 cases per million population.
 - (B) Identification of parcels in Health Vulnerable Locations with lifetime excess cancer risk due to air pollution greater than 90 cases per million population.
 - (C) Identification of parcels where PM_{2.5} concentrations are greater than 10 µg/m³ (including ambient levels).
 - (D) Identification of parcels in Health Vulnerable Locations where PM_{2.5} concentrations are greater than 9 µg/m³ (including

ambient levels).

(E) Identification of parcels within 500 feet of any Freeway, if those locations were not otherwise captured by modeling estimates.

(F) New research findings, particularly quantification of risk, that change the Director's knowledge of how particulate matter and any other air pollutants affect public health.

(3) Required performance standards for Enhanced Ventilation Proposals must include the following minimum criteria:

(A) Location of air intake for HVAC (Heating, Ventilation and Air Conditioning systems) away from air pollution sources;

(B) Specification of filtration certified by the ASHRAE capable of achieving protection from particulate matter (PM_{2.5}) equivalent to that associated with a MERV 13 filtration (as defined by ASHRAE standard 52.2).

(4) Additional criteria for Enhanced Ventilation Proposals may include the following project design information:

(A) Number of air exchanges per hour of outside filtered air;

(B) Building materials and/or design that limit unfiltered infiltration of outside air, such as air sealing or maintenance of positive pressure within the building interior;

(C) Location of operable windows oriented away from air pollutant sources, to the extent feasible;

(D) Other building design criteria that may reduce air pollution exposure to residents;

(E) Other combinations of technologies and designs to achieve the goals of this Article.

(5) Certification and/or licensing requirements for the persons who prepare the Enhanced Ventilation Proposals pursuant to Section 3807. The Enhanced Ventilation Proposal must be prepared by, or under the responsible charge of a person who is authorized by California Business and Professions Code Sections 6700-6799 (Professional Engineers Act), or any successor provisions, to design mechanical ventilation systems that meet the requirements of this Article 38 and San Francisco Building Code Section 1203.5 and either:

(A) a licensed mechanical engineer, or

(B) an individual authorized by California Business and Professions Code Sections 6700-6799 to design mechanical ventilation systems that meet the requirements of this Article 38 and San Francisco Building Code Section 1203.5.

(6) Minimum criteria for maintenance and disclosure, including but not limited to:

(A) Minimum standards for proper maintenance, and

(B) Disclosure to buyers, lessees and renters that the building is located in an area with substantial concentrations of air pollutants, and that the building includes an enhanced ventilation system information about the proper use of the installed enhanced ventilation system.

(e) The Director may specify additional or alternative equivalents as justified by accepted research including:

- (1) addition or substitution of risk factor criteria;
- (2) inclusion of other pollutants such as Nitrogen Dioxide.

(f) Within Health Vulnerable Locations, the Director shall specify more protective requirements in the Air Pollutant Exposure Zones.

(g) The Director may grant variances to this Article 38, on a case-by-case basis.

(Added by Ord. 281-08, File No. 080934, 12/5/2008; amended by Ord. [224-14](#), File No. 140806, App. 11/7/2014, Eff. 12/7/2014)

CODIFICATION NOTE

1. Blank in Ord. [224-14](#); ordinance number inserted by the codifier.

SEC. 3810. MAINTENANCE AND DISCLOSURE REQUIREMENTS.

(a) The ventilation systems installed pursuant to Section 3807 shall be properly maintained, following standard practices, and as specified by the manufacturer.

(b) Documentation of the installation and/or maintenance of the enhanced ventilation systems shall be preserved for five years after installation.

(c) Failure to properly maintain the enhanced ventilation systems is subject to enforcement and possible penalties under the Health Code Article 11, Nuisances, or other applicable sections.

(d) Disclosure to buyers, lessees and renters shall be made in accordance with Rules and Regulations as specified in Section 3809(d)(6).

(Added by Ord. 281-08, File No. 080934, 12/5/2008; amended by Ord. [224-14](#), File No. 140806, App. 11/7/2014, Eff. 12/7/2014)

SEC. 3811. FEES.

(a) Review and approval of an Enhanced Ventilation Proposal . . . \$984.00

(b) Additional consultation, document review or inspection . . . \$225.00 per hour

(Added by Ord. [224-14](#), File No. 140806, App. 11/7/2014, Eff. 12/7/2014)

(Former Sec. 3811 added by Ord. 281-08, File No. 080934, 12/5/2008; redesignated as Sec. 3812 by Ord. [224-14](#), File No. 140806, App. 11/7/2014, Eff. 12/7/2014)

SEC. 3812. NO CONFLICT WITH FEDERAL OR STATE LAW.

Nothing in this Article shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

(Added as Sec. 3811 by Ord. 281-08, File No. 080934, 12/5/2008; redesignated by Ord. [224-14](#), File No. 140806, App. 11/7/2014, Eff. 12/7/2014)

(Former Sec. 3812 added by Ord. 281-08, File No. 080934, 12/5/2008; redesignated as Sec. 3813 by Ord. [224-14](#), File No. 140806, App. 11/7/2014, Eff. 12/7/2014)

SEC. 3813. SEVERABILITY.

If any section, subsection, sentence, clause, or phrase of this Article 38 is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Article. The Board of Supervisors hereby declares that it would have passed this Article and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of this Article would be subsequently declared invalid or unconstitutional.

(Added as Sec. 3812 by Ord. 281-08, File No. 080934, 12/5/2008; redesignated by Ord. [224-14](#), File No. 140806, App. 11/7/2014, Eff. 12/7/2014)

(Former Sec. 3813 added by Ord. 281-08, File No. 080934, 12/5/2008; redesignated as Sec. 3814 and amended by Ord. [224-14](#), File No. 140806, App. 11/7/2014, Eff. 12/7/2014)

SEC. 3814. UNDERTAKING FOR THE GENERAL WELFARE.

In adopting and implementing this Article 38, the City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing in its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

(Added as Sec. 3813 by Ord. 281-08, File No. 080934, 12/5/2008; redesignated and amended by Ord. [224-14](#), File No. 140806, App. 11/7/2014, Eff. 12/7/2014)

EXHIBIT 6



SAN FRANCISCO PLANNING DEPARTMENT

MEMO

DATE: July 29, 2015
TO: Mike Grisso, KR Flower Mart, LLC
FROM: Joshua Switzky, Planning Department
RE: PPA Case No. 2015-001903PPA / 2015-004256PPA for
630-698 Brannan Street

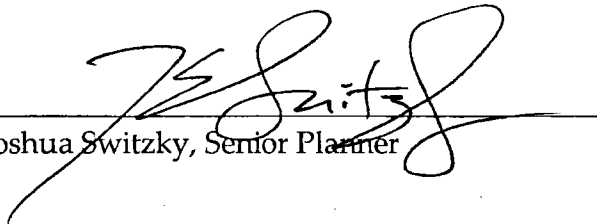
1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Please find the attached Preliminary Project Assessment (PPA) for the address listed above. You may contact the staff contact, Lisa Chen, at (415) 575-9124 or lisa.chen@sfgov.org, to answer any questions you may have, or to schedule a follow-up meeting.


Joshua Switzky, Senior Planner



SAN FRANCISCO PLANNING DEPARTMENT

Preliminary Project Assessment

Date: July 23, 2015 (revised: July 29, 2015)
Case No.: **2015-001903PPA / 2015-004256PPA**
Project Address: 630-698 Brannan Street
Block/Lot: 3778/001B, 002B, 004 and 005
Zoning: SALI (Service/Arts/Light Industrial) Zoning District
40/55-X Height and Bulk District
Western SoMa Special Use District
Existing Area Plan: Western SoMa Community Plan;
Proposed Area Plan: Central SoMa Plan (Draft)
Project Sponsor: Mike Grisso, KR Flower Mart, LLC
415-243-8803
Staff Contact: Lisa Chen, 415-575-9124
lisa.chen@sfgov.org

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

DISCLAIMERS:

Please be advised that this determination does not constitute an application for development with the Planning Department. It also does not represent a complete review of the proposed project, a project approval of any kind, or in any way supersede any required Planning Department approvals listed below. The Planning Department may provide additional comments regarding the proposed project once the required applications listed below are submitted. While some approvals are granted by the Planning Department, some are at the discretion of other bodies, such as the Planning Commission or Historic Preservation Commission. Additionally, it is likely that the project will require approvals from other City agencies such as the Department of Building Inspection, Department of Public Works, Department of Public Health, San Francisco Public Utilities Commission, and others. The information included herein is based on plans and information provided for this assessment and the Planning Code, General Plan, Planning Department policies, and local/state/federal regulations as of the date of this document, all of which are subject to change.

PROJECT DESCRIPTION:

The project sponsor submitted PPA applications in February 2015 and April 2015, proposing two design variations for the same site. Except where noted, comments in this letter shall apply to both project proposals.

The project would demolish one existing single story warehouse-style building, four single-story with mezzanine buildings, two single-story retail/warehouse buildings, and one single-story industrial building – totaling 157,541 sq. ft. on four adjoining lots – all of which are part of the existing the San Francisco Flower Mart. The first proposal (“February 2015 proposal”) would construct a 1,814,950 sq. ft. mixed-use development, consisting of: (1) three stepped buildings ranging in height from 65 feet to 250 feet with 1,492,450 GSF of office space and 45,800 GSF of ground floor retail (which includes 10,000 sq. ft.

of San Francisco Flower Mart retail space); (2) 115,000 leasable sq. ft. of below-grade warehouse space that would be occupied by the San Francisco Flower Mart; (3) 20,000 sq. ft. of below-grade loading space and 17,500 sq. ft. on-grade truck parking for the San Francisco Flower Mart; (3) 110,000 sq. ft. below-grade parking; and, (4) 14,200 sq. ft. of on-grade office and retail loading. Vehicle access to the underground parking garage and the Flower Mart is proposed on Morris Street (off of Sixth Street), with trucks exiting on the shared private alley and continuing onto Fifth Street. Two levels of below grade parking would accommodate 300 parking spaces, of which 150 spaces would be designated for exclusive Flower Mart use. The project also includes two public plazas totaling 34,175 sq. ft. facing Brannan Street and in the center of the project, which will create mid-block pedestrian connections to Morris Street and to a shared private alley to the north of the property.

The project sponsor also submitted a subsequent application for a Preliminary Project Assessment ("April 2015 proposal") with a project variant that maintains the SF Flower Mart location at street level. This proposal elevates the office towers above a 24' podium that would house the SF Flower Mart and associated retail spaces. The profiles and spacing of the office towers would remain the same; however, the maximum heights would increase, ranging from 77 to 271 feet, and the project square footages would change slightly, featuring: (1) 1,512,260 GSF of office space, (2) 29,550 GSF of ground floor retail, (3) 115,000 GSF of warehouse space for the Flower Mart; and, (4) 147,450 GSF of below-grade parking (accommodating approximately 350 parking spaces, including 25 truck parking spaces for use by Flower Mart tenants). Under this proposal, the northern plaza would be elevated above the 24' podium, with terraces stepping down to the street-level plaza facing Brannan Street. In addition, in lieu of at-grade parking for the Flower Mart, spaces would be designated for truck loading on the shared private alley on the northern edge of the site.

PLANNING CONTEXT:

The proposed project is located within the Western SoMa Community Plan, which was evaluated in the *Western SoMa Community Plan, Rezoning of Adjacent Parcels, and 350 8th Street Project Environmental Impact Report (Western SoMa PEIR)*, certified in 2012.¹ The project site also lies within the proposed Central SoMa Plan area, a community planning process initiated in 2011. The Central Corridor Plan Draft for Public Review² (Draft Plan) was released in April 2013, with proposed changes to the allowed land uses and building heights in the Plan area, including a strategy for improving the public realm within the Plan area and vicinity. The Draft Plan is available for download at <http://centralsoma.sfplanning.org>. The Central SoMa Plan will be evaluated in an Environmental Impact Report (EIR), which is currently underway. The Draft Plan and its proposed rezoning are anticipated to be before decision-makers for approval in 2016.

The existing zoning for the project site is SALI (Service/Arts/Light Industrial), which does not allow office uses, while the proposed use district for the project site in the Draft Plan is Mixed-Use Office (MUO),

¹ Available for review on the Planning Department's Area Plan EIRs web page: <http://www.sf-planning.org/index.aspx?page=1893>.

² Please note that the Central SoMa Plan was formerly called the Central Corridor Plan. To avoid ambiguity, this letter uses the current "Central SoMa Plan" when referring to the ongoing planning process, while "Draft Plan" refers to the document published in April 2013 under the name "Central Corridor Plan Draft for Public Review."

which would allow office uses as well as the other uses proposed under the project. The Draft Plan includes two height alternatives. The Central SoMa Plan EIR will study the Draft Plan's Mid-Rise Height Alternative and a modified High-Rise Height Alternative, which include different proposed height limits for the project site. Under the Mid-Rise Height Alternative the proposed height designation for the site is 55/65/85, which would allow buildings up to 85 feet tall on some portions of the project site, while under the modified High-Rise Height Alternative the EIR will study development of buildings up to 270 feet on the project site. At this point, it is unknown which height option, if any, would ultimately be approved by the Planning Commission and Board of Supervisors. Further Central SoMa Plan-related comments in this PPA are based on the Draft Plan concepts published to date, which are contingent on the approval of the proposed Central SoMa Plan rezoning by the Planning Commission and Board of Supervisors.

ENVIRONMENTAL REVIEW:

The proposed project requires environmental review either individually, with a project-specific Initial Study/Mitigated Negative Declaration or Environmental Impact Report (EIR), or in a Community Plan Exemption (CPE) if the project is consistent with an adopted community plan (see the discussion under "Community Plan Exemption" below). The proposed project is located within the Western SoMa Area Plan, which was evaluated in the *Western SoMa PEIR*. However, the proposed project is not consistent with the land use or development density (zoning) identified in the Western SoMa Area Plan, and it is therefore not eligible for a CPE under the *Western SoMa PEIR*.

The project's proposed building heights range from 65 to 250 feet for the below-grade Flower Mart configuration (February 2015) and from 77 to 271 feet for the street-level Flower Mart configuration (April 2015). These heights would both be consistent with the High-Rise Height Alternative studied in the Central SoMa Plan EIR. Thus, it is possible that the proposal, as currently presented, would qualify for a CPE under the proposed Central SoMa Plan EIR once that EIR is certified and the Planning Commission and Board of Supervisors have adopted new zoning controls. However, the proposed project would be assessed based on the height limits for the project site in place at the time that the Planning Department entitlements for the proposed project are sought.

Due to the project's location within the geographic area evaluated in the *Western SoMa PEIR*, any development on the project site would potentially be subject to the mitigation measures identified in that document. Potentially significant project environmental impacts that were identified in and pertinent mitigation measures and CEQA findings from the *Western SoMa PEIR* that may be applicable to the proposed project are discussed below, under the applicable environmental topic. However, mitigation measures from the *Western SoMa PEIR* that are applicable to the proposed project area could be refined, augmented, or superseded under the future Central SoMa Plan EIR, which would become applicable to the proposed project upon approval of the Draft Plan.

Community Plan Exemption

Section 15183 of the California Environmental Quality Act (CEQA) Guidelines states that projects that are consistent with the development density established by a community plan for which an environmental impact report (EIR) was certified do not require additional environmental review, except as necessary to determine the presence of project-specific significant effects not identified in the programmatic plan area

EIR. A CPE may be prepared for such projects. Please note that a CPE is a type of exemption from environmental review, and cannot be modified to reflect changes to a project after approval. Proposed increases beyond the CPE project description in project size or intensity after project approval will require reconsideration of environmental impacts and issuance of a new CEQA determination.

Within the CPE process, there can be three different outcomes as follows:

1. **CPE Only.** All potentially significant project-specific and cumulatively considerable environmental impacts are fully consistent with significant impacts identified in the underlying area plan EIR (assumed here to be the Central SoMa Plan EIR), and there would be no new "peculiar" significant impacts unique to the proposed project. In these situations, all pertinent mitigation measures and CEQA findings from the in the underlying area plan FEIR are applied to the proposed project, and a CPE checklist and certificate is prepared. With this outcome, the applicable fees are: (a) the CPE determination fee (currently \$13,659) and (b) the CPE certificate fee (currently \$7,580). (The Planning Department schedule of application fees may be downloaded at: <http://www.sf-planning.org/Modules/ShowDocument.aspx?documentid=513>)
2. **Mitigated Negative Declaration.** If new site- or project-specific significant impacts are identified for the proposed project that were not identified in the underlying area plan EIR, and if these new significant impacts can be mitigated to a less-than-significant level, then a focused mitigated negative declaration is prepared to address these impacts, and a supporting CPE checklist is prepared to address all other impacts that were encompassed by the underlying area plan EIR, with all pertinent mitigation measures and CEQA findings from the underlying area plan EIR also applied to the proposed project. With this outcome, the applicable fees are: (a) the CPE determination fee (currently \$13,659) and (b) the standard environmental evaluation fee (which is based on construction value).
3. **Focused EIR.** If any new site- or project-specific significant impacts cannot be mitigated to a less-than-significant level, then a focused EIR is prepared to address these impacts, and a supporting CPE checklist is prepared to address all other impacts that were encompassed by the underlying area plan EIR, with all pertinent mitigation measures and CEQA findings from the underlying area plan EIR also applied to the proposed project. With this outcome, the applicable fees are: (a) the CPE determination fee (currently \$13,659); (b) the standard environmental evaluation fee (which is based on construction value); and (c) one-half of the standard EIR fee (which is also based on construction value). An EIR must be prepared by an environmental consultant from the Planning Department's environmental consultant pool (http://www.sfplanning.org/ftp/files/MEA/Environmental_consultant_pool.pdf). The Planning Department will provide more detail to the project sponsor regarding the EIR process should this level of environmental review be required.

As discussed above, the proposed project is located within the proposed Central SoMa Plan Area, which is under evaluation in the forthcoming Central SoMa Plan EIR; if the proposed project is consistent with the development density identified in the Central SoMa Plan, it may be eligible for a CPE. If the proposed 630-698 Brannan Street project is not consistent with the height and density identified for the project site in the adopted Central SoMa Plan, it would be precluded from qualifying for a CPE under the Central SoMa Plan. The proposed project would be analyzed in a separate environmental document that would not rely on the environmental analysis undertaken for the Central SoMa Plan. In this case, the applicable

fees would be (a) the standard environmental evaluation (EE) fee based on the cost of construction; and (b) the standard EIR fee, if an EIR is required.

In order to begin formal environmental review, please submit an **Environmental Evaluation Application (EEA)**. The EEA can be submitted at the same time as the PPA Application. The environmental review may be done in conjunction with the required approvals listed below, but must be completed before any project approval may be granted. **Note that until an entitlement application is submitted to the Current Planning Division, only the proposed Project Description will be reviewed by the assigned Environmental Coordinator.** EEAs are available in the Planning Department lobby at 1650 Mission Street, Suite 400, at the Planning Information Center at 1660 Mission Street, and online at www.sfplanning.org under the "Publications" tab. See "Environmental Applications" on page 2 of the current Fee Schedule for a calculation of environmental application fees.³

Below is a list of topic areas that would require additional study based on the preliminary review of the project as it is proposed in the PPA application. This discussion is applicable to both the February 2015 and April 2015 project proposals, except as noted.

1. **Historic Resources.** The project site contains one or more structures considered to be a potential historic resource (a building constructed 45 or more years ago). The property was surveyed as part of the South of Market Historic Resources Survey and identified for potential architectural and cultural significance, but was not fully evaluated at that time. Therefore, the proposed demolition is subject to review by the Department's Historic Preservation staff. To assist in this review, the project sponsor must hire a qualified professional to prepare a Historic Resource Evaluation (HRE) report. The professional must be selected from the Planning Department's Historic Resource Consultant Pool. Please contact Tina Tam, Senior Preservation Planner, via email at tina.tam@sfgov.org for a list of three consultants from which to choose. Please contact the HRE scoping team at HRE@sfgov.org to arrange the HRE scoping process. The historic resource consultant should submit the draft HRE report for review to Environmental Planning after the project sponsor has filed the EEA and update it as necessary to reflect feedback received in the PPA letter. Historic Preservation staff will not begin reviewing your project until a complete HRE is received.

The Western SoMa PEIR identified two mitigation measures to minimize construction impacts of new development projects on historic resources within 25 feet for non-pile driving activities and 100 feet for pile driving activities: *M-CP-7a: Protect Historical Resources from Adjacent Construction Activities* and *M-CP-7b: Construction Monitoring Program for Historical Resources*. These mitigation measures require an evaluation to determine whether special construction measures are necessary to protect nearby historic resources, as well as implementation of a construction monitoring program for those historic resources. The closest known historic resource is located adjacent to the project site at 701 Bryant Street (3778/001). Therefore, these mitigation measures would apply to the proposed project.

³ San Francisco Planning Department. *Schedule for Application Fees*. Available online at: <http://www.sf-planning.org/Modules/ShowDocument.aspx?documentid=513>.

2. **Archeological Resources.** Project implementation would include soil-disturbing activities associated with building construction, including excavation to a depth of approximately 25 feet below grade for construction of the underground parking, loading, and Flower Mart operational areas under the February 2015 below-grade Flower Mart scenario, and up to 15 feet for underground parking and loading under the April 2015 street-level Flower Mart scenario. The project site is located within an area where no previous archeological survey has been prepared. The Western SoMa PEIR noted that California Register of Historical Resources (CRHR)-eligible archeological resources are expected to be present within existing sub-grade soils of the Plan Area and the proposed land use policies and controls within the Plan Area could adversely affect significant archeological resources.

Because of the depth of excavation under either the below-grade or street-level Flower Mart configuration, *Western SoMa PEIR Archeological Mitigation Measure M-CP-4a: Project-Specific Preliminary Archeological Assessment* and *M-CP-4b: Procedures for Accidental Discovery of Archeological Resources* would be applicable to the proposed project. *Mitigation Measure M-CP-4a* requires that a Preliminary Archeology Review (PAR) be prepared by the Planning Department archeologist. Based on the PAR, the Environmental Review Officer (ERO) would determine if an Archeological Research Design/Treatment Plan (ARDTP) is required to more definitively identify the potential for CRHR-eligible archeological resources to be present within the project site and to determine the appropriate action necessary to reduce the potential effects of the project on archeological resources to a less-than-significant level. If an ARDTP is required, the scope of the ARDTP will be determined in consultation with the ERO. The Planning Department archeologist will be informed by the geotechnical study of the project site's subsurface geological conditions. (See Geotechnical Study below.) *Mitigation Measure M-CP-4b* outlines procedures for ensuring that appropriate actions are taken in the event that an accidental discovery of archeological resources occurs during the construction of the project.

3. **Transportation.** Based on the Planning Department's Transportation Impact Analysis Guidelines for Environmental Review, the project would require additional transportation analysis to determine whether the project may result in a significant impact.⁴ Therefore, the Planning Department requires that a consultant listed in the Planning Department's Transportation Consultant Pool prepare a Transportation Impact Study. You are required to pay additional fees for the study; please contact Virnaliza Byrd at (415) 575-9025 to arrange payment. Once you pay the fees, please contact Manoj Madhavan at (415) 575-9095 or manoj.madhavan@sfgov.org so that he can provide you with a list of three consultants from the pre-qualified Transportation Consultant Pool. Upon selection of a transportation consultant, the Department will assign a transportation planner who will direct the scope of the consultant-prepared study.

Additionally, the proposed project is located on a high injury corridor as mapped by Vision Zero.⁵ Planning staff have reviewed the proposed site plans and request the following clarification and offer the following requests, some of which address the safety of persons walking and bicycling to and from the project site and vicinity:

⁴ This document is available at: <http://www.sf-planning.org/index.aspx?page=1886>.

⁵ This document is available at: <http://www.sfmta.com/sites/default/files/projects/2015/vision-zero-san-francisco.pdf>.

- Schedule a site visit by Planning staff will be needed in order to identify pedestrian-related safety issues.
- Clarify what is meant by “semi-queueing” in the PPA application project description.
- Clarify whether new on-street parking spaces on Brannan, 5th, and 6th streets are proposed as Flower Mart loading areas.
- Coordinate any streetscape or roadway improvements with the Central SoMa EIR team as well as Citywide Planning and the San Francisco Municipal Transportation Agency (SFMTA). (See the Preliminary Project Comments and Preliminary Design Comments sections for further discussion.)
- Clarify parking space dimensions and confirm that “SV” notation on plans indicates service vehicle spaces.
- Ensure project design conforms with pedestrian-related policies and design guidelines, especially as the project site is adjacent to high-injury corridors.
- Clearly label alleys on site plans.

Please include the requested information with the EEA and coordinate with the assigned environmental and transportation planners regarding streetscape/roadway and pedestrian improvements.

4. **Noise.** The proposed project would include commercial/light industrial uses that could generate noise levels in excess of ambient noise, either short term, at nighttime, or as a 24-hour average, in the project site vicinity. It would therefore be subject to *Western SoMa PEIR Noise Mitigation Measure M-NO-1c: Siting of Noise-Generating Uses*, which is intended to reduce potential conflicts between existing sensitive receptors and new noise-generating uses. *Mitigation Measure M-NO-1c* requires that a noise analysis be prepared for a new development that could generate noise prior to the first project approval action. The mitigation measure requires that such an analysis include, at a minimum, a site survey to identify potential noise-sensitive uses within 900 feet of, and that have a direct line-of-sight to, the project site. At least one 24-hour noise measurement must be included in the analysis. The analysis must be prepared by person(s) qualified in acoustical analysis and/or engineering and must demonstrate with reasonable certainty that the proposed use would comply with the use compatibility requirements of the San Francisco General Plan and Police Code Section 2909, that the proposed use would not adversely affect nearby noise-sensitive uses, and that there are no particular circumstances about the project site that appear to warrant heightened concern about noise levels that would be generated by the proposed use. Should such concerns be present, the Planning Department may require the completion of a detailed noise assessment by person(s) qualified in acoustical analysis and/or engineering prior to the first project approval action, and may require implementation of site-specific noise reduction features or strategies.

Construction of the proposed project would generate noise. While construction noise is temporary in nature and regulated by the San Francisco Noise Ordinance, the *Western SoMa PEIR* evaluated construction noise impacts that would result from implementation of the Community Plan and identified two mitigation measures that, when implemented, would reduce these impacts to a less-than-significant level. *Mitigation Measure M-NO-2a: General Construction Noise Control Measures* includes best practices for construction work, such as state-of-the-art noise shielding and muffling

devices and the use of electrically- or hydraulically-powered construction equipment, to minimize construction noise levels. *Mitigation Measure M-NO-2b: Noise Control Measures During Pile Driving* includes a set of site-specific noise attenuation measures for construction projects involving pile driving.

- Air Quality.** The proposed project's 1.8 million sf of office and commercial/light industrial uses exceed the Bay Area Air Quality Management District's (BAAQMD) construction and operational screening levels for criteria air pollutants.⁶ Therefore, an analysis of the project's criteria air pollutant emissions is likely to be required. Please provide detailed information related to construction equipment, phasing and duration of each phase, and volume of excavation as part of the EEA. Should this analysis determine that criteria air pollutant emissions exceed the *Western SoMa PEIR* significance thresholds, construction and operational mitigation measures identified in the PEIR would be required. In addition, *Western SoMa PEIR Mitigation Measure M-AQ-6: Construction Emissions Minimization Plan for Criteria Air Pollutants* requires equipment exhaust minimization measures during construction. Another measure, *Western SoMa PEIR Mitigation Measure M-AQ-2 Transportation Demand Management Strategies for Future Development Projects*, requires various Transportation Demand Management (TDM) strategies be implemented to reduce vehicle trips and associated air pollutant emissions.

In addition, project-related demolition, excavation, grading and other construction activities may cause wind-blown dust that could contribute particulate matter into the local atmosphere. To reduce construction dust impacts, the proposed project will be required to adhere to the dust control requirements set forth in the Construction Dust Ordinance contained in San Francisco Health Code Article 22B and San Francisco Building Code Section 106.A.3.2.6. The proposed project is also required to prepare a Construction Dust Control Plan for review and approval by DPH.

The project site is located within an Air Pollutant Exposure Zone, as mapped and defined by Health Code, Article 38. The Air Pollutant Exposure Zone identifies areas with poor air quality based on modeling of air pollution, exposures, and health vulnerability from mobile, stationary, and area source emissions within San Francisco. Should the proposed project include new sensitive land uses (for example, day care facilities), those facilities would be subject to the requirements of Health Code Article 38. Additionally, due to the project site's location within an Air Pollutant Exposure Zone, construction of the project would require compliance with *Western SoMa PEIR Mitigation Measure M-AQ-7: Construction Emissions Minimization Plan for Health Risks and Hazards*.

If the project would generate new sources of toxic air contaminants including, but not limited to, diesel generators or boilers, or any other stationary sources, the project would result in toxic air contaminants that may affect both on-site and off-site sensitive receptors within the Air Pollutant Exposure Zone. If the proposed project includes sensitive receptors (for example, a day care facility), it would be subject to additional requirements under Article 38. Given the proposed project's height of up to 270 feet, the proposed project would likely require a backup diesel generator; additional measures, such as that described in *Western SoMa PEIR Mitigation Measure M-AQ-4: Siting of Uses that*

⁶ BAAQMD, *CEQA Air Quality Guidelines*, May 2011, Chapter 3.

Emit PM_{2.5} or DPM and Other TACs, will likely be necessary to reduce its emissions. Please provide detailed information related to any proposed stationary sources with the EEA.

6. **Greenhouse Gases.** *The City and County of San Francisco's Strategies to Address Greenhouse Gas Emissions* presents a comprehensive assessment of policies, programs, and ordinances that represents San Francisco's Qualified Greenhouse Gas (GHG) Reduction Strategy. Projects that are consistent with San Francisco's Qualified GHG Reduction Strategy would result in less-than-significant impacts from GHG emissions. In order to facilitate a determination of compliance with San Francisco's Qualified GHG Reduction Strategy, the Planning Department has prepared a Greenhouse Gas Analysis Compliance Checklist.⁷ The project sponsor is required to submit the completed table regarding project compliance with the identified regulations and provide project-level details in the discussion column. This information will be reviewed by the environmental planner during the environmental review process to determine if the project would comply with San Francisco's Greenhouse Gas Reduction Strategy. Projects that do not comply with an ordinance or regulation may be determined to be inconsistent with the Greenhouse Gas Reduction Strategy.
7. **Wind.** The proposed project would involve construction of a building over 80 feet in height. The project would therefore be required to comply with *Western SoMa Mitigation Measure M-WS-1: Screening Level Wind Analysis and Wind Tunnel Testing*. Given the proposed project's height, location, and preliminary design, wind tunnel testing will likely be required as part of the analysis. The consultant will be required to prepare a proposed scope of work for review and approval by the Environmental Planning coordinator prior to proceeding with the analysis.
8. **Shadow.** The proposed project would result in construction of a building greater than 40 feet in height. A preliminary shadow fan analysis prepared by Planning Department staff indicates that the proposed project could cast shadows on Victoria Manalo Draves Park and the Gene Friend Recreation Center, both San Francisco Recreation & Parks Department properties, as well as other nearby public and private open spaces. The project sponsor is therefore required to hire a qualified consultant to prepare a detailed shadow study. The consultant must submit a Shadow Study Application, which can be found on the Planning Department's website (<http://www.sf-planning.org/Modules/ShowDocument.aspx?documentid=539>). A separate fee is required. The consultant must also prepare a proposed scope of work for review and approval by Environmental Planning staff prior to preparing the analysis.
9. **Utilities and Service Systems.** The proposed project exceeds the threshold for a "water demand project" as defined in Sections 10910 of the California Water Code and preparation of a water supply assessment (WSA) may therefore be required. A determination of the need for a WSA will be made in consultation with the San Francisco Public Utilities Commission during preparation of the environmental documentation for the proposed project.

⁷ Refer to <http://sf-planning.org/index.aspx?page=1886> for latest "Greenhouse Gas Compliance Checklist for Private Development Projects."

10. **Biological Resources.** The proposed project would include demolition of buildings, and may therefore be required to comply with *Western SoMa Mitigation Measure M-BI-1a: Pre-Construction Special Status Bird Surveys*. This measure requires pre-construction special-status bird surveys during certain time periods when birds are likely to be nesting, and includes restrictions on construction during the breeding period.
11. **Geology.** The project site is located within a Seismic Hazard Zone (Liquefaction Hazard Zone likely underlain by artificial fill). Any new construction on the site is therefore subject to a mandatory Interdepartmental Project Review.⁸ A geotechnical study prepared by a qualified consultant must be submitted with the EEA. The study should address whether the site is subject to liquefaction, and should provide recommendations for any geotechnical concerns identified in the study. In general, compliance with the building codes would avoid the potential for significant impacts related to structural damage, ground subsidence, liquefaction, landslides, and surface settlement. To assist Planning Department staff in determining whether the project would result in environmental impacts related to geological hazards, it is recommended that you provide a copy of the geotechnical information with boring logs for the proposed project. This study will also help inform the Planning Department Archeologist of the project site's subsurface geological conditions.
12. **Hazardous Materials.** The proposed project would include excavation and below-grade construction on a site with previous and ongoing light industrial uses, and which is included on a map of sites with known or suspected soil and/or groundwater contamination maintained under Article 22A of the Health Code, also known as the Maher Ordinance. Therefore, the project is subject to the Maher Ordinance, which is administered and overseen by the Department of Public Health (DPH), and which requires the project sponsor to retain the services of a qualified professional to prepare a Phase I Environmental Site Assessment (ESA) that meets the requirements of Health Code Section 22.A.6. The Phase I ESA would determine the potential for site contamination and level of exposure risk associated with the project. Based on that information, soil and/or groundwater sampling and analysis, as well as remediation of any site contamination, may be required. These steps are required to be completed prior to the issuance of any building permit.

DPH requires that projects subject to the Maher Ordinance complete a Maher Application, available at: <http://www.sfdph.org/dph/EH/HazWaste/hazWasteSiteMitigation.asp>. Fees for DPH review and oversight of projects subject to the ordinance would apply. Please refer to DPH's fee schedule, available at: <http://www.sfdph.org/dph/EH/Fees.asp#haz>. Please provide a copy of the submitted Maher Application and Phase I ESA with the EEA. Compliance with Health Code Article 22A would meet the requirements of *Western SoMa PEIR Hazardous Materials Mitigation Measure M-HZ-3: Site Assessment and Corrective Action*.

Western SoMa PEIR Hazardous Materials Mitigation Measure M-HZ-2: Hazardous Building Materials Abatement would be applicable to the proposed project. The mitigation measure requires that the project sponsor ensure that any equipment containing polychlorinated biphenyls (PCBs) or mercury,

⁸ San Francisco Planning Department. Interdepartmental Project Review. Available online at: <http://www.sf-planning.org/Modules/ShowDocument.aspx?documentid=522>.

such as fluorescent light ballasts and fluorescent light tubes, be removed and properly disposed of in accordance with applicable federal, state, and local laws. In addition, any other hazardous materials identified, either before or during work, must be abated according to applicable federal, state, and local laws.

Because the existing buildings were constructed prior to 1980, asbestos-containing materials, such as floor and wall coverings, may be found in the buildings. The Bay Area Air Quality Management District (BAAQMD) is responsible for regulating airborne pollutants including asbestos. Please contact BAAQMD for the requirements related to demolition of buildings with asbestos-containing materials. In addition, because of their age (constructed prior to 1978), lead paint may be found in the existing buildings. Please contact the San Francisco Department of Building Inspection (DBI) for requirements related to the demolition of buildings that may contain lead paint.

13. **Tree Planting and Protection.** The Department of Public Works Code Section 8.02-8.11 requires disclosure and protection of landmark, significant, and street trees located on private and public property. Any such trees must be shown on the site plans with the size of the trunk diameter, tree height, and accurate canopy drip line. Please submit the *Tree Planting and Protection Checklist* with the EEA and ensure that trees are appropriately shown on site plans. Also see the comments below under "Street Trees."
14. **Disclosure Report for Developers of Major City Projects.** The San Francisco Ethics Commission S.F. Camp. & Govt. Conduct Code § 3.520 et seq. requires developers to provide the public with information about donations that developers make to nonprofit organizations that may communicate with the City and County regarding major development projects. This report must be completed and filed by the developer of any "major project." A major project is a real estate development project located in the City and County of San Francisco with estimated construction costs exceeding \$1,000,000 where either: (1) The Planning Commission or any other local lead agency certifies an EIR for the project; or (2) The project relies on a program EIR and the Planning Department, Planning Commission, or any other local lead agency adopts any final environmental determination under CEQA. A final environmental determination includes: the issuance of a CPE; certification of an EIR; adoption of a Final Mitigated Negative Declaration; or a project approval by the Planning Commission that adopts CEQA Findings. In instances where more than one of the preceding determinations occur, the filing requirement shall be triggered by the earliest such determination. A major project does not include a residential development project with four or fewer dwelling units. The first (or initial) report must be filed within 30 days of the date the Planning Commission (or any other local lead agency) certifies the EIR for that project or, for a major project relying on a program EIR, within 30 days of the date that the Planning Department, Planning Commission, or any other local lead agency adopts a final environmental determination under CEQA. Please submit a Disclosure Report for Developers of Major City Projects to the San Francisco Ethics Commission. This form can be found at the Planning Department or online at <http://www.sfethics.org>.

PLANNING DEPARTMENT APPROVALS:

The project requires the following Planning Department approvals. These approvals may be reviewed in conjunction with the required environmental review, but may not be granted until after the required environmental review is completed.

Note that the subject parcel is within the Central SoMa Plan area. The Central Corridor Draft Plan for Public Review was published in April 2013. The Central SoMa Plan process is anticipated to be completed in 2016. The proposals in the Draft Plan are subject to change and are contingent on the eventual approval by the Planning Commission and Board of Supervisors. Please see the Preliminary Project Comments section for more details on proposed requirements under the Draft Plan.

1. **Rezoning.** The project site is located within the SALI (Service/Arts/Light Industrial) District. The proposed office use is not permitted under this zoning, but the proposed industrial and retail (subject to applicable size restrictions) uses would be allowed. In order for the project to proceed, the Planning Commission and Board of Supervisors would need to approve new zoning controls for the subject parcel.

The zoning concepts included in the Central Corridor Draft Plan indicate that a reclassification to MUO (Mixed Use Office) is being considered for the site. Office use is permitted in the MUO Zoning District. Please see further discussion in the Preliminary Project Comments section.

2. **Height District Reclassification.** The project site is located within the 40/55-X Height and Bulk District. The height of the proposed project would exceed this height limit of both designations. In order for the project to proceed, the Board of Supervisors would need to approve a Height District Reclassification for the subject parcel.

The zoning concepts published in the Central Corridor Draft Plan (April 2013) indicate that height limits of 55- and 65-feet (proposed Mid-Rise Scenario Alternative) and 55-, 65-, and 85-feet (proposed High-Rise Scenario Alternative) are being considered for this site. The proposed project would not conform with these alternatives put forward in the Draft Plan. However, the EIR currently underway will study a High-Rise Height Alternative of up to 270 feet on the project site. This analysis is not an indication of which height scenario will ultimately be adopted as part of the Plan and is not a guarantee that the Planning Commission or the Board of Supervisors will approve changes to height limits. Please see further discussion in the Preliminary Project Comments section.

3. A **Large Project Authorization** from the Planning Commission is required per Planning Code Section 329 for the new construction of a building greater than 75 feet in height and greater than 25,000 gross square feet.
4. A **Shadow Application** must be submitted, per Planning Code Section 295. Due to potential shadow impacts on nearby property owned by the San Francisco Recreation and Park Department (see "Preliminary Project Comments" below), the project must be approved by the Recreation and Park Commission.

5. An **Office Allocation** from the Planning Commission is required per Planning Code Section 321 et seq. to establish more than 25,000 gross square feet of new office space.
6. A **Building Permit Application** is required for the demolition of the existing building on the subject property.
7. A **Building Permit Application** is required for the proposed new construction on the subject property.

All applications are available in the Planning Department lobby at 1650 Mission Street Suite 400, at the Planning Information Center at 1660 Mission Street, and online at www.sfplanning.org. Building Permit applications are available at the Department of Building Inspections at 1660 Mission Street.

NEIGHBORHOOD NOTIFICATIONS AND PUBLIC OUTREACH:

Project Sponsors are encouraged to conduct public outreach with the surrounding community and neighborhood groups early in the development process. Additionally, many approvals require a public hearing with an associated neighborhood notification. Differing levels of neighborhood notification are mandatory for some or all of the reviews and approvals listed above.

This project is required to conduct a **Pre-Application Meeting** with surrounding neighbors and registered neighborhood groups before a development application may be filed with the Planning Department. The Pre-application packet, which includes instructions and template forms, is available at www.sfplanning.org under the "Permits & Zoning" tab. All registered neighborhood group mailing lists are available online at www.sfplanning.org under the "Resource Center" tab.

PRELIMINARY PROJECT COMMENTS:

The following analysis examines the proposed project under the proposed zoning outlined within the Draft Central SoMa Area Plan. Unless otherwise noted, the comments apply to both project proposals submitted for this property.

1. **Existing Zoning/Height-Bulk.** The subject property is zoned as a Service/Arts/Light Industrial (SLI) district, which does not permit the proposed office use, but does permit the proposed industrial and retail (subject to applicable size restrictions) uses. It is located within the 40/55-X height and bulk district, which does not permit the project's proposed height and bulk. *The project could not be approved under existing zoning.*
2. **Central SoMa Plan.** The subject property falls within the ongoing Central SoMa Plan study area bounded by 2nd, 6th, Townsend and Market Streets. The Central Corridor Draft Plan was published in April 2013 and is currently being evaluated in an Environmental Impact Report (EIR). The Draft Plan proposes changes to the allowed land uses and building heights, and includes a strategy for improving the public realm in this area. The EIR, the Plan, and the

proposed rezoning and affiliated Code changes are anticipated to be brought before decision-makers for approval in the latter part of 2015 or early 2016.

The Central Corridor Draft Plan includes recommendations for new land use controls as well as new height and bulk controls for the subject property. The Draft Plan is available for download at <http://centralsoma.sfplanning.org>. *Further comments in this section of the PPA are based on the draft Central Corridor Draft Plan.*

- 3. Land Use.** The Central SoMa Draft Plan recommends rezoning the subject property to the Mixed-Use Office (MUO) Zoning District, in which the proposed office, industrial, and retail uses would be allowed. The project also falls within the South SoMa SUD proposed in the Plan, which would require predominantly commercial uses on large sites such as this one, in order to support substantial development in this transit-rich area.

The proposal to maintain the SF Flower Mart on site helps achieve one of the Plan's central goals, which is to support a diversity of jobs and businesses in the area, including Production, Distribution, Repair (PDR) uses. The Flower Mart has been a San Francisco institution for over a century, and still serves an important PDR function. As such, the City has an interest in ensuring its continued operation, whether in its current location or elsewhere in San Francisco, and any development on the project site will be assessed for its potential impact to the ongoing operation and viability of the Flower Mart. The Plan proposes requiring at least 0.5 FAR of PDR space in most commercial developments in order to support these goals across the Plan Area. In addition, in areas currently zoned SALI, 100% replacement of existing PDR space would be required in order to prevent displacement of businesses (the greater of these two requirements would apply). For more information, see the draft policy document on Production, Distribution and Repair at:

Central SoMa Draft Policy Document: Revised Production, Distribution, and Repair (March 2015):
[http://www.sfplanning.org/ftp/files/Citywide/Central Corridor/Draft CentralSoMa PDR Policy-March2015.pdf](http://www.sfplanning.org/ftp/files/Citywide/Central_Corridor/Draft_CentralSoMa_PDR_Policy-March2015.pdf)

Both project proposals, which preserve Flower Mart operations on site, are generally consistent with the intent of the proposed PDR policy. As this proposal is still in a preliminary phase, please ensure that the size of the Flower Mart is consistent with the PDR replacement requirements that are ultimately adopted (currently proposed at 100% replacement of PDR space in SALI districts). The project proposals include 115,000 sq ft of Flower Mart space and 10,000 sq ft of associated retail store frontage (125,000 sq ft total), while the current SF Flower Mart includes 126,500 of leasable warehouse and retail space.

This project also falls within the SoMa Entertainment SUD proposed in the Draft Plan, in which entertainment uses would be permitted. In order to create a diverse and dynamic 24-hour neighborhood characteristic of SoMa, the Central Corridor Plan's preliminary land use principles envision a mixed-use neighborhood in which substantial office development is balanced with retail, arts, entertainment, industrial, and residential uses. The proposed ground floor uses

(45,800 sf of retail uses under the February 2015 proposal; and 115,000 sf of industrial uses and 29,550 sf of retail space under the April 2015 proposal) supports this vision of a mixed-use neighborhood. The project sponsor is encouraged to further explore inclusion of a variety of active uses for these ground floor spaces. Please see the Preliminary Design Comments for further discussion.

4. **Urban Form: Height and Bulk.** In recognition of the desire to accommodate more growth in the area, the draft Central Corridor Plan recommends changing the height limits of the subject property to 55 and 65 feet. Additionally, the Draft Plan includes a Higher Height Alternative, which would allow additional height up to a maximum of 85-feet on a portion of the subject property, while the EIR is evaluating a development scenario of up to 270 feet. The proposed building tower heights, ranging from 65-to-250-feet (February 2015) and 77-to-270 feet (April 2015), are consistent with the High Rise Height Alternative under study in the Central Corridor Plan EIR. The Plan publication and ongoing EIR analysis is not an indication of which heights will ultimately be adopted as part of the Plan and is not a guarantee that the Planning Commission or the Board of Supervisors will approve the proposed heights or whether these bodies will change existing height limits.

Regardless of what height scenario is finally adopted by the Plan, any portions of the building exceeding 85-feet in height would be subject to additional setback requirements and bulk restrictions. Please see the Preliminary Design Comments below for additional discussion of massing and site design. The Central SoMa Draft Policy Paper on Bulk requirements describes the most recent proposal for the Plan's bulk controls, intended to ensure that the neighborhood urban form supports light, air, and sun access to the street, while supporting greater densities. The paper is available at:

Central SoMa Draft Policy Paper: Bulk (February 2015):

http://www.sf-planning.org/ftp/files/Citywide/Central_Corridor/Central_SoMa_Draft_Policy_Paper-Feb2015_graphics.pdf

Please note that existing requirements in Eastern Neighborhoods districts for mid-block alleys and massing reduction for large projects will continue to apply. Please see comment 20 ("Mid-Block Alley") below for more information.

5. **Open Space/Private-ly-Owned Public Open Space (POPOS).** The Central Corridor Draft Plan proposes a requirement that commercial developments include a minimum amount of Privately-Owned Public Open Space (POPOS), similar to those required in the C-3 district under Section 138. If these requirements are adopted as part of the plan, such spaces would need to meet specified provisions on accessibility, design quality, and operations and maintenance. Please see the Central SoMa policy paper on POPOS, found here:

Central SoMa Draft Policy Document: Privately Owned Public Open Spaces (POPOS) (November 2014):

[http://www.sf-planning.org/ftp/files/Citywide/Central Corridor/Draft CentralSoMa POPOS Policy-November2014.pdf](http://www.sf-planning.org/ftp/files/Citywide/Central_Corridor/Draft_CentralSoMa_POPOS_Policy-November2014.pdf)

In addition, the Planning Department has developed draft Key Development Sites Guidelines for properties throughout the Plan Area, including the site of the SF Flower Mart. These design guidelines were crafted to help shape development of these key sites, particularly where their size presents special possibilities for realizing public realm or other public benefit objectives, where there is a need for coordination between or within sites, and/or where adjacent investments in transit or open space infrastructure require special consideration of the relationship between private development and the public realm. These guidelines are available at:

Central SoMa Draft Policy Document: Key Development Sites Guidelines (March 2015):
[http://www.sf-planning.org/ftp/files/Citywide/Central Corridor/Draft CentralSoMa Policy Paper-Key Development Site Guidelines-March2015.pdf](http://www.sf-planning.org/ftp/files/Citywide/Central_Corridor/Draft_CentralSoMa_Policy_Paper-Key_Development_Site_Guidelines-March2015.pdf)

The Guidelines for Site 7 ["Flower Mart Block," encompassing both the Flower Mart site as well as the adjacent site at 5th/Brannan (3778/047)] call for continuous mid-block alleys to break down the massing of the block and increase pedestrian connectivity throughout the site. It also calls for coordination on the placement and design of POPOS, consolidating spaces into a single cohesive open space where possible, in order to maximize accessibility and functionality and help meet the great need for additional open spaces in this area. Finally, the guidelines also call for ground-floor activation and specifies that office space shall not be an allowed use along any street or POPOS frontage.

As currently designed, both proposals are inconsistent with these design guidelines, as they do not create adequate mid-block pedestrian connections, nor do they meet the intent of the recommended placement of POPOS within the block. This is particularly true of the April 2015 proposal, which does not include continuous pedestrian access at the rear of the elevated plaza. Further, the POPOS are designed as a segmented series of plazas that do not connect with the adjacent site, and that are lined with office uses. Please see the Preliminary Design Comments section below for additional comments.

6. **Streetscape Improvements.** The Draft Plan calls for streetscape improvements across the study area, with extensive streetscape improvements proposed along Brannan Street in order to support a safe, convenient, and attractive street environment for all users. Proposed improvements on this section of Brannan Street include wider sidewalks, reducing the number of traffic lanes, one-way cycle tracks on both sides of the street, and adding a signalized mid-block crossing. The Plan would also prohibit new curb cuts on this street. The proposed project will be expected to implement street improvements consistent with the Plan along any adjacent street and alley frontages. Please see comment 11 ("Street Trees / Streetscape Plan") and the Preliminary Design Comments for further discussion.

7. **Sustainability & Central SoMa Eco-District.** The Department sees a special opportunity for the Flower Market site to exhibit a variety of sustainability best practices including and beyond those required by the Green Building Code and other City and State sustainability requirements. The proposed project could serve as one of the primary anchor properties for the Central SoMa Eco-District. An “eco-district” is a neighborhood or district where residents, community institutions, property owners, developers, and businesses join together with city staff and utility providers to meet sustainability goals by formulating a portfolio of innovative projects at a district or block-level. The Planning Department has identified the Central SoMa plan area as a Type 2 Eco-District—an infill area composed of many smaller parcels and property owners.

All major new development in the Central SoMa Plan Area will be expected to participate in some capacity in the Eco-District Program and a possible Sustainability Management Association to help guide it. In addition, Planning staff have been in conversation with Kilroy Realty staff regarding voluntary sustainability measures related to energy, water use and building systems. Department staff will continue to work with Kilroy on further refinement and feasibility of site-specific sustainability strategies. For more information please see:

San Francisco Eco-District Program:

<http://www.sf-planning.org/index.aspx?page=3051>

Central SoMa Eco-District Task Force Recommendations Report (2013):

http://www.sf-planning.org/ftp/files/plans-and-programs/emerging_issues/sustainable-development/CentralSoMa_EcoDTaskForceReport_112513.pdf

The following comments address specific Planning Code and other general issues that may substantially impact the proposed project. Please note that these comments reflect current Planning Code requirements for this property, which may differ from the requirements being considered under the Central SoMa Plan. Please see the comments above and the Preliminary Design Comments for more information.

8. **Interdepartmental Project Review.** This review is required for all proposed new construction in seismic hazard zones, in which the subject property falls. Please go to the Department’s website for information about the application.
9. **Large Project Authorization:** Planning Code Section 329 outlines the requirements for a Large Project Authorization in Eastern Neighborhoods Mixed Use Zoning Districts. Under these requirements, a Large Project Authorization is required of new construction of more than 25,000 gross square feet. All large projects within the MUO Zoning District are subject to review by the Planning Commission in an effort to achieve the objectives and policies of the General Plan, the applicable Design Guidelines and the Planning Code. Additional modifications of certain Planning Code requirements may be granted under the Large Project Authorization.
10. **Office Allocation.** As defined in Planning Code Section 321, the proposed project would need to obtain an Office Development Authorization from the Planning Commission for new

construction of over 25,000 GSF of office use. Please note that proposed amount of office use exceeds the annual limit allocation of 875,000 GSF per year for large cap projects (more than 50,000 GSF), such that entitlement of the proposed project in its entirety would depend on the accrual of unused allocations over more than one annual cycle. The Planning Department recommends that the project sponsor monitor the status of the Annual Limit Program at: <http://www.sf-planning.org/index.aspx?page=3254>

11. **Street Trees/Streetscape Plan.** Planning Code Section 138.1 requires one street tree for every 20 feet of frontage for new construction with any remaining fraction of 10 feet or more of frontage requiring an additional tree, as well as the submittal of a streetscape plan for projects above a certain size. The proposed project would require additional street trees along public rights-of-way, as well as submittal of a streetscape plan identifying proposed improvements. Please consult with the Department of Public Works regarding the placement of the street trees. Per Planning Code Section 138.1, the Department will require standard streetscape elements and sidewalk widening for the appropriate street type per the Better Streets Plan, including landscaping, site furnishings, and/or corner curb extensions (bulb-outs) at intersections. Please see the Preliminary Design Comments for further discussion.
12. **Street Frontage.** Planning Code Section 145.1 outlines requirements for street frontages to ensure that they are pedestrian-oriented, fine-grained, and are appropriate and compatible with the buildings in MUO District. Please ensure that the ground floor street frontage meets all of these requirements as related to use, ground floor ceiling height, transparency, fenestration, gates, railings and grillwork.
13. **Shadow.** Planning Code Section 147 states that a shadow analysis is required any project over 50 feet in height in the Eastern Neighborhoods Plan Area. Similarly, Planning Code Section 295 requires a shadow analysis be conducted for any project greater than 40 feet in height. The preliminary analysis for the proposed project indicates that it may cast shadows on nearby public parks; therefore, additional analysis will be required. See comment 8 ("Shadow") in the Environmental Review section for more information.
14. **Parking.** Under current zoning (SALI) and the zoning proposed under the Draft Central Corridor Plan (MUO), no parking would be required. However, each of these zoning districts would have parking maximums, which are listed in Planning Code Section 151.1. For office use within the MUO Zoning District, parking is limited to seven percent of the gross floor area of office use. For retail use within the MUO Zoning District, parking is permitted at a ratio of 1 car for each 1,500 sq ft of retail use. For other manufacturing and industrial uses, parking is permitted at a ratio of 1 car for each 1,500 square feet of occupied floor area.
15. **Bicycle Parking & Showers.** Planning Code Section 155.2 outlines the requirement for bicycle parking in new development. The number of required Class 1 and Class 2 bicycle parking spaces shall be dependent on the amount of retail, PDR, and office space.

In addition, Planning Code Section 155.4 outlines the requirement for shower facilities and lockers for office and retail development. For office development over 50,000 sq ft, a minimum four showers and twenty-four clothes lockers are required. Please ensure compliance with these requirements.

16. **Car-Sharing.** Planning Code Section 166 provides the required number of car sharing spaces for new construction. The number of required car-share parking spaces shall be dependent on the amount of off-street parking. Please ensure compliance with this requirement.
17. **Transportation Management Program.** Pursuant to Planning Code Section 163, an agreement will be required to be executed with the Planning Department to ensure that transportation brokerage services are provided for the life of the project.
18. **Horizontal Mass Reduction:** Planning Code Section 270.1 requires a horizontal mass reduction for all new construction projects with street frontage greater than 200-ft in length. Currently, the proposed project has approximately 241-ft of frontage along Folsom Street. Therefore, the proposed project is required to incorporate a mass reduction that: 1) is not less than 30-ft in width; 2) is not less than 60-ft in depth from the street-facing building façade; 3) extends up to the sky from a level not higher than 25-ft above grade or the third-story, whichever is lower; and 4) results in discrete building sections with a maximum plan length along the street frontage not greater than 200-ft. Please ensure that the project meets this requirement. Please see comment 4 (“Urban Form: Height and Bulk”) and the Preliminary Design Comments for more information on massing requirements proposed in the Draft Plan.
19. **Narrow Street Height Provisions:** For projects within the MUO Zoning District along a Narrow Street (a public right of way less than or equal to 40 feet in width, or any mid-block passage or alley that is less than 40 feet in width), Planning Code Section 261.1 specifies that all subject frontages shall have upper stories set back at least 10 feet at the property line above a height equivalent to 1.25 times the width of the abutting narrow street. No part or feature of a building may penetrate the required setback plane. Please see comment 4 (“Urban Form: Height and Bulk”) and the Preliminary Design Comments for more information on massing requirements proposed in the Draft Plan.
20. **Mid-Block Alley:** Planning Code Section 270.2 outlines requirements for new construction on parcels that have one or more street frontages of over 200 linear feet on a block face longer than 400 feet between intersections. For new construction on lots with greater than 300 linear feet of street frontage, a publicly accessible mid-block alley for the entire depth of the property will be required. This alley should generally be located toward the middle of the subject block face and be perpendicular to the subject frontage. Additional provisions for this requirement are specified within the aforementioned code section. Please see comment 5 (“Open Space / Privately-Owned Public Open Space (POPOS)”) and the Preliminary Design Comments for more information on proposed requirements under the Draft Plan.

21. **Transit Impact Development Fee.** Pursuant to Planning Code Section 411 et seq., the Transit Impact Development Fee (TIDF) will apply to this project. Please be aware that under the ongoing Transportation Sustainability Program, a proposed new transportation impact fee (the Transportation Sustainability Fee, or TSF) may replace the TIDF. Additional information on this program is available on the Department's website at:
<http://www.sf-planning.org/index.aspx?page=3035>
22. **Eastern Neighborhoods Impact Fees.** This project is subject to the applicable fees outlined in Section 423 et seq.
23. **Jobs-Housing Linkage Program.** Pursuant to Planning Code Section 413 et seq., the Jobs-Housing Linkage Program fee will apply to this project.
24. **Child Care Requirements.** Pursuant to Planning Code Section 414 et seq., this project will be subject to child care requirements, and/or the associated in-lieu fee, since it is constructing more than 50,000 gsf of office space.
25. **Public Art.** Pursuant to Planning Code Section 429 et seq., this project will be subject to the public art requirements, since it involves new construction of non-residential use in excess of 25,000 sq ft within the MUO Zoning District.
26. **First Source Hiring Agreement.** A First Source Hiring Agreement is required for any project proposing to construct 25,000 gross square feet or more. For more information, please contact:

Ken Nim, Workforce Compliance Officer
CityBuild, Office of Economic and Workforce Development
City and County of San Francisco
50 Van Ness, San Francisco, CA 94102
(415)581-2303

PRELIMINARY DESIGN COMMENTS:

The project is located in the study area of the Central SoMa Area Plan, currently in process. The site is large and unique, currently housing the San Francisco Flower Mart in a neighborhood with a mixed character of commercial, PDR and residential uses. While the existing neighborhood context includes one to eight story buildings, the Draft Plan proposes a significant increase in density in the area, as it is well served by local and regional transit. The plan proposes several high-rise and large floorplate mid-rise projects on adjacent blocks. The following comments address preliminary design issues that may significantly impact the proposed project:

1. **Site Design, Open Space, and Massing.** The Planning Department recommends that the open space and massing strategy be reframed to better support the goals of the Central SoMa district identity, specifically that the area is intended to be a mid-rise district punctuated with occasional

towers. To clearly define this mid-rise massing, the plan proposes establishing a defined and variable streetwall between 65-ft and 85-ft to keep a strong yet pedestrian-scaled edge along the major streets. A handful of towers (defined as any mass above 160') will be permitted in the Plan Area and are to be small (maximum floorplate of 15,000 sf for office) from the 85' plane and above to be more "spire-like." The Planning Department finds that the current proposal, as a campus of buildings, shifts the balance and definition of the massing and open space too much in favor of the latter, such that the buildings are seen more as objects in an open environment rather than a mid-rise solid with relief open spaces carved from it.

Additionally, the Plan's proposed rezoning generally reinforces a neighborhood pattern of larger heights on the large streets with lower heights towards the center of the block. While there are few existing small streets or alleys present in the large block bounded by Sixth, Fifth, Bryant and Brannan, the Plan seeks to further the scale and massing of this characteristic pattern, including a re-establishment of smaller streets or alleys to provide permeability and physical access through the interior of the site. The current proposal deviates from this intent by including a high-rise tower at the center of the development site and by its lack of connectivity and permeability to the adjacent site at 5th & Brannan, and to 5th Street generally. The proposed massing of the buildings effectively creates a solid barrier to visual and physical connectivity to 5th Street in a way that is not consistent with the draft Plan. The project sponsor will need to consider how the scenario with the Flower Mart above grade can be designed to achieve these objectives and not create extensive stretches of ground-level impermeability, particularly when the Mart is not in operation.

Note also that the draft Plan currently includes an apparent mass reduction bulk control (informally known as "skyplane") which would apply at lot edges. The Planning Department recommends reviewing the "Shaping New Buildings" boards created for the last community meeting to review this intent in more depth, available at (see pages 6 -11):

<http://www.sf-planning.org/ftp/files/Citywide/Central Corridor/CentralSoma Combined Storyboards-032515.pdf>

We recommend that the project sponsors and their design team further work with the staff developing the Key Development Sites Guidelines as part of the Central SoMa plan, which can be found here:

Central SoMa Draft Policy Document: Key Development Sites Guidelines (March 2015):

<http://www.sf-planning.org/ftp/files/Citywide/Central Corridor/Draft CentralSoMa Policy Paper-Key Development Site Guidelines-March2015.pdf>

2. **Street Frontage.** The unique nature of the Flower Mart use presents opportunities to support open space identity, accessibility, and connectivity in Central SoMa. Along with fulfilling Planning Code Sections 138 (Privately-Owned Public Open Space) and 270.2 (Mid-Block Alley

requirements), the project should provide a defined singular space or intentional network of spaces that are programmed and designed to be inclusive and attractive to the public and local residents in addition to workers and tenants on site and in the vicinity. Most importantly, the interior of the block should be positively activated and permeable even when the Flower Mart is not open. The current proposal in the Draft Plan would require active uses, such as retail, lining all POPOS frontages. Both proposals would not be compliant with this key requirement, as they feature office uses along the portions of the plaza.

The Flower Mart could itself be redefined as a semi-open environment with a strong sense of permeability to the public realm. This inventive ground floor “landscape” would be able to facilitate access for service vehicles and the industrial nature of the commercial activity, while being safe and spatially connected for pedestrians and their retail interface. As the project has significant POPOS requirements and the Flower Mart may consume and require a large portion of the lot area, we recommend continuing to work with Planning Department staff to consider how best to meet the requirement and intents of both the open space and mid-block alley requirements through creative building massing, ground floor programming, and landscape design. Please see the Central SoMa POPOS policy paper found here:

Central SoMa Draft Policy Document: Privately Owned Public Open Spaces (POPOS) (November 2014):
[http://www.sf-planning.org/ftp/files/Citywide/Central Corridor/Draft CentralSoMa POPOS Policy-November2014.pdf](http://www.sf-planning.org/ftp/files/Citywide/Central_Corridor/Draft_CentralSoMa_POPOS_Policy-November2014.pdf)

Due to the complexity of the site context and great potential to influence the character of the area, the Planning Department encourages the project sponsor to initiate this landscape and ground floor design development early in the project.

Additionally, per Planning Code Section 138.1, the Department will require standard streetscape elements and sidewalk widening for the appropriate street type per the Better Streets Plan, including landscaping, site furnishings, and/or corner curb extensions (bulb-outs) at intersections (See Better Streets Plan Section 4 for Standard Improvements and Section 5.3 for Bulb-Out Guidelines). The project sponsor is required to submit a Streetscape Plan illustrating these features, and the department will work with the project sponsor and other relevant departments to determine an appropriate streetscape design. Standard street improvement would be part of basic project approvals not count for as credit towards in-kind contributions.

- 3. Architecture.** As the project proposal is diagrammatic, the Planning Department has little comment on the architecture at this time but recommends that the project express significant depth and high-quality materials in the facades and reflect the architectural detailing and character of the neighborhood.

Above all, the project should express a clear and neighborhood-compatible architectural idea that not only provides a contemporary set of buildings, but acknowledges the history of the site, expresses the unique nature of the development program, and feels accessible and welcoming for

its public elements. The architecture should consider itself as a campus of features that may have some commonality, but may also express variety in their concept, material creativity, and personality.

PRELIMINARY PROJECT ASSESSMENT EXPIRATION:

This Preliminary Project Assessment is valid for a period of **18 months**. An Environmental Evaluation, Conditional Use Authorization, or Building Permit Application, as listed above, must be submitted no later than **January, 23, 2017**. Otherwise, this determination is considered expired and a new Preliminary Project Assessment is required. Such applications and plans must be generally consistent with those found in this Preliminary Project Assessment.

Enclosure: Neighborhood Group Mailing List

cc: Richard Sucre, Current Planning
Elizabeth Purl, Environmental Planning
Maia Small, Design Review
Jonas Ionin, Planning Commission Secretary
Charles Rivasplata, MTA
Jerry Sanguinetti, DPW
Pauline Perkins, PUC
June Weintraub and Jonathan Piakis, DPH
Planning Department Webmaster (planning.webmaster@sfgov.org)

- Angelica Cabande
Organizational Director
South of Market Community Action
Network (SOMCAN)
1110 Howard Street
San Francisco, CA 94103
- Antonio Diaz
Project Director
People Organizing to Demand Environmental
and Economic Rights (PODER)
474 Valencia Street #125
San Francisco, CA 94103
- Carolyn Diamond
Executive Director
Market Street Association
870 Market Street, Suite 456
San Francisco, CA 94102
- Corinne Woods
0
Mission Creek Harbor Association
300 Channel Street, Box 10
San Francisco, CA 94158
- Alexandra Goldman
Community Planner
Tenderloin Neighborhood Development
Corporation - CO Department
215 Taylor Street
San Francisco, CA 94102
- Eric Lopez
President
SoMaBend Neighborhood Association
P.O. Box 410805
San Francisco, CA 94141
- Ethan Hough
Secretary
One Ecker Owners Association
16 Jessie Street Unit 301
San Francisco, CA 94105
- Gerald Wolf
President
Hailam Street Homeowners Association
1 Brush Place
San Francisco, CA 94103
- Ian Lewis
0
HERE Local 2
209 Golden Gate Avenue
San Francisco, CA 94102
- Jane Kim
Supervisor, District 6
Board of Supervisors
1 Dr. Carlton B Goodlett Place, Room #244
San Francisco, CA 94102-4689
- Janet Carpinelli
Board President
Dogpatch Neighborhood Association
934 Minnesota Street
San Francisco, CA 94107
- Jason Henderson
Vice Chariman
Market/Octavia Community Advisory
Comm.
300 Buchanan Street, Apt. 503
San Francisco, CA 94102
- Jim Meko
Chair
SOMA Leadership Council
366 Tenth Street
San Francisco, CA 94103
- Katy Liddell
President
South Beach/Rincon/ Mission Bay
Neighborhood Association
403 Main Street #813
San Francisco, CA 94105
- Kaye Griffin
Director
LMNOP Neighbors
1047 Minna Street
San Francisco, CA 94103
- Keith Goldstein
0
Potrero-Dogpatch Merchants Association
800 Kansas Street
San Francisco, CA 94107
- Ken Baxter
Director
Citizens for Change
355 11th Street, Suite 200
San Francisco, CA 94103
- Laura Magnani
0
American Friends Service Committee
65 Ninth Street
San Francisco, CA 94103
- Marvis Phillips
Land Use Chair
Alliance for a Better District 6
230 Eddy Street #1206
San Francisco, CA 94102-6526
- Patsy Tito
Executive Director
Samoan Development Centre
2055 Sunnysdale Avenue #100
San Francisco, CA 94134-2611
- Reed Bement
President
Rincon Hill Residents Association
75 Folsom Street #1800
San Francisco, CA 94105
- Rodney Minott
Chair
Potrero Hill Neighbors/Save the Hill
1206 Mariposa Street
San Francisco, CA 94107
- Sonja Kos
Community Advocate
TODCO Impact Group
230 Fourth Street
San Francisco, CA 94103
- Ted Olsson
Chair
TJPA CAC
30 Sharon Street
San Francisco, CA 94114-1709
- Tiffany Bohee
Executive Director
Office of Community Investment and
Infrastructure, City and County of San
Francisco
1 South Van Ness Avenue, 5th Floor
San Francisco, CA 94103
- J.R. Eppler
President
Potrero Boosters Neighborhood Association
1459 - 18th Street, Suite 133
San Francisco, CA 94107
- York Loo
0
York Realty
243A Shipley Street
San Francisco, CA 94107-1010

Aaron Peskin
470 Columbus Avenue, Ste. 211
San Francisco, CA 94133

Chuck Turner
Director
Community Design Center
5 Thomas Mellon Circle, #128
San Francisco, CA 94134

Grace Shanahan
President
Residential Builders Association
1717 17th Street, Ste. 200
San Francisco, CA 94103

Michael Theriault
Secretary-Treasurer
SF Building and Construction Trades
Council
1188 Franklin Street, Ste.203
San Francisco, CA 94109

Sue Hestor
Attorney at Law
870 Market Street, #1128
San Francisco, CA 94102

Adrian Simi
Local Field Representative
Carpenters Local 22
2085 Third Street
San Francisco, CA 94107

David Villa-Lobos
Executive Director
Community Leadership Alliance
P.O. Box 642201
San Francisco, CA 94109

Lynn Sousa
Public Works Coordinator
AT&T Construction and Engineering
795 Folsom Street, Rm.426
San Francisco, CA 94107-1243

Sona Trauss
President
SF Bay Area Association of Renters
1618 12th Street
Oakland, CA 94607

Ted Gullicksen
Office Manager
San Francisco Tenants Union
558 Capp Street
San Francisco, CA 94110

Alex Lantsberg
Research Analyst
Carpenters Local 22 c/o NCCRC Research
265 Hegenberger Road, Ste. 220
Oakland, CA 94621

Diego Hernandez
Organizer
Laborers Local 261
3271 18th Street
San Francisco, CA 94110

Mary Miles
0
Coalition for Adequate Review
364 Page Street, #36
San Francisco, CA 94102

Stephen Williams
Attorney
Law Office of Stephen M. Williams
1934 Divisadero Street
San Francisco, CA 94115

EXHIBIT 7

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

Final –Methodology to Calculate Particulate Matter (PM) 2.5 and PM 2.5 Significance Thresholds

October 2006

Executive Officer

Barry R. Wallerstein, D. Env.

Deputy Executive Officer

Planning, Rule Development and Area Sources

Elaine Chang, DrPH

Assistant Deputy Executive Officer

Planning, Rule Development and Area Sources

Laki Tisopulos, Ph.D., P.E.

Planning and Rules Manager

Planning, Rule Development and Area Sources

Susan Nakamura

Authors: Mike Krause Air Quality Specialist
Steve Smith, Ph.D. Program Supervisor

Technical Assistance: James Koizumi Air Quality Specialist
Tom Chico Program Supervisor
Robert Wu Air Quality Specialist
Xinqiu Zhang Air Quality Specialist
Joe Cassmassi Planning Manager
Julia Lester, Ph.D.

**SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT
GOVERNING BOARD**

CHAIRMAN: WILLIAM A. BURKE, Ed.D.
 Speaker of the Assembly Appointee

VICE CHAIRMAN: S. ROY WILSON, Ed.D.
 Supervisor, Fourth District
 Riverside County Representative

MEMBERS:

MICHAEL D. ANTONOVICH
Supervisor, Fifth District
Los Angeles County Representative

JANE W. CARNEY
Senate Rules Committee Appointee

RONALD O. LOVERIDGE
Mayor, City of Riverside
Cities Representative, Riverside County

GARY OVITT
Supervisor, Fourth District
San Bernardino County Representative

JAN PERRY
Councilmember, Ninth District, City of Los Angeles
Cities Representative, Los Angeles County, Western Region

MIGUEL A. PULIDO
Mayor, City of Santa Ana
Cities Representative, Orange County

TONIA REYES URANGA
Councilmember, Seventh District, City of Long Beach
Cities Representative, Los Angeles County, Eastern Region

JAMES SILVA
Supervisor, Second District
Orange County Representative

CYNTHIA VERDUGO-PERALTA
Governor's Appointee

DENNIS YATES
Mayor, City of Chino
Cities Representative, San Bernardino County

EXECUTIVE OFFICER:
BARRY R. WALLERSTEIN, D.Env.

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Introduction

In the last few years, both California and the federal governments have established ambient air quality standards for fine particulate matter (PM) less than or equal to 2.5 microns in diameter (PM2.5). As a result, there is a need to establish a methodology for calculating PM2.5 and appropriate PM2.5 significance thresholds for the purpose of analyzing local and regional PM2.5 air quality impacts in California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) air quality analyses. This document provides a methodology for calculating PM2.5 and recommendations for localized and regional PM2.5 significance thresholds.

Background

PM larger than 2.5 microns and less than 10 microns, often referred to as the coarse PM fraction (or PM10), is mostly produced by mechanical processes. These include automobile tire wear, industrial processes such as cutting and grinding, and re-suspension of particles from the ground or road surfaces by wind and human activities such as construction or agriculture. In contrast, PM less than or equal to PM2.5 is mostly derived from combustion sources, such as automobiles, trucks, and other vehicle exhaust, as well as from stationary combustion sources. The particles are either directly emitted or are formed in the atmosphere from the combustion of gases, such as NO_x and SO_x combining with ammonia. PM2.5 components from material in the earth's crust, such as dust, are also present, with the amount varying in different locations. Staff's recommendation for calculating PM2.5 focuses only on directly emitted PM2.5.

In 1997, U.S. EPA established an annual and a 24-hour standard for the finest fraction of particulates, PM2.5, to complement the existing PM10 standards. However, U.S. EPA recently modified the 24-hr PM2.5 standard and revoked the annual PM10 standard. (Table 1). The annual component of the standard was established to provide protection against typical day-to-day exposures as well as longer-term exposures, while the daily component protects against more extreme short-term events.

TABLE 1

Federal Standards for Particulate Matter

Federal Standards	PM 10	PM 2.5
Annual	Revoked ^a	15 µg/m ³
24-Hour	150 µg/m ³	35 µg/m ³ ^b

In June 2002, the California Air Resources Board (CARB) adopted new, stricter standards for particulate matter that would affect both the coarse as well as fine particulate fraction (Table 2). CARB delayed action on the proposed 24-hour PM2.5 standard in light of the

^a U.S. EPA final rulemaking for CFR 40 Part 50.7 National Primary and Secondary Ambient Air Quality Standards at http://epa.gov/pm/pdfs/20060921_rule.pdf

^b U.S. EPA final rulemaking for CFR 40 Part 50.13 National Primary and Secondary Ambient Air Quality Standards at http://epa.gov/pm/pdfs/20060921_rule.pdf

findings related to statistical issues in several key short-term exposure health effects studies.

TABLE 2

California Standards for Particulate Matter

California Standards	PM 10	PM 2.5
Annual	20 $\mu\text{g}/\text{m}^3$	12 $\mu\text{g}/\text{m}^3$
24-Hour	50 $\mu\text{g}/\text{m}^3$	n/a

Methodology to Calculate PM 2.5

Because there are currently few or no PM2.5 emission factors for mechanical or combustion processes, staff is recommending an indirect approach to calculating PM2.5 emissions until such time as PM2.5 factors are developed. Since PM2.5 is a subset of PM10, the current methodology for calculating PM10 from fugitive dust sources (grading, demolition, unpaved roads, open storage piles, etc.) and combustion sources (stationary combustion sources, vehicle exhaust) will continue to be used to calculate PM10 and can also be used to calculate PM2.5. Total suspended PM (TSP) emissions typically contain specific fractions of PM10 and PM2.5 that can be measured. In general, PM from fugitive dust generating sources is primarily composed of PM10 with a relatively small fraction of the fugitive PM consisting of PM2.5. Alternatively, PM from combustion sources is primarily composed of PM2.5 with a small fraction consisting of PM10.

To calculate both PM10 and PM2.5, existing PM10 calculation methodologies for both fugitive dust PM10 and combustion PM10 can be used. To determine the PM2.5 fractions of the PM10 emission results, staff is recommending that the PM10 emissions be calculated using standard PM10 calculation methodologies. The PM10 emission results for each emission source or operation would then be multiplied by the applicable PM2.5 fraction, derived by emissions source, using PM profiles in the California Emission Inventory Data and Reporting System (CEIDARS) developed by the California Air Resources Board (CARB). The CEIDARS PM profiles are used to develop emission inventories for a variety of sources and operations in the Air Quality Management Plan (AQMP). The CEIDARS PM profiles have been streamlined to be used for most types of processes that would be encountered in a CEQA or NEPA document. In addition, AQMD staff has identified the PM2.5 fraction of PM10. The streamlined CEIDARS PM profiles can be found in Appendix A. The CEIDARS PM profiles may be updated as necessary to reflect updates prepared by CARB.

If the project being evaluated is not listed among the categories in Appendix A, then the closest related type of operation/process should be used. For example in analyzing construction activities, e.g., grading, earth moving, etc., if the specific activity is not located in the tables the CEQA practitioner can use the following default factors derived from the 2003 AQMP annual inventories (see Tables 3 and 4 below under the “Localized Significance Thresholds for PM2.5 Emissions” discussion). For mechanical dust generating sources, e.g., construction, the PM2.5 fraction of PM10 is 21 percent and for combustion sources the PM2.5 fraction of PM10 is 99 percent. For off-road combustions

sources, the PM2.5 fraction default would be 89 percent (Table 5). Other publicly available and peer reviewed sources of PM10 and PM2.5 emission factors can also be used if they more closely match the type of emission source than the sources identified in Appendix A. In addition, site-specific or project-specific information can be used.

Once the PM10 fractions from all emissions sources are calculated, these are summed and compared to the appropriate PM10 significance thresholds to determine whether or not a project is significant. Similarly, once the PM2.5 fractions from all emissions sources have been calculated, these are also summed (separate from the PM10 fractions) and compared to the appropriate PM2.5 significance threshold (see following discussion) to determine project significance.

The PM2.5 fraction of PM10 can be easily calculated as follows.

Step 1: Calculate PM10 emissions for each emissions source category.

Step 2: Look up the PM2.5 fraction of PM10 for the applicable source category by year that construction will occur or operation of the project will begin (Appendix A, column 6 of the appropriate table).

Step 3: Multiply the PM2.5 fraction by the PM10 emissions for each source category (PM2.5 emissions = PM10 emissions x [PM2.5 fraction])

Step 4: Sum the PM2.5 emissions from each emissions source.

Step 5: Compare PM2.5 emissions to the appropriate significance threshold.

Example:

A project is estimated to generate 8 pounds per day of PM10 from one piece of construction equipment. The PM2.5 emissions are as follows:

PM2.5 emissions = 8 pounds of PM10 per day x 0.89 = 7.12 pounds of PM2.5 per day.

In conjunction with establishing a methodology for calculating PM2.5, staff has developed the following recommended PM2.5 significance thresholds for both localized and regional significance for both construction and operation.

Localized Significance Thresholds for PM 2.5 Emissions

Localized significance thresholds (LSTs) were developed in response to the SCAQMD Governing Board's environmental justice (EJ) initiatives (EJ initiative I-4) in recognition of the fact that criteria pollutants, carbon monoxide (CO), oxides of nitrogen (NOx), and PM10 in particular, can have local impacts as well as regional impacts. The LST proposal went through extensive public outreach and was adopted by the Governing Board in October 2003. At the time the LST was adopted by the Governing Board, staff had not yet developed proposed LSTs for PM2.5.

Determining localized air quality impacts requires dispersion modeling. Because local lead agencies may not have the expertise or resources to perform dispersion modeling, SCAQMD created a series of look-up tables for CO, NO_x, and PM₁₀ in which staff back-calculated the mass emissions necessary to equal or exceed the construction or operation LST. The look-up tables were created for projects one to five acres in size and take into consideration location (source receptor area) and distance to the sensitive receptor. To use the look-up tables, the lead agency calculates daily emission as it normally would and then compares the results to the emissions in the applicable look-up table.

In general, the LSTs will apply primarily to construction because emissions from construction equipment occur at a fixed location compared to operation, which, for most land use projects, consists of emissions from vehicles traveling over the roadways, which, therefore, do not create impacts to a single location. To further assist lead agencies with calculating construction emissions, the SCAQMD conducted construction site surveys for each phase of construction to develop standard construction scenarios relative to construction equipment and hours of operation. Spreadsheets were developed to calculate emissions for the construction scenarios in an effort to create scenarios that would not exceed any applicable LSTs. When preparing a CEQA analysis, lead agencies could use the sample construction projects for their construction analyses, use the spreadsheets to tailor the analysis to their individual projects, or use a combination of the two.

The following subsections describe the proposed PM2.5 LSTs for both operation and construction.

Establishing LSTs

To determine the effects of PM2.5 on local (nearby) receptors, such as residents, hospitals, schools, etc., a PM2.5 localized significance threshold (LST) needs to be established. Since the Basin exceeds one or more of the state or federal ambient air quality standards for PM2.5, the process used to determine significance for attainment pollutants, i.e., NO₂ and CO, developed for the LST program cannot be used^c. Under the LST program, since PM₁₀ is a nonattainment pollutant, the LST methodology uses a different process for determining whether localized PM₁₀ air quality impacts are significant. To determine localized PM₁₀ air quality impacts during operation, the LST methodology uses as a significance threshold the allowable change in concentration threshold for PM₁₀ listed in Rule 1303, Table A-2, which is 2.5 micrograms per cubic meter (µg/m³). The allowable change in concentration threshold is a modeled concentration that cannot be exceeded at the sensitive receptor, and determines whether or not a permit applicant will receive a permit from the SCAQMD. For the LST program staff used a dispersion model (ISCST3) to convert the 2.5 µg/m³ concentration into mass daily PM₁₀ emissions numbers based on the size of the project, location of the project, and distance to the sensitive receptor. The

^c Under the LST program, to determine significance for attainment pollutants, the emissions contribution from the project expressed as a concentration is added to the highest local ambient concentration from the last three years where data are available. If the sum is equal to or greater than any applicable state or federal ambient air quality standard, the project is considered to have significant localized air quality impacts for that pollutant. More information on the LST program can be found at the following URL: <http://www.aqmd.gov/ceqa/handbook/LST/LST.html>.

results were then incorporated into an LST look-up table. If the mass emissions from a project exceed the applicable LST look-up tables' mass emission numbers (which are based on the 2.5 $\mu\text{g}/\text{m}^3$ concentration), then localized PM10 air quality impacts are considered to be significant.

Operational Localized Significance Thresholds

To establish operational PM2.5 localized significance thresholds, staff first reviewed the PM inventories in Appendix III of the 2003 AQMP. In particular, staff evaluated the composition of PM10 and PM2.5 from combustion processes in the 2003 AQMP to establish a general ratio of PM2.5 to PM10. Combustion processes were evaluated because, for most land use projects, mobile source combustion emissions comprise the majority of emissions. Table 3 shows the total PM10 and PM2.5 inventories for total fuel combustion process for the years 2005 through 2010. As can be seen in Table 3, over the five-year timeframe considered, the fraction of combustion PM10 that consists of PM2.5 is consistently 99 percent. Since combustion PM10 and PM2.5 fractions are essentially equivalent, staff is recommending that the operational localized significance threshold for PM2.5 be the same as the current operational localized significance threshold for PM10, i.e., 2.5 $\mu\text{g}/\text{m}^3$.

TABLE 3

Total Stationary Source Fuel Combustion Inventory (Tons/Day)

Year	PM 10	PM 2.5	Percent of PM 10 which is PM 2.5
2005	8.13	8.01	99
2006	8.21	8.10	99
2007	8.30	8.18	99
2008	8.38	8.26	99
2010	8.54	8.42	99

Source: Appendix III, 2003 AQMP, Annual Average Emission Inventory

Construction Localized Significance Thresholds

Similarly, to develop a PM2.5 construction significance threshold for localized impacts, staff considered the PM2.5 contribution from fugitive sources and the PM2.5 contribution from combustion sources (construction equipment). As discussed in more detail in the following paragraphs, combustion emissions from the construction equipment contribute a larger portion of the total PM2.5 emissions from construction operations than fugitive sources.

Staff then reviewed the 2003 AQMP, Appendix III fugitive PM inventory for construction and demolition to obtain the PM10 and PM2.5 compositions. Table 4 shows the total PM10 and PM2.5 inventories for construction activities for the years 2005 through 2010. As can be seen in Table 4, over the five-year timeframe, the fraction of PM10 that consists of PM2.5 is consistently 21 percent. Multiplying the fugitive PM2.5 percent fraction of

PM10 by the existing construction PM10 LST, $10.4 \mu\text{g}/\text{m}^3$, produces a result of approximately $2.2 \mu\text{g}/\text{m}^3$.

TABLE 4

Total Fugitive PM Inventory (Tons/Day)

Year	PM 10	PM 2.5	Percent of PM 10 which is PM 2.5
2005	42.7	8.91	21
2006	43.66	9.11	21
2007	44.6	9.3	21
2008	45.54	9.5	21
2010	47.44	9.9	21

Source: Appendix III, 2003 AQMP, Annual Average Emission Inventory

Off-road construction equipment, however, also contributes combustion PM as well as fugitive PM. To determine the contribution of PM2.5 from construction equipment combustion emissions, staff performed dispersion modeling using the ISCST3 dispersion model for one-, two-, and five-acre construction scenarios. The construction scenarios were developed from construction site surveys conducted in connection with staff's original LST proposal. Combustion sources were modeled as adjacent five-meter volume sources and fugitive sources were modeled as adjacent one-meter area sources. Worst-case meteorological data from the West Los Angeles source receptor area were used and receptors were placed at 25, 50, 100, 200, and 500 meter distances from the construction site. Using CARB speciation data, it was assumed that 21 percent of fugitive dust PM10 is comprised of PM2.5 and 89 percent of off-road equipment combustion PM10 emissions are comprised of PM2.5 (based 2003 AQMP inventories, see Table 5).

TABLE 5

Combustion PM Inventory from Off-Road Equipment (Tons/Day)

Year	PM 10	PM 2.5	Percent of PM 10 which is PM 2.5
2005	11.95	10.64	89
2006	11.61	10.33	89
2007	11.2	9.97	89
2008	10.93	9.71	89
2010	10.26	9.09	89

Source: Appendix III, 2003 AQMP, Annual Average Emission Inventory

The modeling results showed that combustion PM2.5 from off-road equipment comprise approximately 75 to 100 percent of the total PM2.5 emissions from construction activities. Further, the PM2.5 contribution from fugitive sources is dependant on the construction phase. For example, the modeling showed that the demolition and site preparation phases have the highest fugitive PM2.5 contribution to the overall results, whereas, the building and asphalt paving phases contribute the most combustion PM2.5 to the overall results.

The modeling results indicate that the contribution of off-road combustion PM2.5 emissions can be three to four times higher than the contribution of PM2.5 from fugitive sources. Based on this result, staff recommends that the PM2.5 fugitive dust component be adjusted upward by approximately four times to account for the PM2.5 emissions from the construction equipment. As a result, staff is recommending a PM2.5 construction LST of 10.4 $\mu\text{g}/\text{m}^3$, the same as the construction LST for PM10. Finally, an exceedance of either the PM10 construction LST or the PM2.5 construction LST is a significant adverse localized air quality impact.

Regional Emission Threshold of Significance for PM 2.5

Emissions that exceed the regional significance thresholds are mass daily emissions that may have significant adverse regional effects and are the air quality significance thresholds with which most CEQA practitioners are familiar.

Table 6
Regional Air Quality Significance Thresholds

<i>Mass Daily Thresholds^a</i>		
Pollutant	Construction^b	Operation^c
NOx	100 lbs/day	55 lbs/day
VOC	75 lbs/day	55 lbs/day
PM10	150 lbs/day	150 lbs/day
SOx	150 lbs/day	150 lbs/day
CO	550 lbs/day	550 lbs/day
Lead	3 lbs/day	3 lbs/day

The following subsection describes the proposed PM2.5 regional significance thresholds for both operation and construction.

Establishing Regional Significance Thresholds

PM emissions also affect air quality on a regional basis. When fugitive dust enters the atmosphere, the larger particles of dust typically fall quickly to the ground, but smaller particles less than 10 microns in diameter may remain suspended for longer periods, giving the particles time to travel across a regional area and affecting receptors at some distance from the original emissions source. Fine PM2.5 particles have even longer atmospheric residency times. Staff is recommending a PM2.5 regional significance threshold based on a recent EPA proposal, as explained in the following paragraphs.

On September 8, 2005, EPA published in the Federal Register “Proposed Rule to Implement the Fine Particle National Ambient Air Quality Standards,” which proposed a significant emission rate for PM2.5 of 10 tons per year. Staff is proposing to use EPA’s

significant emission rate for PM2.5 to develop the daily mass emission regional significance threshold for PM2.5. Converting the annual rate, 10 tons, into a daily rate produces a daily rate of approximately 55 pounds per day. A similar approach was used to derive the operational regional significance thresholds for NO2 and VOC. NO2 and VOC operational regional significance thresholds were derived by using the NOx/VOC emission rate that defined a major source in the South Coast Air Basin, 10 tons per year. Converting the annual emissions rate into a daily rate resulted in a regional operational significance threshold of 55 pounds per day for each pollutant. Similar to the regional significance threshold for PM10 of 150 pounds per day, the proposed PM2.5 regional significance threshold of 55 pounds per day would apply to both construction and operation.

Conclusion

In this document staff identified a methodology to indirectly calculate PM2.5 emissions for a CEQA or NEPA air quality analysis, to be used until such time as PM2.5 emission factors are available, which will allow the CEQA practitioner to calculate PM2.5 emissions directly. In addition, PM2.5 construction and operation LSTs have been identified to address localized impacts. The PM2.5 LSTs will be used to develop look-up tables for projects five acres in size or smaller, similar to those prepared for PM10, nitrogen dioxide (NO2), and carbon monoxide (CO). As with the other pollutants, the PM2.5 look-up tables can be used as a screening procedure to determine whether or not small projects (less than or equal to five acres) will generate significant adverse localized air quality impacts. Screening procedures are by design conservative, that is, the predicted impacts tend to overestimate the actual impacts. If the predicted impacts are acceptable using the LST look-up tables, then a more detailed evaluation is not necessary. However, if the predicted impacts are significant, then the project proponent may wish to perform a more detailed emission and/or modeling analysis before concluding that the impacts are significant. Project proponents are not required to use this LST procedure; and may complete site specific modeling instead. Site-specific modeling is required for projects larger than five acres.

APPENDIX A

Updated CEIDARS Table with PM2.5 Fractions

Appendix A – Updated CEIDARS List with PM2.5 Fractions

Table A - Updated CEIDARS Table with PM2.5 Fractions

SCC MAIN CATEGORY	SCC SUBCATEGORY	PM2.5 FRACTION OF TOTAL PM	PM10 FRACTION OF TOTAL PM	PM2.5 FRACTION OF PM10
ASBESTOS REMOVAL		0.500	0.500	1.000
ASPHALT PAVING / ROOFING	FUGITIVE EMISSIONS	0.925	0.960	0.964
	MANUFACTURING	0.945	0.980	0.964
BURNING	AGRICULTURE/FIELD CROPS, WEED ABATEMENT	0.938	0.984	0.954
	FOREST MANAGEMENT, TIMBER AND BRUSH FIRE	0.854	0.961	0.889
	ORCHARD PRUNINGS	0.925	0.981	0.943
	RANGE MANAGEMENT, WASTE BURNING	0.932	0.983	0.948
	UNPLANNED STRUCTURAL FIRES	0.914	0.980	0.933
CEMENT MANUFACTURING		0.620	0.920	0.674
CHEMICAL MANUFACTURING	FERTILIZER-UREA	0.950	0.960	0.990
	ORGANIC AND INORGANIC CHEMICALS	0.890	0.900	0.989
COATINGS, SOLVENTS, INKS AND DYES	SOLVENT BASED	0.925	0.960	0.964
	WATER-BASED COATING	0.620	0.680	0.912
CONSUMER PRODUCTS		0.925	0.960	0.964
COOKING	BAKING, CHARBROILING, DEEP FAT FRYING	0.420	0.700	0.600
COOLING TOWER		0.420	0.700	0.600
DRY CLEANING		0.925	0.960	0.964
ELECTROPLATING	HEXAVALENT CHROME, CADMIUM	1.000	1.000	1.000
	ZINC AND COPPER	0.925	0.960	0.964
EXTERNAL COMBUSTION	COAL, COKE, LIGNITE	0.150	0.400	0.375
	GASEOUS FUEL-EXCEPT PETROLEUM AND INDUSTRIAL PROCESS HEATERS	1.000	1.000	1.000
	GASEOUS FUEL-PETROLEUM AND INDUSTRIAL PROCESS HEATER ONLY	0.930	0.950	0.979
	LIQUID FUEL-EXCEPT RESIDUAL OIL	0.967	0.976	0.991
	RESIDUAL OIL-EXCEPT UTILITY BOILERS	0.760	0.870	0.874
	RESIDUAL OIL-UTILITY BOILERS ONLY	0.953	0.970	0.982
	STEEL FURNACE	0.930	0.980	0.949
FABRICATED METALS	WOOD/BARK WASTE	0.927	0.997	0.930
	ABRASIVE BLASTING	0.790	0.860	0.919
FOOD AND AGRICULTURE	ARC WELDING, OXY FUEL, COPPER, ZINC, BATH	0.925	0.960	0.964
	COFFEE ROASTING	0.610	0.620	0.984
	FERMENTATION, RENDERING, FISH AND NUT PROCESSING	0.420	0.700	0.600
	GRAIN ELEVATORS	0.010	0.290	0.034
	GRAIN MILLING, DRYING	0.400	0.540	0.741
FUGITIVE DUST	LIVESTOCK WASTE	0.420	0.700	0.600
	AGRICULTURAL TILLING DUST	0.101	0.454	0.222
	CONSTRUCTION AND DEMOLITION	0.102	0.489	0.208
	LANDFILL DUST	0.102	0.489	0.208
	LIVESTOCK DUST	0.055	0.482	0.114
	PAVED ROAD DUST	0.077	0.457	0.169
FUGITIVE EMISSIONS - ORGANIC AND INORGANIC	UNPAVED ROAD DUST	0.126	0.594	0.212
	LIQUID FUEL STORAGE/HANDLING, LOADING, UNLOADING DISPENSING	0.925	0.960	0.964
	NATURAL GAS PRODUCTION, CRUDE OIL PRODUCTION, PETROLEUM REFINING	0.555	0.610	0.910
	ORGANIC AND INORGANIC CHEMICALS	0.925	0.960	0.964
	PROCESSING	0.925	0.960	0.964
	WELL CEMENTS, PUMPS, VALVES, FLANGES, SEALS	0.925	0.960	0.964

Appendix A – Updated CEIDARS List with PM2.5 Fractions

Table A - Updated CEIDARS Table with PM2.5 Fractions (Continued)

SCC MAIN CATAGORY	SCC SUBCATAGORY	PM2.5 Fraction of Total PM	PM10 Fraction of Total PM	PM2.5 Fraction of PM10
HEALTH CARE, LABS	STERILIZATION	0.420	0.700	0.600
INCINERATOR, AFTERBURNER, FLARES	GASEOUS FUEL	1.000	1.000	1.000
	LIQUID FUEL	0.967	0.976	0.991
	SOLID FUEL	0.200	0.300	0.667
INTERNAL COMBUSTION	DISTILLATE AND DIESEL-ELECTRIC GENERATION	0.937	0.960	0.976
	DISTILLATE AND DIESEL-EXCEPT ELECTRIC GENERATION	0.967	0.976	0.991
	GASEOUS FUEL	0.992	0.994	0.998
	GASOLINE	0.992	0.994	0.998
	JET FUEL	0.967	0.976	0.991
	SOLID PROPELLANT	0.927	0.997	0.930
MINERAL PROCESS LOSS	BRICK, CEMENT, FIBERGLASS, GLASS MFG.	0.146	0.500	0.292
	COAL CLEANING, SURFACE COAL MINE, NONMETALLIC MINERAL	0.146	0.500	0.292
	GRINDING, CRUSHING, SURFACE BLASTING	0.146	0.500	0.292
	LOADING AND UNLOADING BULK MATERIALS	0.146	0.500	0.292
MINERAL PRODUCTS	CLAY AND RELATED PRODUCTS GRINDING OPERATIONS	0.513	0.560	0.916
	CRUSHING, SCREENING, BLASTING, LOADING AND UNLOADING	0.030	0.100	0.300
	FIBERGLASS MANUFACTURING	0.992	0.994	0.998
	GLASS MELTING FURNACE	0.963	0.980	0.983
	GYPSUM MANUFACTURING	0.495	0.880	0.563
	LIME MANUFACTURING	0.117	0.300	0.390
	STONE QUARRYING	0.146	0.500	0.292
OFF-ROAD EQUIPMENT	DIESEL	0.920	1.000	0.920
	GASEOUS FUEL	0.992	0.994	0.998
	GASOLINE	0.680	0.900	0.756
ON-ROAD VEHICLES	BRAKE WEAR	0.420	0.980	0.429
	DIESEL	0.920	1.000	0.920
	GASOLINE-CATALYST	0.900	0.970	0.928
	GASOLINE-NO CATALYST	0.680	0.900	0.756
	HEAVY, MEDIUM, LIGHT DUTY TRUCKS AND VEHICLES, MOTORHOMES, BUSES, MOTORCYCLES	0.925	0.960	0.964
	TIRE WEAR	0.250	1.000	0.250
PETROLEUM INDTRY	ASPHALT CONCRETE	0.333	0.400	0.833
PRIMARY AND SECONDARY METALS	ELECTRO REDUCTION, FURNACE, FLUXING, STORAGE, PROCESSING	0.903	0.950	0.951
	IRON & STEEL, FOUNDRY, HEAT TREATING	0.860	0.960	0.896
	STEEL FURNACE	0.600	0.830	0.723
RESIDENTIAL FIREPLACES AND WOOD COMBUSTION		0.900	0.935	0.963
SHIPS	DIESEL	0.920	1.000	0.920
	LIQUID FUEL	0.937	0.960	0.976
TRAINS	HAULING, SWITCHING	0.920	1.000	0.920
WASTEWATER, SEWAGE TREATMENT, DIGESTER		0.925	0.960	0.964
WOOD PRODUCTS	SANDING	0.885	0.920	0.962
	SAWING	0.283	0.400	0.708

APPENDIX B

PM2.5 Localized Significance Threshold Look-up Tables

Table B-1. PM2.5 Emission Thresholds for Construction

SRA No.	Source Receptor Area	Significance Threshold of 10.4 ug/m ³ Allowable emissions (lbs/day) as a function of receptor distance (meters) from boundary of site									
		1 Acre					2 Acre				
		25	50	100	200	500	25	50	100	200	500
1	Central LA	3	5	10	24	102	5	7	12	28	110
2	Northwest Coastal LA County	3	4	8	18	77	4	5	10	21	82
3	Southwest Coastal LA County	3	5	9	21	75	5	7	12	25	81
4	South Coastal LA County	3	5	10	26	93	5	7	13	30	101
5	Southeast LA County	3	4	8	19	86	4	6	10	22	92
6	West San Fernando Valley	3	4	7	18	79	4	5	9	21	84
7	East San Fernando Valley	3	4	8	18	68	4	6	10	21	73
8	West San Gabriel Valley	3	4	7	18	77	4	5	9	21	82
9	East San Gabriel Valley	3	5	9	22	94	5	7	12	26	100
10	Pomona/Walnut Valley	3	4	7	18	75	4	6	10	21	80
11	South San Gabriel Valley	4	5	9	20	83	5	8	12	24	89
12	South Central LA County	3	4	7	17	70	4	6	9	19	74
13	Santa Clarita Valley	3	4	7	18	74	4	5	9	20	80
15	San Gabriel Mountains	3	4	7	18	74	4	5	9	20	80
16	North Orange County	3	4	9	20	74	4	6	11	24	79
17	Central Orange County	3	4	9	22	85	4	6	11	25	92
18	North Coastal Orange County	3	5	9	22	76	5	7	12	26	83
19	Saddleback Valley	3	4	8	19	68	4	6	10	22	74
20	Central Orange County Coastal	3	5	9	22	76	5	7	12	26	83
21	Capistrano Valley	3	4	8	19	68	4	6	10	22	74
22	Norco/Corona	3	5	9	22	92	5	7	12	25	98
23	Metropolitan Riverside County	3	4	8	20	86	4	6	10	23	91
24	Perris Valley	3	4	8	20	86	4	6	10	23	91
25	Lake Elsinore	3	4	8	20	86	4	6	10	23	91
26	Temecula Valley	3	4	8	20	86	4	6	10	23	91
27	Anza Area	3	4	8	20	86	4	6	10	23	91
28	Hemet/San Jacinto Valley	3	4	8	20	86	4	6	10	23	91
29	Banning Airport	4	7	14	36	156	6	9	17	41	166
30	Coachella Valley	3	5	10	24	105	5	7	12	28	112
31	East Riverside County	3	5	10	24	105	5	7	12	28	112
32	Northwest San Bernardino Valley	4	6	12	32	141	5	8	14	36	150
33	Southwest San Bernardino Valley	4	6	12	32	141	5	8	14	36	150
34	Central San Bernardino Valley	3	5	9	23	98	4	6	12	26	104
35	East San Bernardino Valley	4	5	10	26	112	5	7	13	30	120
36	Central San Bernardino Mountains	4	6	12	32	141	5	8	14	36	150
37	West San Bernardino Valley	3	5	9	23	98	4	6	12	26	104
38	East San Bernardino Mountains	4	5	10	26	112	5	7	13	30	120

Table B-1. PM2.5 Emission Thresholds for Construction (Continued)

SRA No.	Source Receptor Area	Significance Threshold of 10.4 ug/m ³ Allowable emissions (lbs/day) as a function of receptor distance (meters) from boundary of site				
		5 Acre				
		25	50	100	200	500
1	Central LA	8	11	18	36	126
2	Northwest Coastal LA County	6	8	14	29	95
3	Southwest Coastal LA County	8	11	19	35	96
4	South Coastal LA County	8	10	18	39	120
5	Southeast LA County	7	10	15	30	103
6	West San Fernando Valley	6	8	13	26	96
7	East San Fernando Valley	8	10	15	28	86
8	West San Gabriel Valley	7	9	14	27	93
9	East San Gabriel Valley	8	11	17	35	116
10	Pomona/Walnut Valley	7	9	15	28	93
11	South San Gabriel Valley	9	12	19	34	104
12	South Central LA County	7	10	15	27	86
13	Santa Clarita Valley	6	8	13	26	95
15	San Gabriel Mountains	6	8	13	26	95
16	North Orange County	6	9	15	34	95
17	Central Orange County	7	9	15	32	109
18	North Coastal Orange County	9	11	18	35	101
19	Saddleback Valley	8	11	16	30	90
20	Central Orange County Coastal	9	11	18	35	101
21	Capistrano Valley	8	11	16	30	90
22	Norco/Corona	8	11	18	34	113
23	Metropolitan Riverside County	8	10	16	31	105
24	Perris Valley	8	10	16	31	105
25	Lake Elsinore	8	10	16	31	105
26	Temecula Valley	8	10	16	31	105
27	Anza Area	8	10	16	31	105
28	Hemet/San Jacinto Valley	8	10	16	31	105
29	Banning Airport	11	14	25	55	189
30	Coachella Valley	8	11	19	37	128
31	East Riverside County	8	11	19	37	128
32	Northwest San Bernardino Valley	9	12	21	45	170
33	Southwest San Bernardino Valley	9	12	21	45	170
34	Central San Bernardino Valley	8	10	17	35	120
35	East San Bernardino Valley	9	12	20	40	140
36	Central San Bernardino Mountains	9	12	21	45	170
37	West San Bernardino Valley	8	10	17	35	120
38	East San Bernardino Mountains	9	12	20	40	140

Table B-2. PM2.5 Emission Thresholds for Operation

SRA No.	Source Receptor Area	Significance Threshold of 2.5 ug/m ³ Allowable emissions (lbs/day) as a function of receptor distance (meters) from boundary of site									
		1 Acre					2 Acre				
		25	50	100	200	500	25	50	100	200	500
1	Central LA	1	2	3	6	25	2	2	3	7	27
2	Northwest Coastal LA County	1	1	2	5	19	1	2	3	6	20
3	Southwest Coastal LA County	1	2	3	5	18	1	2	3	6	20
4	South Coastal LA County	1	2	3	7	23	1	2	4	8	25
5	Southeast LA County	1	1	2	5	21	1	2	3	6	22
6	West San Fernando Valley	1	1	2	5	19	1	2	2	5	21
7	East San Fernando Valley	1	1	2	5	17	1	2	3	5	18
8	West San Gabriel Valley	1	1	2	5	19	1	2	3	5	20
9	East San Gabriel Valley	1	2	3	6	23	2	2	3	7	25
10	Pomona/Walnut Valley	1	1	2	5	18	1	2	3	5	20
11	South San Gabriel Valley	1	2	3	5	20	2	2	3	6	22
12	South Central LA County	1	1	2	4	17	1	2	3	5	18
13	Santa Clarita Valley	1	1	2	5	18	1	2	2	5	20
15	San Gabriel Mountains	1	1	2	5	18	1	2	2	5	20
16	North Orange County	1	1	3	5	18	1	2	3	6	19
17	Central Orange County	1	1	2	6	21	1	2	3	6	22
18	North Coastal Orange County	1	2	3	6	19	2	2	3	7	20
19	Saddleback Valley	1	1	2	5	17	1	2	3	6	18
20	Central Orange County Coastal	1	2	3	6	19	2	2	3	7	20
21	Capistrano Valley	1	1	2	5	17	1	2	3	6	18
22	Norco/Corona	1	2	3	6	23	2	2	3	6	24
23	Metropolitan Riverside County	1	1	2	5	21	1	2	3	6	22
24	Perris Valley	1	1	2	5	21	1	2	3	6	22
25	Lake Elsinore	1	1	2	5	21	1	2	3	6	22
26	Temecula Valley	1	1	2	5	21	1	2	3	6	22
27	Anza Area	1	1	2	5	21	1	2	3	6	22
28	Hemet/San Jacinto Valley	1	1	2	5	21	1	2	3	6	22
29	Banning Airport	1	2	4	9	38	2	3	5	10	40
30	Coachella Valley	1	2	3	6	26	2	2	3	7	27
31	East Riverside County	1	2	3	6	26	2	2	3	7	27
32	Northwest San Bernardino Valley	1	2	3	8	34	2	2	4	9	36
33	Southwest San Bernardino Valley	1	2	3	8	34	2	2	4	9	36
34	Central San Bernardino Valley	1	2	3	6	24	1	2	3	7	25
35	East San Bernardino Valley	1	2	3	7	27	2	2	4	8	29
36	Central San Bernardino Mountains	1	2	3	8	34	2	2	4	9	36
37	West San Bernardino Valley	1	2	3	6	24	1	2	3	7	25
38	East San Bernardino Mountains	1	2	3	7	27	2	2	4	8	29

Table B-2. PM2.5 Emission Thresholds for Operation (Continued)

SRA No.	Source Receptor Area	Significance Threshold of 2.5 ug/m3 Allowable emissions (lbs/day) as a function of receptor distance (meters) from boundary of site				
		5 Acre				
		25	50	100	200	500
1	Central LA	2	3	5	9	31
2	Northwest Coastal LA County	2	2	4	7	23
3	Southwest Coastal LA County	2	3	5	9	24
4	South Coastal LA County	2	3	5	10	29
5	Southeast LA County	2	3	4	8	25
6	West San Fernando Valley	2	2	3	7	23
7	East San Fernando Valley	2	3	4	7	21
8	West San Gabriel Valley	2	3	4	7	23
9	East San Gabriel Valley	2	3	5	9	28
10	Pomona/Walnut Valley	2	3	4	7	23
11	South San Gabriel Valley	2	3	5	9	25
12	South Central LA County	2	3	4	7	21
13	Santa Clarita Valley	2	2	3	7	23
15	San Gabriel Mountains	2	2	3	7	23
16	North Orange County	2	3	4	8	23
17	Central Orange County	2	3	4	8	27
18	North Coastal Orange County	2	3	5	9	25
19	Saddleback Valley	2	3	4	8	22
20	Central Orange County Coastal	2	3	5	9	25
21	Capistrano Valley	2	3	4	8	22
22	Norco/Corona	2	3	5	9	28
23	Metropolitan Riverside County	2	3	4	8	26
24	Perris Valley	2	3	4	8	26
25	Lake Elsinore	2	3	4	8	26
26	Temecula Valley	2	3	4	8	26
27	Anza Area	2	3	4	8	26
28	Hemet/San Jacinto Valley	2	3	4	8	26
29	Banning Airport	3	4	6	14	46
30	Coachella Valley	2	3	5	9	31
31	East Riverside County	2	3	5	9	31
32	Northwest San Bernardino Valley	2	3	5	11	41
33	Southwest San Bernardino Valley	2	3	5	11	41
34	Central San Bernardino Valley	2	3	5	9	29
35	East San Bernardino Valley	3	3	5	10	34
36	Central San Bernardino Mountains	2	3	5	11	41
37	West San Bernardino Valley	2	3	5	9	29
38	East San Bernardino Mountains	3	3	5	10	34

Carroll, John (BOS)

From: Tom Lippe <lippelaw@sonic.net>
Sent: Monday, November 30, 2015 10:01 AM
To: BOS Legislation, (BOS)
Cc: Carroll, John (BOS); dkelly@warriors.com; CPC-WarriorsAdmin; Givner, Jon (CAT); Stacy, Kate (CAT); Malamut, John (CAT); Nuru, Mohammed (DPW); Sanguinetti, Jerry (DPW); Sweiss, Fuad (DPW); Storrs, Bruce (DPW); Sanchez, Scott (CPC); Jones, Sarah (CPC); Rodgers, AnMarie (CPC); Starr, Aaron (CPC); Pearson, Audrey (CAT); Rahaim, John (CPC); Bollinger, Brett (CPC); Ionin, Jonas (CPC); kaufhauser@warriors.com; CMiller@stradasf.com; BOS-Supervisors; BOS-Legislative Aides; Calvillo, Angela (BOS); Somera, Alisa (BOS); Patrick Soluri; Osha Meserve; Susan Brandt-Hawley
Subject: Re: Mission Bay Alliance, Warriors EIR CEQA Appeal; Appellants' Partial Brief, 3rd of 4 emails
Attachments: Exhs 8-14 SENT Appeal EIR Brf Exhs 8-14.pdf
Categories: 150990

Dear Clerk of the Board of Supervisors,

This email is the third of four. Attached are

- Exhibits 8-14 of 15 to Appellant's Partial Brief Re: Public Comment, Air Quality, Transportation, Water Quality, Biological, and Noise

Tom Lippe
Law Offices of Thomas N. Lippe APC
201 Mission St., 12th Floor
San Francisco, CA 94105
Tel 415 777-5604 x 1
Fax 415 777-5606
e-mail: lippelaw@sonic.net
Web: www.lippelaw.com

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On 11/30/2015 9:59 AM, Tom Lippe wrote:

Dear Clerk of the Board of Supervisors,

This email is the second of four. Attached are

- Exhibits 5-7 of 15 to Appellant's Partial Brief Re: Public Comment, Air Quality, Transportation, Water Quality, Biological, and Noise

Tom Lippe
Law Offices of Thomas N. Lippe APC
201 Mission St., 12th Floor
San Francisco, CA 94105
Tel 415 777-5604 x 1
Fax 415 777-5606
e-mail: lippelaw@sonic.net
Web: www.lippelaw.com

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On 11/30/2015 9:57 AM, Tom Lippe wrote:

Dear Clerk of the Board of Supervisors

Attached, in .pdf format please find the above referenced appeal brief with exhibits.

Due to the size of the files, the brief and exhibits it will be transmitted in four (4) separate emails.

This email is the first of four. Attached are

- Appellant's Partial Brief Re: Public Comment, Air Quality, Transportation, Water Quality, Biological, and Noise
- Exhibits 1-4 of 15

Eighteen hard copies of same will be hand delivered to your office today by 12noon.

Thank you for your attention to this matter.

Tom Lippe
Law Offices of Thomas N. Lippe APC
201 Mission St., 12th Floor
San Francisco, CA 94105
Tel 415 777-5604 x 1
Fax 415 777-5606
e-mail: lippelaw@sonic.net
Web: www.lippelaw.com

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On 11/24/2015 9:25 AM, Carroll, John (BOS) wrote:

Good morning,

I am resending this message in order to update the recipients list for this and future document distributions. If you received this message previously, feel free to ignore these links; I have not updated them.

The Office of the Clerk of the Board has scheduled a hearing date for Special Order before the Board of Supervisors on **December 8, 2015, at 3:00 p.m.** Please find linked below a letter regarding the Final Subsequent Environmental Impact Report certification and Tentative Map appeals for the proposed Golden State Warriors Event Center

Project, as well as direct links to the Office of Community Investment and Infrastructure's timely filing determination for the CEQA appeal.

[Clerk of the Board Letter Re: FSIER Appeal - November 23, 2015](#)

[OCII Memo Re: FSEIR Appeal - November 16, 2015](#)

[Clerk of the Board Letter Re: Tentative Map Appeal - November 23, 2015](#)

I invite you to review the entirety of both matters on our [Legislative Research Center](#) by following the links below.

[Board of Supervisors File No. 150990 - FSEIR Appeal](#)
[Board of Supervisors File No. 151204 - Tentative Map Appeal](#)

Thank you,

John Carroll
Legislative Clerk

Board of Supervisors
San Francisco City Hall, Room 244
San Francisco, CA 94102
(415)554-4445 - Direct | (415)554-5163 - Fax
john.carroll@sfgov.org | bos.legislation@sfgov.org



Click [here](#) to complete a Board of Supervisors Customer Service Satisfaction form.

The [Legislative Research Center](#) provides 24-hour access to Board of Supervisors legislation and archived matters since August 1998.

***Disclosures:** Personal information that is provided in communications to the Board of Supervisors is subject to disclosure under the California Public Records Act and the San Francisco Sunshine Ordinance. Personal information provided will not be redacted. Members of the public are not required to provide personal identifying information when they communicate with the Board of Supervisors and its committees. All written or oral communications that members of the public submit to the Clerk's Office regarding pending legislation or hearings will be made available to all members of the public for inspection and copying. The Clerk's Office does not redact any information from these submissions. This means that personal information—including names, phone numbers, addresses and similar information that a member of the public elects to submit to the Board and its committees—may appear on the Board of Supervisors website or in other public documents that members of the public may inspect or copy.*

EXHIBIT 8



Diesel & Health Research

This page last reviewed June 21, 2011

Background on Diesel Health Effects

Diesel engines emit a complex mixture of air pollutants, composed of gaseous and solid material. The visible emissions in diesel exhaust are known as particulate matter or PM. In 1998, California identified diesel exhaust particulate matter (PM) as a **toxic air contaminant** based on its potential to cause cancer, premature death, and other health problems. Diesel engines also contribute to California's fine particulate matter (PM_{2.5}) air quality problems. Those most vulnerable are children whose lungs are still developing and the elderly who may have other serious health problems. Based on year 2006-2008 emissions in California, diesel PM contributes each year to approximately 2,000 premature deaths, with an uncertainty range of 1,500 to 2,400. In addition, diesel soot causes visibility reduction and is a potent global warmer.



Diesel Research Projects

View all of the latest reports and ongoing contracts in our [Research Projects Database Diesel Results page](#).

Over 50 research projects funded by ARB have been grouped into the following categories (the below

PDF files were created August 2006):

- [Exposure](#) (PDF - 90 KB)
- [Health Effects](#) (PDF - 99 KB)
- [General PM Exposure and Health Effects](#) (PDF - 85 KB)
- [Source Testing Methods Development](#) (PDF - 100 KB)
- [Emissions Inventory](#) (PDF - 83 KB)
- [Source Apportionment and Receptor Modeling](#) (PDF-94 KB)
- [Tunnel Studies](#) (PDF - 76 KB)
- [Other](#) (PDF - 85 KB)

The ARB has been leading several multi-agency research programs to characterize vehicle emissions. Find out more by visiting ARB's [Vehicle Emissions Research](#) web page.

Diesel Related Information and Fact Sheets

- [ARB's Truck Stop web site](#)
- [Diesel Fact Sheets](#)
- [Toxic Air Contaminant Emissions from Diesel-fueled Engines](#)

For more information about Diesel Related Research, please contact [Dr. Linda Smith](#) at (916) 327-8225.

EXHIBIT 9

COMMISSION ON COMMUNITY INVESTMENT AND INFRASTRUCTURE

RESOLUTION NO. 62 - 2015

APPROVING AN AMENDED BUDGET FOR THE PERIOD JULY 1, 2015 THROUGH JUNE 30, 2016, TO INCREASE, BY AN AMOUNT NOT TO EXCEED \$135,000,000, BOND PROCEEDS TO BE RECEIVED BY THE SUCCESSOR AGENCY AND TO INCREASE ITS EXPENDITURE AUTHORITY BY \$135,000,000 AND AUTHORIZING THE EXECUTIVE DIRECTOR TO SUBMIT THE BUDGET TO THE MAYOR'S OFFICE AND THE BOARD OF SUPERVISORS

BASIS FOR RESOLUTION

- WHEREAS, The Redevelopment Agency of the City and County of San Francisco (the "Former Redevelopment Agency") and FOCIL-MB, LLC (the "Master Developer"), as assignee of Catellus Development Corporation, are parties to a Mission Bay South Owner Participation Agreement executed November 16, 1998, and amended three times (as further amended, the "OPA"), which includes the "Mission Bay South Financing Plan" (the "Financing Plan") and which provides, among other things, that tax increment financing will be used to reimburse the Master Developer's expenditures for public infrastructure; and,
- WHEREAS, As part of the OPA, the Former Redevelopment Agency entered into a series of binding agreements, including the Mission Bay South Tax Increment Allocation Pledge Agreement executed November 16, 1998, by and between the City and County of San Francisco and the Former Redevelopment Agency (the "Pledge Agreement"), to which the Master Developer is an express third-party beneficiary; and,
- WHEREAS, On February 1, 2012, state law dissolved the Former Redevelopment Agency and required the transfer of certain of its assets and obligations to the Successor Agency to the Former Redevelopment Agency, commonly known as the Office of Community Investment and Infrastructure ("Successor Agency" or "OCII"), Cal. Health & Safety Code §§ 34170 et seq. ("Redevelopment Dissolution Law"); and,
- WHEREAS, The California Department of Finance has finally and conclusively determined that the OPA and Pledge Agreement are enforceable obligations that survived the dissolution of the Former Redevelopment Agency and that became the responsibility of the Successor Agency; and,
- WHEREAS, The OPA, including the Financing Plan and the Pledge Agreement, contain an irrevocable pledge of property tax increment (formerly tax increment revenues) to the payment of Mission Bay South Redevelopment Project Area Infrastructure Costs, as defined in the Financing Plan, ("Infrastructure Costs") and the Successor Agency is obligated, under the OPA, including the Financing Plan and the Pledge

Agreement, to issue bonds or incur other indebtedness secured by an irrevocable pledge of tax increment revenues to pay such Infrastructure Costs; and,

WHEREAS, The Master Developer has submitted a written request to the Successor Agency, Letter, November 14, 2014, and the Successor Agency staff, its consultants and bond counsel, and the Master Developer have met and conferred, over several months, and have determined that, pursuant to the Financing Plan and the Pledge Agreement, but subject to the approval of the Oversight Board and the California Department of Finance, the Successor Agency will issue additional Tax Allocation Debt to reimburse the Master Developer for Infrastructure Costs; and,

WHEREAS, Section 34177.5(a)(4) provides that a successor agency may, subject to the approval of the oversight board and the California Department of Finance, issue bonds or incur other indebtedness to make payments under enforceable obligations when the enforceable obligations include the irrevocable pledge of property tax increment, formerly tax increment revenues, or other funds and the obligation to issue bonds secured by that pledge; and,

WHEREAS, Under Redevelopment Dissolution Law, Cal. Health & Safety Code Section 34173, and San Francisco Ordinance No. 215-12 (Oct. 4, 2012), the OCII is a separate legal entity from the City and is subject to the governance of the Board of Supervisors of the City and County of San Francisco (“Board of Supervisor”), acting in its legislative capacity. Under Section 33606 of the California Health and Safety Code, the Board of Supervisors must approve the Successor Agency’s annual budget, which is required to include proposed revenues, expenditures, and indebtedness, and must also approve budget amendments; and,

WHEREAS, On May 5, 2015, this Commission approved, by Resolution 25-2015, a budget for FY 2015-16; subsequently, the Board of Supervisors approved, by Resolution No.278-15 (July 30, 2015), the Successor Agency budget for FY 2015-16 and authorized the issuance of bonds not to exceed \$51,000,000; and,

WHEREAS, Subsequent to the final approval of the Successor Agency’s FY 2015-16 budget, the Successor Agency has determined that the issuance of additional tax allocation debt is necessary and appropriate to fulfill its obligations under the OPA. The proposed issuance includes two series of tax allocation revenue bonds for Mission Bay South Redevelopment Project Area in an aggregate principal amount not to exceed \$135 million and increases budgetary expenditure by \$135 million (“Additional Tax Allocation Debt”); and,

WHEREAS, The proceeds of the bonds will, as required by the OPA, be used for the reimbursement of Infrastructure Costs and costs associated with the issuance of those bonds; and,

WHEREAS, The bonds will likely issue in two series: Series 2015C in a principal amount not to exceed \$45 million will be a “parity bond” issued on the same terms as the currently outstanding Mission Bay South Redevelopment Project Area tax-exempt tax allocation bonds; and Series 2015D subordinate bond in a principal amount

not to exceed \$90 million, the debt service on which will be payable only after the debt service on the parity bonds has been paid; and,

WHEREAS, Issuance of the Additional Tax Allocation Debt will require an amendment to the Successor Agency's budget for FY 2015-16 to receive and expend an additional \$135 million and will also require Board of Supervisors' authorization of the additional debt; and,

WHEREAS, Approval of the FY 2015-16 Budget is not a "Project," as defined by the California Environmental Quality Act ("CEQA") Guidelines Sections 15378(b)(4) and 15378(b)(5). The budget will provide administrative, technical assistance support, and funding for activities authorized under Redevelopment Dissolution Law. Actions related to the approval of the budget will not independently result in a physical change in the environment are not subject to environmental review under CEQA; now, therefore, be it

RESOLVED, That the Successor Agency approves amendments to its fiscal year budget for the period July 1, 2015 through June 30, 2016 ("FY 2015-16 Budget"), attached to this Resolution as Attachment A, to (1) increase the amount of bond proceeds to be received by the Successor Agency in an additional principal amount not to exceed \$135 million and (2) increase expenditure authority by \$135 million; and furthermore authorizes the Executive Director to transmit the FY 2015-16 Amended Budget to the Mayor's Office and the Board of Supervisors and to make any nonmaterial changes that may be proposed during review by the Mayor or Board of Supervisors, provided that the Executive Director shall seek Commission approval for any material changes to the budget.

Attachment A: OCII FY 2015-16 Budget, as amended

I hereby certify that the foregoing resolution was adopted by the Commission at its meeting of October 20, 2015.

Commission Secretary

Office of Community
Investment & Infrastructure
Successor to the
San Francisco Redevelopment Agency

FY 2015-16 Budget
Amended October 20, 2015

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**OFFICE OF COMMUNITY INVESTMENT & INFRASTRUCTURE
FY 2015-16 Proposed Budget**

1. Background

The Office of Community Investment & Infrastructure is the Successor OCII to the San Francisco Redevelopment Agency. On February 1, 2012 the San Francisco Redevelopment Agency (“SFRA”), along with all 400 redevelopment agencies in California, was dissolved pursuant to Assembly Bill 26 (“AB 26”) and by order of the California State Supreme Court. In June of 2012, Assembly Bill 1484 was passed to further clarify certain aspects of the dissolution of redevelopment agencies, and together the two assembly bills are known as the “Dissolution Law”. Pursuant to the Dissolution Law and to Board of Supervisors Ordinance 215-12, the Office of Community Investment and Infrastructure (“OCII”) is the Successor OCII to the San Francisco Redevelopment Agency. As Successor Agency, OCII succeeds to the organizational status of SFRA but without any legal authority to participate in redevelopment activities except to complete work related to approved enforceable obligations.

Those enforceable obligations are related to: (1) the Major Approved Development Projects (defined as the Hunters Point Shipyard / Candlestick Point Redevelopment Project, the Mission Bay North and South Redevelopment Project, and the Transbay Redevelopment Project); (2) the asset management of SFRA assets such as Yerba Buena Gardens, existing economic development agreements such as loans, grants, or owner participation agreements, and other real property and assets of SFRA that must be wound down under the Dissolution Law; and (3) OCII’s Retained Housing Obligations which include ensuring the development of affordable housing in the Major Approved Development Projects.

OCII’s obligations are a key part of the Mayor’s plan to create 30,000 units by 2020, with one-third, or 10,000, of them as permanently affordable. In fact OCII’s Retained Housing Obligations will result in over 3,300 affordable units by 2020 through both stand-alone projects funded with OCII subsidy as well as inclusionary affordable units provided through private development. This includes several OCII sponsored projects that received completion permits just before the close of 2013, and opened their doors to welcome new residents in 253 affordable units in early 2014. The 1180 4th Street project delivered another 150 units later in 2014. Below is a summary of OCII’s contribution to the Mayor’s plan to create this vitally important resource for San Francisco.

**Mayor’s Plan for 10,000 Affordable Units by 2020:
OCII Pipeline**

Project Status	Affordable Stand-Alone Units	Affordable Inclusionary Units	Totals
Completed & Occupied	400		400
In Construction	543	102	645
In Predevelopment	754	272	1,026
In Preliminary Planning	936	359	1,011
Totals	2,633	733	3,366

Governance

The Commission on Community Investment and Infrastructure, which was established by the City through Ordinance 215-12, is the main governing body of OCII and is responsible for implementing and completing the enforceable obligations of the former redevelopment projects, including exercising land use and design approval authority for the Major Approved Development Projects. The Commission is comprised of five members appointed by the Mayor and confirmed by the Board of Supervisors, with two of the seats held by residents of the two supervisorial districts with the largest amounts of the Major Approved Development Projects.

The Dissolution Law requires that there be an additional governing body known as an Oversight Board to oversee certain functions of OCII as the Successor OCII, and which has a fiduciary duty to the holders of enforceable obligations with the former Redevelopment Agency and to the taxing entities that are entitled to an allocation of property taxes. The Oversight Board of the City and County of San Francisco reviews and approves OCII's expenditures and use of tax increment through semi-annual Recognized Obligation Payment Schedules ("ROPS"), as well as approving the issuance of any bonds, transfers of property, and other matters related to the dissolution of SFRA. The Mayor appoints four of the seven members of the Oversight Board, subject to confirmation by the Board of Supervisors. One of those four members must represent the largest group of former OCII employees. The remaining three members are representatives of affected taxing entities: the Bay Area Rapid Transit District, the San Francisco Unified School District, and the San Francisco Community College.

The Dissolution Law requires that OCII be a separate legal entity from the City and County of San Francisco, just as SFRA was. However, OCII is still subject to the governance of the City acting through its legislative capacity. Accordingly, the OCII's budget must be approved first by the Commission and subsequently approved by the Mayor and Board of Supervisors.

2. Budget Summary

As shown in Table 1, the Fiscal Year (“FY”) 2015-16 proposed budget of \$629 million represents an increase of \$251.7 million compared to the prior year, largely due to:

- The anticipated receipt of \$257 million in proceeds from the sale of publicly-owned land in the Transbay area, of which \$243 million represents land sales proceeds from Zone 1 which will be provided to the Transbay Joint Powers Authority to help finance construction of the Transit Center, and the remaining \$12 million will help to subsidize affordable housing development.
- The anticipated issuance and use of \$45 million in new taxable bond proceeds to finance affordable housing in the Mission Bay South and Hunters Point Shipyard/Candlestick Point project areas.
- \$111 million reduction in one-time developer payments and \$28 million reduction in prior year fund balances included in the FY 2014-15 budget and designated for affordable housing.
- \$10 million reduction in anticipated Property Tax – Mission Bay revenues due to a one-time correction resulting in additional property tax allocated to Mission Bay in FY 2014-15.
- \$7 million reduction in hotel tax revenues for debt service due to the final payment made during FY 2014-15 on 1992 hotel tax bonds for the Moscone Convention Center, leaving only one remaining series of hotel tax-funded bonds.
- The anticipated issuance and use of \$135 million in new tax-exempt bond proceeds to finance the reimbursement of infrastructure costs in Mission Bay South.

Table 2 shows the OCII FY 2015-16 budget by high-level categories of spending and funding source. These show that excluding debt service and pass-throughs to the Transbay Joint Powers Authority, 36% (\$98 million) of the budget is for Affordable Housing, 53% for infrastructure, 7% for asset management (including Yerba Buena Gardens programming and maintenance), and 4% for project management and administration.

Looking at budget sources for current operations, proposed new bond proceeds make up 64% of the budget, while property tax, developer payments, and fund balances constitute approximately 10% each. Rents and garage revenues make up 6%, with less than 1% attributed to various other revenues.

Table 3 shows the proposed FY 2015-16 budget by project.

Table 1. FY 2015-16 Proposed Budget, \$ Thousands

Sources	FY 15 Budget	FY 16 Adopted	Diff FY 15 vs FY 16	FY 16 Proposed Amended
Property Tax Increment - Debt Service	\$ 97,583	98,234	\$ 651	\$ 98,234
Property Tax Increment - Mission Bay	17,120	6,300	\$ (10,820)	6,300
Property Tax Increment - Admin Allowance	2,910	3,301	\$ 391	3,301
Property Tax Increment - Other	13,695	22,480	\$ 8,785	22,480
Subtotal Property Tax Increment	131,309	130,315	(994)	130,315
Land Sale Proceeds	19,000	257,240	\$ 238,240	257,240
New Bond Proceeds	300	44,679	\$ 44,379	179,679
Developer Payments	123,724	12,226	\$(111,498)	12,226
Rent, Lease & Garage Revenues	22,873	16,009	\$ (6,864)	16,009
US Navy Cooperative Agreement	290	350	\$ 60	350
Loan Repayments	106	50	\$ (56)	50
City Reimbursements for OCII Staff	536	303	\$ (233)	303
Hotel Tax/Moscone Revs for Debt Service	11,805	5,024	\$ (6,782)	5,024
Subtotal Current Revenues	309,943	466,196	156,253	601,196
Fund Balance - Housing	49,829	21,432	\$ (28,398)	21,432
Fund Balance - Other	17,695	6,338	(11,357)	6,338
Total Sources	377,467	493,966	116,499	628,966
Uses - Operations				
Salaries and Benefits	8,414	7,616	\$ (797)	7,616
Affordable Housing Services	619	827	\$ 208	827
Rent	441	454	\$ 13	454
Retiree Health and Pension UAAL Contribution	1,040	1,577	\$ 537	1,577
Auditing & Accounting Services	210	545	\$ 335	545
Legal Services	1,395	2,215	\$ 820	2,215
Planning & Infrastructure Rww	2,815	2,415	\$ (400)	2,415
Asset Management	6,879	6,770	\$ (109)	6,770
Workforce Development Svcs	189	250	\$ 61	250
Other Professional Services	7,322	4,058	\$ (3,265)	4,058
Grants to Community-Based Organizations	5,312	4,005	\$ (1,307)	4,005
Payments to other Public Agencies	4,456	4,177	\$ (278)	4,177
Other Current Expenses	4,010	2,002	\$ (2,007)	2,002
Subtotal Operations	43,102	36,911	(6,191)	36,911
Affordable Housing Loans	103,172	96,500	\$ (6,672)	96,500
Affordable Housing Reserve	69,098	-	\$ (69,098)	-
Development Infrastructure	24,283	5,860	\$ (18,423)	140,860
YBG Capital Reserve	3,167	-	\$ (3,167)	-
Community Grants Reserve	1,496	-	\$ (1,496)	-
Pass-through to TJPA	3,000	245,700	\$ 242,700	245,700
Public Art	1,378	-	\$ (1,378)	-
Other Use of Bond Proceeds	9,217	-	\$ (9,217)	-
Debt Service	119,555	108,995	(10,560)	108,995
Total Uses	\$377,467	\$493,966	\$116,499	\$628,966
Note: Salaries and Benefits includes OCII staff and City Administrator staff assigned to OCII.				

Table 2. FY 2015-16 Budget Summary by Sources and Uses, \$ Thousands

Uses - Current Operations	Developer Pmts	Property Tax	Bond Proceeds	Fund Balances	Property Rents and Garage Revs	Other	Total by Use	Subtotal Use %
Affordable Housing	\$ 14,740	\$ 17,818	44,679	\$ 21,085	\$ -	\$ -	\$ 98,323	36%
Infrastructure	8,128	2,050	135,000	-	536	130	145,844	53%
Asset Management	250	947	-	3,960	14,766	50	19,973	7%
Project Mgmt & Admin	3,848	5,966	-	1,347	-	694	11,855	4%
Subtotal by Source	\$ 26,966	\$ 26,781	\$ 179,679	\$ 26,392	\$ 15,302	\$ 874	\$ 275,994	100%
Subtotal Source %	10%	10%	65%	10%	6%	0%	100%	
Debt Service	-	100,334	-	1,378	536	5,024	107,272	
Pass-through to TJPA	242,500	3,200	-	-	-	-	245,700	
Total Budget	\$ 269,466	\$ 130,315	\$ 179,680	\$ 27,770	\$ 15,838	\$ 5,898	\$ 628,966	

Table 3. Proposed FY 2015-16 Budget by Project Area/Cost Center, \$ Thousands

Sources	Admin	Debt Service	HPS/CP	MBN	MBS	TBY	YBC	YBG	SBH	Other	Total FY 15-16
Property Tax Increment - Debt Service	-	98,234	-	-	-	-	-	-	-	-	98,234
Property Tax Increment - Admin Allowance	1,066	-	1,525	308	-	402	-	-	-	-	3,301
Property Tax Increment - Other	1,577	50	-	2,050	4,250	18,134	-	-	-	2,720	28,780
Land Sale Proceeds	-	-	-	-	-	257,240	-	-	-	-	257,240
New Bond Proceeds	-	-	7,500	-	168,179	4,000	-	-	-	-	179,679
Developer Payments	150	-	9,701	178	1,413	475	309	-	-	-	12,226
Rent, Lease & Garage Revenues	-	536	316	-	-	168	4,330	8,198	1,738	723	16,009
US Navy Cooperative Agreement	-	-	350	-	-	-	-	-	-	-	350
Loan Repayments	-	-	-	-	-	-	-	-	-	50	50
City Reimbursements for OCII Staff	-	-	-	-	-	-	-	-	-	303	303
Hotel Tax/Moscone Revs for Debt Service	-	5,024	-	-	-	-	-	-	-	-	5,024
Fund Balance - Housing	-	-	94	-	-	21,085	-	-	-	253	21,432
Fund Balance - Other	-	1,378	-	-	-	1,000	-	3,960	-	-	6,338
Total Sources	2,793	105,222	19,486	2,536	173,843	302,504	4,639	12,158	1,738	4,048	628,966
Uses - Operations											
Allocated Staff & Operating Expenses	(9,062)	-	4,077	426	1,578	2,144	69	213	-	555	-
Salaries and Benefits	7,616	-	-	-	-	-	-	-	-	-	7,616
Affordable Housing Services	827	-	-	-	-	-	-	-	-	-	827
Rent	454	-	-	-	-	-	-	-	-	-	454
Retiree Health and Pension UAAL Contribution	1,577	-	-	-	-	-	-	-	-	-	1,577
Auditing & Accounting Services	185	-	-	60	300	-	-	-	-	-	545
Legal Services	265	-	1,585	-	-	275	-	40	-	50	2,215
Planning & Infrastructure Rvw	-	-	2,315	-	50	50	-	-	-	-	2,415
Asset Management	-	-	-	-	-	-	1,320	3,780	-	1,670	6,770
Workforce Development Svcs	-	-	200	-	-	50	-	-	-	-	250
Other Professional Services	275	50	3,433	-	-	300	-	-	-	-	4,058
Grants to Community-Based Organizations	-	-	-	-	-	-	-	4,005	-	-	4,005
Payments to other Public Agencies	-	-	316	-	-	-	3,250	90	521	-	4,177
Other Current Expenses	656	-	60	-	-	-	-	70	1,217	-	2,002
Subtotal Uses - Operations	2,793	50	11,986	486	1,928	2,819	4,639	8,198	1,738	2,275	36,911
Other Uses											
Affordable Housing Loans	-	-	7,500	-	35,915	53,085	-	-	-	-	96,500
Development Infrastructure	-	-	-	-	136,000	900	-	3,960	-	-	140,860
Pass-through to TJPA	-	-	-	-	-	245,700	-	-	-	-	245,700
Debt Service	-	105,172	-	2,050	-	-	-	-	-	1,773	108,995
Total Uses	2,793	105,222	19,486	2,536	173,843	302,504	4,639	12,158	1,738	4,048	628,966

OCII also administers six Community Facilities Districts (“CFDs”) created under California’s Mello-Roos Act which support infrastructure and maintenance activities in project areas with funds from dedicated parcel taxes. Although the CFD activities are not included in OCII’s budget, their spending plans, annual levies and outstanding debt as of June 30, 2015 are provided for informational purposes in Appendix 1.

In addition to authorizing expenditure of amounts specified in the FY 2015-16 budget, the enabling resolution accompanying the budget would:

- Allow OCII to transfer budgeted appropriations within the projects shown on Table 3 and to transfer appropriations for allocated staffing and overhead costs between projects.
- Direct that the expenditure authority funded by proposed tax allocation bonds shall be reserved and subject to release after receipt by OCII of such bond funds or substitute financing.
- Authorize OCII to expend the interest earned on bond proceeds for purposes consistent with the bond indentures, subject to consistency with an approved ROPS, and provided that OCII has determined that such interest is not subject to Internal Revenue Service arbitrage restrictions.
- Authorize OCII to accept and expend any pledged property tax revenues in the Mission Bay North and South, Rincon Point South Beach and Transbay project areas, and Transbay revenues from sale of formerly state-owned properties, for their pledged purposes, subject to consistency with an approved ROPS.
- Authorize the Executive Director to expend funds appropriated in prior years in reserve accounts designated for affordable housing projects, community benefits grants and Yerba Buena Gardens capital account for their designated purposes; subject to the availability of funds and consistency with an approved ROPS.

3. Administration Expenses and Budgeted Positions

Table 4 provides a summary of OCII’s proposed \$11.9 million FY 2015-16 administrative budget, representing a \$40 thousand decrease from the prior year.

Table 4. Proposed FY 2015-16 Administrative Budget, \$ Thousands

Sources	FY 14-15 Bgt	FY 15-16 Adopted	Diff
Property Tax Increment - Administrative Allowance	\$ 2,910	\$ 3,301	\$ 391
Property Tax Increment - Retiree Health and UAAL	1,040	1,577	537
Developer Payments	150	150	-
Staff & Operating Expenses Allocated to Projects	7,795	6,827	(968)
Total Sources	\$ 11,895	\$ 11,855	\$ (40)
Uses	FY 14-15 Bgt	FY 15-16 Adopted	Diff
Salaries and Benefits	\$ 8,414	\$ 7,616	\$ (798)
Affordable Housing Services	619	827	\$ 208
Rent	441	454	\$ 13
Retiree Health and Pension UAAL Contribution	1,040	1,577	\$ 537
Auditing & Accounting Services	210	185	\$ (25)
Legal Services	285	265	\$ (20)
Other Professional Services	275	275	\$ -
Other Current Expenses	611	656	\$ 45
Total Uses	\$ 11,895	\$ 11,855	\$ (40)

The \$7.8 million budget for staff salaries and benefits includes both OCII staff and City Administrator staff assigned to OCII. This budget represents a \$798,000 decrease from the approved FY 2014-15 budget, despite the provision of cost-of-living increases to OCII staff that match those received by City of San Francisco staff. The decrease is primarily due to:

- Transfer of 9.6 FTE South Beach Harbor staff to the Port of San Francisco due to the assumption by the Port of responsibility for operation of South Beach Harbor and transfer of 2 FTE OCII staff to the Mayor’s Office of Housing and Community Development to continue work on former SFRA housing programs transferred to the City after redevelopment dissolution. Savings from these transfers is partially offset by:
- Proposed addition of full time equivalent (“FTE”) positions to help OCII accelerate affordable housing production and other horizontal and vertical development in FY 2015-16, as described in the “Budgeted Positions” section below.
- Decrease in the CalPERS employer share contribution as a percentage of payroll from 18.19% in FY 2014-15 to 9.52% in FY 2015-16, with the “unfunded accrued actuarial liability (“UAAL”) billed separately as a lump sum and included in the budget separately. The employer contribution is further offset by the supplemental employee contribution of 1% salary, rising to 2.25% in October 2015 in accordance with recently negotiated labor agreements.

Other items of note include:

- **Affordable Housing Services:** The \$827,000 budget represents \$687,000 in staffing support provided by the Mayor’s Office of Housing and Community Development and \$140,000 for OCII’s contribution towards the software development costs of MOHCD’s new online Affordable Housing Data Portal (SF DAHLIA). OCII’s contribution is 10% of the overall software cost, based on an estimate of OCII projects’ usage of the system.
- **Retiree Health and Pension Unfunded Accrued Actuarial Liability (“UAAL”) contribution:** This includes \$1,040,000 budgeted for retiree health insurance obligations, and a further \$536,660 budgeted for OCII’s contribution to its pension liability, as calculated under a new billing formula and procedure established by the California Public Employees Retirement System (“CalPERS”) starting in FY 2015-16. Under the existing system, agencies such as OCII were billed by CalPERS a percentage of their active employee payroll to cover both the pension benefit being earned by their employees each year (also known as the “normal cost”) and an additional percentage for the UAAL—an estimated amount needed to catch up for unfunded liabilities in the system as a result of the pension system not meeting expectations in prior years or as a result of new demographic assumptions, such as the realization that retirees are living longer and the system will need to pay out more funds as a result. Under the new formula, the CalPERS bills for the UAAL portion as a fixed dollar amount each year rather than as a percentage of payroll.
- **Legal Services:** The \$265,000 budget includes:
 - \$125,000 budget for City Attorney’s Office general legal support of OCII.
 - \$140,000 budget for other legal support that may be required by OCII.

Note that project-specific budgets include an additional \$1.1 million for City Attorney’s Office and \$0.85 million for other legal assistance.

- **Other Professional Services:** The \$275,000 budget includes \$100,000 for public communications support, \$20,000 for records management support, \$15,000 for Office of Labor Standards Enforcement investigations support and \$140,000 contingency budget for unforeseen requirements that may come up during the year, unchanged from the FY 2014-15 budgeted amounts.
- **Other Current Expenses:** The \$662,000 budget includes:
 - \$270,000 for insurance premiums and allowance for deductibles;
 - \$105,000 for software licensing fees
 - \$ 96,000 for mail, e-mail, internet, server hosting, telephone, copy machine and records storage
 - \$ 60,000 for office supplies and employee training and field expenses
 - \$ 60,000 for Commission and Oversight Board meeting expenses, including audiovisual recording of Commission meetings by SFGOV TV.
 - \$ 30,000 for information technology supplies.
 - \$ 41,000 for other expenses.

FY 2015-16 Budgeted Positions

Budgeted positions and salary ranges are shown in Table 5. Salary ranges shown are as of May 2015 and are subject to change based on negotiated labor agreements. Salary ranges are for information only-- should there be any discrepancy between the salary ranges shown here and negotiated labor agreements, the negotiated labor agreement amount would be determinative. In special circumstances, and in accord with OCII's Personnel Policy, individuals may receive higher salaries than the ranges shown below to reflect acting assignments or unusual recruitment conditions.

In February 2015, OCII employees were offered positions within the City and County of San Francisco at comparable salaries that would allow them to continue working on OCII projects through a contractual arrangement between OCII and the City. At that time, 21 employees accepted the offer, including all nine employees working at South Beach Harbor, who will continue working at the Harbor after the ownership of the facility transfers to the Port of San Francisco, and two employees working on City housing programs that were assumed by the Mayor's Office of Housing and Community Development following redevelopment dissolution. The FY 2015-16 budgeted positions listed in Table 5 reflect the remaining OCII employees plus those former OCII employees who transferred to the City and are continuing to work on OCII work under contract to OCII.

The FY 2015-16 budget includes a net addition of six full time equivalent positions ("FTEs"), reflecting the increased workload based on the anticipated timing of development in the Major Approved Development Projects, along with a proposed accelerated work schedule for affordable housing projects, including up to 6 new Requests for Proposals ("RFPs") for affordable housing projects. The proposed new positions and position changes are:

- Addition of a Deputy General Counsel to support the OCII General Counsel with the increasing volume of legal review work. The cost of this position is partially offset by a reduction in the work order with the City Attorney's office from FY 2014-15 budgeted levels to reflect the actual level of support anticipated to be provided by that office.
- Addition of a Human Resources and Administrative Services manager position to bring in house services that were provided by the City Administrator's Office.
- Addition of one Project Manager, two Senior Development Specialists and one Management Assistant II to assist with the volume of development work proposed for FY 2015-16.

Table 5. FY 15-16 Proposed FTE, Compared to Prior Year

Class	Class Title	Biweekly Salary Range	FY 14/15	FY 15/16
			Adj Bgt	Proposed
500	Executive Director	\$6,968 - \$8,470	1	1
520	General Counsel	\$6,542 - \$7,952	1	1
1060	Deputy Director, Finance and Admin	\$6,099 - \$7,413	1	1
1060	Deputy Director	\$6,099 - \$7,413	1	1
560	Human Resources/Admin Svcs Mngr	\$3,897 - \$4,737	0	1
525	Deputy General Counsel	\$5,268 - \$6,403	0	1
565	Senior Civil Engineer	\$4,935 - \$5,999	1	1
535	Development Services Manager	\$4,630 - \$5,628	1	1
550	Senior Project Manager	\$4,575 - \$5,561	1	1
590	Project Manager	\$3,952 - \$4,804	3	4
990	Assistant Project Manager	\$3,718 - \$4,519	2	2
540	Housing Program Manager	\$4,629 - \$5,627	1	1
595	Senior Development Specialist	\$3,999 - \$4,861	1	3
615	Development Specialist	\$3,718 - \$4,519	8	8
705	Assistant Development Specialist	\$3,212 - \$3,904	1	1
930	Staff Associate V	\$3,952 - \$4,804	1	1
585	Contract Compliance Supervisor	\$4,316 - \$5,246	1	1
1065	Contract Compliance Specialist III	\$4,087 - \$4,968	1	1
640	Contract Compliance Specialist II	\$3,121 - \$3,794	1	1
970	Accounting Supervisor	\$4,316 - \$5,246	1	1
670	Financial Systems Accountant	\$3,575 - \$4,345	1	1
695	Accountant III	\$3,088 - \$3,753	1	1
775	Accountant II	\$2,554 - \$3,104	1	1
630	Senior Financial Analyst	\$4,070 - \$4,947	1	1
720	Senior Programmer Analyst	\$3,203 - \$3,893	1	1
1030	Management Assistant III	\$2,905 - \$3,531	3	3
1035	Management Assistant II	\$2,534 - \$3,080	2	3
855	Records Specialist II	\$1,985 - \$2,413	1	1
860	Senior Office Assistant	\$1,985 - \$2,413	1	1
	Subtotal without South Beach Harbor		40	46
	OCII Positions transferred to City for City Housing Work effective FY 15/16		2	0
	South Beach Harbor Positions (to Port of SF in FY 15-16)		8.6	0
	Total including work transferred to City		50.6	46
	Additional Temporary Staff Budget (rounded)		\$300,000	\$370,000

4. Debt Service

Table 6 provides a summary of OCII’s proposed \$105 million FY 2015-16 debt service budget, representing a decrease of \$6.7 million from the prior year:

EXHIBIT 10

CITY AND COUNTY OF SAN FRANCISCO
BOARD OF SUPERVISORS
BUDGET AND LEGISLATIVE ANALYST

1390 Market Street, Suite 1150, San Francisco, CA 94102 (415) 552-9292
FAX (415) 252-0461

November 6, 2015


TO: Budget and Finance Committee
FROM: Budget and Legislative Analyst 
SUBJECT: November 9, 2015 Budget and Finance Committee Meeting

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<p>Item 2 File 15-0995</p>	<p>Department: Office of Community Infrastructure and Investment Office of Economic and Workforce Development</p>
<p>EXECUTIVE SUMMARY</p>	
<p style="text-align: center;">Legislative Objectives</p> <ul style="list-style-type: none"> • The proposed ordinance amends the Administrative Code to add a new Section 10.100-364 to establish the Mission Bay Transportation Improvement Fund to pay for additional services provided by San Francisco Municipal Transportation Agency (SFMTA), San Francisco Police Department (SFPD), and Department of Public Works (DPW) to the Warriors Project. <p style="text-align: center;">Key Points</p> <ul style="list-style-type: none"> • The Golden State Warriors Arena, LLC (Warriors) plans to construct a multipurpose event center and retail and office project at 16th and Third Streets in the Mission Bay neighborhood (Warriors Project). The SFMTA, SFPD, and DPW will provide services to the neighborhood surrounding the Warriors Project. • The proposed ordinance establishes the Mission Bay Transportation Improvement Fund (Fund) as a category four fund, setting aside General Fund monies to pay for services provided by SFMTA, SFPD, and DPW to the Warriors Project. It is anticipated that the revenues to be realized from the Warriors Project will provide for the needed funding sources to the General Fund. <p style="text-align: center;">Fiscal Impact</p> <ul style="list-style-type: none"> • SFMTA’s estimated costs to purchase four new light rail vehicles and make other transportation system improvements to accommodate the Warriors Project are \$55.3 million. Estimated revenues generated by the Warriors Project to pay these costs are \$25.4 million, resulting in a revenue shortfall of \$29.9 million. The estimated revenue shortfall of \$29.9 million will be financed through sale of SFMTA revenue bonds or other financing source. Annual debt service is projected to be paid from tax revenues generated by the Warriors Project. • SFMTA’s expenditures for transportation services to the Warriors Project will be paid by SFMTA fare and parking revenues generated by these services. The Mission Bay Transportation Improvement Fund will pay for SFMTA service to the Warriors Project not covered by these fare and parking revenues, and for SFPD and DPW services to the Warriors Project. • City departments’ estimated annual expenditures to provide services to the Warriors Project are \$10.1 million. These expenditures will be funded by an estimated \$11.6 million in revenues generated by the Warriors Project, resulting in net revenues of \$1.5 million. 	

Policy Consideration

- If the Warriors Project generates insufficient General Fund tax revenues to pay for all of SFMTA's costs to provide transportation services to the Warriors Project, the Warriors will need to directly provide some transportation services.
- Only General Fund tax revenues directly generated by the Warriors Project should be included in the Controller's estimates of Project revenues to the City.

Recommendations

- Amend the proposed ordinance to specify that if the annual cap of 90 percent of General Fund revenues from the Project site and events at the Event Center is insufficient to cover SFMTA's expenditures for transportation services to the Warriors Project, then the Warriors will be responsible to provide the additional transportation services to comply with EIR Mitigation Measures TR-2b and TR-18.
- Amend the proposed ordinance to specify that only tax revenues generated on-site by the Warriors Project are included in the Controller's estimates of General Fund revenue generated by the Warriors Project for the purpose of calculating the annual General Fund contribution to the Mission Bay Transportation Improvement Fund.
- Approve the proposed ordinance as amended.

MANDATE STATEMENT

City Charter Section 2.105 states that all legislative acts shall be by ordinance and shall require two readings at separate meetings of the Board of Supervisors.

City Administrative Code Chapter 10, Article XVIII establishes the City's special funds. Administrative Code Section 10.100-1 defines the eight categories of special funds.

BACKGROUND

The Golden State Warriors Arena, LLC (Warriors)¹ plans to construct a multipurpose event center and retail and office project at 16th and Third Streets in the Mission Bay neighborhood (Warriors Project). The Warriors Project will consist of 1,053,000 square feet of building space, as shown in Table 1 below, and 3.2 acres of open space.

Table 1: Proposed Multipurpose Event Center, Retail and Office Project

	Square Feet
Event Center with 18,064 seats	488,000
Office Space	513,000
Retail Space	52,000
Total	1,053,000

The Warriors purchased 11 acres previously owned by Salesforce.Com in October 2015 with a plan to complete the event center in time for the 2018-19 National Basketball Association (NBA) season. While the Warriors Project is a private development, the City will provide public transportation, including transportation infrastructure, and ongoing public services related to the development.

Mission Bay South Redevelopment Plan Area

The Warriors Project is located on Blocks 29 to 32 in the Mission Bay South Redevelopment Plan Area (Mission Bay South) as shown in Figure 1 below.

¹ The Golden State Warriors Arena, LLC are an affiliate of the Golden State Warriors, LLC, who own the Golden State Warriors basketball team.

Figure 1: Location of Warrior's Project In Mission Bay South

Transportation and Other City Services to the Warriors Project

The San Francisco Municipal Transportation Agency (SFMTA), San Francisco Police Department (SFPD), and Department of Public Works (DPW) will provide services to the neighborhood surrounding the Warriors Project.

Transportation

The Transportation Management Plan, required by the Project's Environmental Impact Report (EIR), includes the Muni Special Event Transit Service Plan, which commits SFMTA to provide additional service to the Warriors Project, including increased light rail service on the T-Third line, and special event shuttles. SFMTA would implement the following transportation infrastructure improvements and services to the Warriors Project:

- Purchasing four additional light rail vehicles
- Extending the existing boarding platform at 3rd and South Streets
- Running three special event shuttles to regional transit stations
- Expanding service levels on the T-Third light rail line, and

- Adding parking control officers to control traffic during arena events

Police Services

Depending on the size and type of events held in the Warriors' event center, the SFPD will incur additional costs by assigning from 8 to 14 police officers on overtime to patrol the neighborhoods surrounding the event center.

Department of Public Works

DPW will incur additional costs by providing an estimated 42 days of litter patrol, steam cleaning, and street sweeping on the streets adjacent to the Warriors Project.

Development Impact Fees

The Warriors will be required to pay two development impact fees contained in the Planning Code and applicable to Mission Bay South: the Child Care Fee and the Transportation Impact Development Fee.

Environmental Impact Report

On November 3, 2015, the Commission on Community Investment and Infrastructure certified the Final Subsequent Environmental Impact Report for the Golden Gate Warriors Event Center and Mixed Use Project under the California Environmental Quality Act (CEQA). The Commission adopted CEQA findings, including a Mitigation Monitoring and Reporting Program and a Statement of Overriding Considerations.

DETAILS OF PROPOSED LEGISLATION

The proposed ordinance amends the Administrative Code to add a new Section 10.100-364 to establish the Mission Bay Transportation Improvement Fund to pay for additional services provided by SFMTA, SFPD, and DPW to the Warriors Project. The ordinance creates an advisory committee to make recommendations about the use of monies from the Fund, and adopts findings pursuant to CEQA.

Mission Bay Transportation Improvement Fund

The proposed ordinance establishes the Mission Bay Transportation Improvement Fund (Fund) as a category four fund, setting aside General Fund monies to pay for services provided by SFMTA, SFPD, and DPW to the Warriors Project.

Uses of Funds

The Fund will be used to pay for the following public services related to the Warriors' Project:

- Public transit
- Special event shuttles
- Parking and traffic engineering and control services
- Pedestrian and bicycle access programs
- Parking enforcement programs

- Local access to the University of California at San Francisco (UCSF) hospitals and facilities located in Mission Bay South
- Police services
- Litter pick-up
- Street and sidewalk clean up
- Other measures to improve services to the Warriors' Project

The Fund will be used to pay for the following SFMTA transit equipment and capital improvements related to the Warriors' Project:

- Light rail vehicles
- Cross over tracks and loading platform improvements on the T-Third line
- Parking and traffic improvements (such as cameras, traffic signals, vehicle messaging signs, and other improvements)
- Bicycle and pedestrian access
- Feasibility study for a ferry landing and service to Mission Bay South

Sources of Funds

The funding source for the proposed Mission Bay Transportation Improvement Fund is the General Fund. It is anticipated that the revenues to be realized from the Warriors Project will provide for the needed funding sources to the General Fund. The Controller will determine the General Fund tax revenue generated or likely to be generated by the Warriors Project each fiscal year to calculate the amount of the General Fund deposit to the Fund.

Maximum annual deposits to the Fund shall not exceed 90 percent of total General Fund revenue generated by the Warriors Project, as determined by the Controller. However, the ordinance sets minimum deposits to the Fund in the first five years, subject to the maximum 90 percent of total General Fund revenue generated by the Warriors Project, as follows:

- Year one: \$8,100,000
- Year two: \$8,300,000
- Year three: \$8,500,000
- Year four: \$8,800,000
- Year five: \$9,100,000

For the first five years, any end-of-year fund balance carries forward to the next year. After the first five fiscal years, end-of-year fund balances up to 25 percent of Fund expenditures carry forward to the next year.

The proposed ordinance establishes a reserve fund of \$1,000,000 once the event center opens. If City departments' expenditures exceed available revenues in the Mission Bay Transportation Improvement Fund, the City is entitled to a credit from the next year's annual deposit to the Mission Bay Transportation Improvement Fund, or from the reserve fund.

Beginning in FY 2016-17, SFMTA, SFPD, and DPW will prepare budget proposals to pay for City services and capital improvements related to the Warriors Project. According to the proposed ordinance, the Mayor and the Board of Supervisors shall include in the City's annual budget sufficient General Fund revenues for deposit into the Fund to meet City departments' budgeted expenditures to provide services to the Warriors Project.

Category Four Fund

The Mission Bay Transportation Improvement Fund, a category four fund, requires that all expenditures from the Fund be subject to appropriation approval by the Board of Supervisors.

Mission Bay Transportation Improvement Fund Advisory Committee

The Mission Bay Transportation Improvement Fund Advisory Committee (Advisory Committee) consists of five members, of which one each is appointed by the Warriors, the University of California at San Francisco, and the District 6 Supervisor, and two are appointed by the Mayor.

FISCAL IMPACT

One Time Capital Expenditures for Transportation Projects

According to the Warriors Project Transportation Management Plan, the SFMTA will provide additional services to accommodate basketball games, concerts and other events at the proposed Warriors event center. SFMTA will increase the number of light rail vehicles on the T-Third line from the current one vehicle per train to the proposed two vehicles per train, resulting in the need to purchase four new light rail vehicles, and reduce the time between trains from 9 minutes to 8 minutes. The SFMTA will also make improvements to the tracks, boarding platforms, and power augmentation to the T-Third line.

SFMTA's estimated costs to purchase four new light rail vehicles and make other transportation system improvements to accommodate the Warriors Project are \$55.3 million. Estimated revenues generated by the Warriors Project to pay these costs are \$25.4 million, resulting in a revenue shortfall of \$29.9 million, as shown in Table 2 below.

**Table 2: Estimated Sources and Uses of Funds for
Transit Improvements for Warriors Project²**

Uses of Funds	Amount
Four new light rail vehicles	\$18,300,287
Installation of three new cross over tracks	5,848,178
Construction of new center boarding platform	22,500,000
Power augmentation	<u>6,800,000</u>
Subtotal Transit Uses of Funds	\$53,448,465
Traffic signals and engineering	<u>1,860,000</u>
Total Uses of Funds	\$55,308,465
Sources of Funds	
Transit Development Impact Fees	\$17,436,000
Transfer tax and construction gross receipts and sales taxes	<u>7,955,799</u>
Total Sources of Funds	\$25,391,799
Revenue shortfall	\$29,916,666

Source: SFMTA

According to Ms. Sonali Bose, SFMTA Chief Financial Officer, the estimated revenue shortfall of \$29,916,666 will be financed through sale of SFMTA revenue bonds or other financing source. Annual debt service is projected to be paid from tax or other revenues generated by the Warriors Project, as shown in Table 3 below.

City Departments' Ongoing Annual Expenditures for the Warriors Project

SFMTA's expenditures for transit services to the Warriors Project will be paid by SFMTA fare and parking revenues generated by these services. The Mission Bay Transportation Improvement Fund will pay for SFMTA service to the Warriors Project not covered by these fare and parking revenues, and for SFPD and DPW services to the Warriors Project.

City departments' estimated annual expenditures to provide services to the Warriors Project are \$10.1 million. These expenditures will be funded by an estimated \$11.6 million in revenues generated by the Warriors Project, resulting in net revenues of \$1.5 million, as shown in Table 3 below.

² SFMTA will incur equipment and infrastructure costs related to the Warriors Project over a four to five year period. The revenue and expenditure estimates shown in Table 2 are the present value (in 2014 dollars) of the four to five year revenue and expenditures plan.

Table 3: Estimated Sources and Uses of Funds for City Departments' Annual Ongoing Expenditures³

Estimated Annual Expenditures for City Services to Warriors Project	
Transit services for events	3,780,746
Enforcement	2,892,838
Parking control officers	<u>238,443</u>
Subtotal, SFMTA operating costs	6,912,026
Estimated debt service on revenue bonds	2,122,661
Police	952,000
DPW	<u>95,357</u>
Total Expenditures	10,082,044
Estimated Annual Revenues Generated by Warriors Project	
SFMTA fare and parking revenue	1,772,894
Property taxes	1,779,882
Sales tax	520,948
Parking tax	482,197
Stadium admissions tax	4,335,920
Gross receipts tax	2,431,277
Utility user tax	<u>253,707</u>
Total Revenues⁴	11,576,825
Net Revenues	\$1,494,781

Sources: SFMTA, SFPD, DPW; Economic & Planning Systems, Inc. report to OCII, Budget and Legislative Analyst estimate of debt service

POLICY CONSIDERATION

If the Warriors Project generates insufficient General Fund tax revenues to pay for all of SFMTA's costs to provide transportation services to the Warriors Project, the Warriors will need to directly provide some transportation services

While SFMTA, SFPD, and DPW will provide services to the Warriors Project, only SFMTA is committed to additional services, as defined by the Muni Special Event Transit Service Plan,

³ City departments will begin providing services to the Warriors Project beginning in the 2018-19 NBA season. These revenue and expenditure estimates are the present value (2015 dollars) of the 2018-19 revenues and expenditures.

⁴ The Economic and Planning Systems, Inc. (EPS) September 2015 report to OCII estimates \$14,110,833 total revenues generated by the Warriors Project, of which \$2,597,737 are allocated to required funds and baselines, such as the Children's Fund and Open Fund, and \$11,513,096 are general revenues. Table 3 revenues of \$11,576,825 differ from the EPS estimates of \$11,513,096 in that Table 3 (1) includes \$1,772,894 in SFMTA fare and parking revenues, and (2) does not include \$1,709,165 in hotel tax and gross receipts tax revenues generated off-site.

which is a component of the Transportation Management Plan.⁵ The Warriors are required to implement a Transportation Management Plan to manage vehicle, transit, pedestrian, and bicycle transportation during Warriors games and other events and activities at the project site, in accordance with the Project's Environmental Impact Report (EIR). According to the EIR, the Warriors will have to implement additional transportation services if the Muni Special Event Transit Service Plan is not implemented.⁶ While the EIR does not explicitly state that insufficient General Fund tax revenue generated by the Warriors Project would cause the Muni Special Event Transit Service Plan to not be implemented, according to City staff, insufficient funding could be one of the causes of not implementing the Transit Service Plan.

According to the October 20, 2015 memorandum from the Director of Transportation to the OCII Executive Director, although SFMTA will be able to deliver transit services to the Warriors Project, SFMTA cannot unequivocally guarantee future funding for the transit services to the Warriors Project in perpetuity. According to the Director of Transportation, the SFMTA supports the Project with the understanding that the City, the Golden State Warriors and SFMTA do not expect the SFMTA operating and capital budgets to experience any adverse impact associated with implementing the proposed transit service plan and the capital investments to support it.

Under the proposed ordinance, the General Fund contribution to the Mission Bay Transportation Improvement Fund is capped at 90 percent of General Fund tax revenues generated by the Warriors Project. The proposed ordinance should be amended to specify that if the revenue cap is insufficient to cover SFMTA's expenditures for transportation services to the Warriors Project, then the Warriors will be responsible to provide additional transportation services to comply with EIR Mitigation Measures TR-2b and TR-18.

Only General Fund tax revenues directly generated by the Warriors Project should be included in the Controller's estimates

OCII's consultant, Economic and Planning Systems, Inc. (EPS) attributed to the Warriors Project hotel and gross receipts tax revenues generated off-site. According to the EPS report, hotel taxes will be generated by out of town visitors attending events at the Warriors Project, and gross receipts taxes will be generated by off-site businesses serving visitors to the Warriors Project. According to the peer review report by Keyser Marston Associates, the EPS analysis is reasonable because (a) only demand generated by the event center and not the retail and office uses is included in the analysis, and (b) the estimates are based on conservative assumptions.

However, the Budget and Legislative Analyst notes that off-site hotel tax and gross receipts tax revenues cannot be directly attributed to the Warriors Project. It is not possible to verify if changes in hotel occupancy and off-site business gross receipts tax revenues are

⁵ SFMTA's expenditures for the transportation infrastructure improvements are funded by the TIDF, real property transfer taxes, and financing (such as revenue bonds). The annual debt service on the financing is included in the annual budget to be funded by the Fund.

⁶ Additional transportation services include shuttle buses, charter buses, high occupancy vehicles, and special ferry service.

due solely to visitors who come to San Francisco specifically to attend Warriors games or other events at the proposed event center. Such increased tax revenues might also be attributable to visitors to San Francisco who do not attend events at the Warriors Project. Any methodology to attribute hotel and gross receipts tax revenues to the Warriors Project is based on assumptions and not actual accounting of tax receipts. Therefore, the Budget and Legislative Analyst does not include these off-site tax revenues, estimated to be \$1,709,165 per year, in the Table 3 estimates above.

The Budget and Legislative Analyst recommends amending the proposed ordinance to specify that only tax revenues generated on-site by the Warriors Project are included in the Controller's estimates of General Fund revenue generated by the Warriors Project for the purpose of calculating the annual General Fund contribution to the Mission Bay Transportation Improvement Fund.

RECOMMENDATIONS

1. Amend the proposed ordinance to specify that if the annual cap of 90 percent of General Fund revenues from the Project site and events at the Event Center is insufficient to cover SFMTA's expenditures for transportation services to the Warriors Project, then the Warriors will be responsible to provide the additional transportation services to comply with EIR Mitigation Measures TR-2b and TR-18.
2. Amend the proposed ordinance to specify that only tax revenues generated on-site by the Warriors Project are included in the Controller's estimates of General Fund revenue generated by the Warriors Project for the purpose of calculating the annual General Fund contribution to the Mission Bay Transportation Improvement Fund.
3. Approve the proposed ordinance as amended.

EXHIBIT 11



November 17, 2015

Mr. Tom Lippe
Law Offices of Thomas N. Lippe, APC
201 Mission Street, 12th Floor
San Francisco, CA 94105

**Subject: Subsequent Environmental Impact Report for Event Center and
Mixed Use Development at Mission Bay Blocks 29-32.
SCN:2014112045**

P15003

Dear Mr. Lippe:

This is an addendum to my November 2, 2015 comments of the Responses to Comment ("the RTC") on the Subsequent Environmental Impact Report (hereinafter "the SEIR") on the above referenced Project in the City and County of San Francisco (hereinafter "the City"). This addendum focuses on an addition to the Project that is different from a feature addressed in the DSEIR. This concerns the proposed modification to the Muni UCSF T Third Station

My qualifications to perform this review were thoroughly documented in my letter of comment on the DSEIR dated July 26, 2015 and are incorporated herein by reference.

Original MUNI UCSF/Mission Bay T Third Station – Impact Analysis Flawed

An original component of the Project was to extend the existing 160 foot northbound and southbound platforms of MUNI's UCSF/Mission Bay T Third LRT station to 320 feet so that the station could accommodate to two-car LRT trains stopping at either directional platform at the same time. The DSEIR found that passenger usage of the MUNI's UCSF/Mission Bay T Third LRT station during pre-event and post-event periods of large events at the Project's "event center" would not exceed thresholds of significance related to the capacity of the station's platforms. This finding is implausible since the platforms are only 9 feet

wide and accessed/egressed by ramps only 4 feet wide. The DSEIR's claim that thresholds of significant impact on these platforms will not be exceeded was arrived at only through evasive assumptions inconsistent with the good faith effort to disclose impact that CEQA demands. These evasions include:

- assuming that, in the pre-event period, if the platform were already crowded, that a subsequently arriving LRT train would not open its doors, thereby trapping riders aboard until the crowd on the platform dissipated, and
- assuming that PTOs would corral departing event patrons in a separate area whenever it appeared that the boarding platforms were becoming overcrowded.

Both of these assumed actions are actually de-facto admissions that there actually would be significant transit impacts related to station platform capacity (we also note that the excessive station dwell times when operators stop but keep the doors closed to keep debarking passengers from overloading station platform capacity is both a significant transit impact and social justice impact on those who rely on the T Third to travel farther south). Instead of disclosing that there is a significant transit impact and proposing effective mitigation, in this instance the DSEIR claims there is no significant impact and defined what appears as a gratuitous improvement, Improvement Measure I-TR-4 to "study" operations and safety at the LRT platforms and determine the need for and feasibility of operational improvements at the platforms, with the study to be performed by a qualified transportation professional approved by SFMTA¹.

The problems with the proposal assumed as part of the Project to extend the existing northbound and southbound platforms are obvious.

- The existing platforms are only 9 feet wide and accessed by ramps that are only 4 feet wide, insufficient widths for event crowds to access or egress the platforms quickly.
- While lengthening the platforms creates the space for a second train to stop, it doesn't add any width to allow the crush crowds to move off the platform efficiently.
- Moreover, in the post-event period, the west (southbound) platform would only service the relatively small numbers of patrons headed south on the T Third. It is fairly useless as a staging point for loading turnback shuttles headed north.

The MUNI UCSF/Mission Bay T Third Station Variant

Between the intervening time between when the DSEIR was circulated and the time the SEIR was prepared, transportation professionals specialized in LRT operations and design were apparently able to get involved instead of just the

¹ Such a study appears to be a deferred mitigation that is improper under CEQA.

professionals who prepare environmental documents. The result is what the SEIR describes as the "Muni UCSF/Mission Bay Station Platform Variant".

The Muni UCSF/Mission Bay Station Platform Variant replaces the split northbound and southbound side platforms with a single center-platform and located in the block between South and Sixteenth Streets. The new center-platform concept is clearly operationally superior to the flawed original proposal to simply extend the existing side platforms and add crossovers for shuttle turn-backs.

- It will have a 17-foot width accessed and egressed by 13-foot wide ramps at both ends of the platform, obviously better suited to dealing with heavy event crowds than the existing side-platform configuration (even if the lengths were doubled as proposed in the DSEIR) that have only 9-foot widths and 4-foot access/egress ramps at one end only.
- Both sides of the proposed center-platform can be readily used by turn-back shuttles, providing much greater operational flexibility for integrating the turn-backs with normal operational flows.

This "variant" is so far superior in ultimate performance to the flawed original proposal for modifying the LRT station that it is now clearly a component of the Project, not just a potential alternative.

Substitution of the New MUNI UCSF/Mission Bay T Third Station Plan Requires Recirculation of the SEIR in Draft Status

The SEIR claims in Volume 4, page 12-23 that the Muni UCSF/Mission Bay Station Platform Variant is analyzed at an equal level of detail as the station platform improvement proposal included in the Project Description for the proposed Project and therefore the variant analysis satisfies all CEQA requirements. However, this interpretation ignores the fact that the variant involves very different and more impactful consequences during construction than the original station platform proposal.

In the original proposal, the basic trackwork would remain the same, the crossovers could be installed over a 3-day weekend period and extension of the platforms could be undertaken largely without interference to services to the existing portion of the platforms or to operations further south along the T Third. In the variant, the entire trackwork between South and Sixteenth Streets would have to be torn up to allow center platform construction, the existing side platforms demolished, and either shoofly trackage around the entire construction site would have to be constructed (likely involving full-time traffic lane closures) or bus services substituted for T Third operations south of China Basin and Mission Rock Streets. This disruptive construction would take place over a 14 month period. The SEIR mentions these significant differences in disruption of

Mr. Tom Lippe
November 17, 2015
Page 4

services and transportation operations but implausibly claims they are the same as for the originally proposed Project. Clearly this is not the case.

Under CEQA, if the project changes after publication of the Draft EIR, and these changes create a new significant impact not identified in the Draft EIR, or a substantial increase in severity of a significant impact that was identified in the Draft EIR, the lead agency must recirculate the draft EIR for public comment. (CEQA section 21092.1.). Although the SEIR makes the conclusory statement that the station variant would not result in new or more severe impacts than previously disclosed, the impacts disclosed in the SEIR are new, more severe and clearly support an opposite conclusion. Hence, the SEIR should have been recirculated in draft for a further 45 day public comment period.

Sincerely,

Smith Engineering & Management
A California Corporation



Daniel T. Smith Jr., P.E.
President



EXHIBIT 12



November 28, 2015

Mr. Tom Lippe
Law Offices of Thomas N. Lippe, APC
201 Mission Street, 12th Floor
San Francisco, CA 94105

**Subject: Subsequent Environmental Impact Report for Event Center and
Mixed Use Development at Mission Bay Blocks 29-32.
SCN:2014112045**

P15003

Dear Mr. Lippe:

This is an addendum to my November 2, 2015 comments of the Responses to Comment ("the RTC") on the Subsequent Environmental Impact Report (hereinafter "the SEIR") on the above referenced Project in the City and County of San Francisco (hereinafter "the City"). This addendum focuses on topics concerning walking distance to the proposed Project, exclusion from the analysis of key intersections that are clearly potentially impacted by the project and that are on identified emergency routes to the UCSF Mission Bay hospitals, severity of impact, a key scenario not analyzed in the SEIR and considerations regarding the effect of the at-grade rail crossing of Sixteenth Street on intersections in the Sixteenth Street corridor.

My qualifications to perform this review were thoroughly documented in my letter of comment on the DSEIR dated July 26, 2015 and are incorporated herein by reference.

Re Walking Distance

The walking distance issue of concern relates to the SEIR Response to Comment located at p p13.11-27, 28. This part of the response expresses the notion that people who work downtown would walk to the Warriors Arena because people who work downtown tend to walk to AT&T Park. This response

is illogical and unreasonable because a) the Warriors Arena is much farther from downtown than AT&T Park and b) because there are limits on how far, in terms of time or distance, the vast majority of able-bodied people are willing to walk on purposeful trips. AT&T Park is within 25 minutes walk distance from the Bank of America Building at California and Montgomery Streets. The Arena site is about 41 minutes walk distance from that downtown location. The Transamerica building located at Washington and Montgomery is about a 29 minute walk from AT&T Park. It is about a 44 minute walk from the Arena site. A compendium of urban planning literature, attached as Exhibit A, mostly related to access to transit, suggests that most people are unwilling to walk more than 30 minutes on purposeful trips. Hence, while AT&T Park is within reasonable walking distance for many working downtown, the Arena site is not.

Re Key Intersections On Emergency Routes Omitted From the Analysis

My letter of November 3, 2015 on page 7 stated: "Many of the intersections and ramps on logical access/egress routes to/from the Project that, at the City's discretion, the SEIR failed to analyze are on the advised emergency access routes from various points in the City and region to the hospitals and are posted on the UCSF web site," I used UCSF's web site interface for directions to the Medical Center to identify recommended emergency routes. (See www.ucsfmissionbayhospitals.org/gethere/ and click on "Get Directions" tab.) For Hyde and Bay, the primary recommended route is the Embarcadero to King, then Third. The secondary route is Hyde, then 8th. For the Transamerica building, the primary route is Clay/Drumm/Washington to Embarcadero, King, Third. The secondary route is Davis/Beale/Bryant/Embarcadero/Third. For Union Square, the primary is west on Geary, down Hyde/8th/Brannan/7th/16th. For the Bay Bridge, the primary is off at 8th and Harrison, down 8th/Brannan/7th/16th. . These documented emergency routes demonstrate why the intersections along Eighth and along the Embarcadero should have been studied. The key intersections are the nine along the Embarcadero with Broadway, Washington, Market, Mission, Howard, Folsom, Harrison, Bryant and Brannan and the six on Eighth with Market, Mission, Howard, Folsom, and especially Harrison and Bryant.

Severity of Impact Issues in the Sixteenth Street Corridor

In prior communications we have discussed the SEIR's failure to distinguish differences in the severity of impacts when intersections are within the LOS F range. That is to say, the SEIR merely reports conditions as LOS F as if all were equivalent when in fact one scenario may involve traffic demands producing delays two, three or four seconds over the LOS F delay threshold of 80 seconds while another involves vastly greater traffic demand producing predicted delays

perhaps 50 percent or 100 percent above the LOS F 80 second delay threshold¹. This situation is particularly marked in the case of the intersection of Sixteenth, Seventh and Mississippi Streets. In this case, Table 5.2-47 reports the scenario of Existing + Giants Game + No GSW Project and the scenario of Existing + Giants Game + GSW Project + Basketball Game as equivalent LOS F conditions. However, buried in the details of Synchro LOS/delay computation sheets contained in Appendix TR for the pm peak hour it is found at page TR-191 that the Existing + Giants Game + No GSW Project is computed to have a delay level of 84.7 seconds per vehicle (slightly less than 6 percent over the 80 second LOS F threshold) while on page TR-323 the Existing + Giants Game + GSW Project + Basketball Game scenario traffic is found to cause a delay of 151.9 seconds per vehicle (almost 90 percent over the 80 second LOS F threshold). While differences in predicted delay above the LOS F threshold are not as precisely reliable as those below the LOS F threshold, vast differences such as the above are clearly indicative of significant differences in severity of impact. And at an intersection such as that of Sixteenth, Seventh and Mississippi Streets which is on a key emergency and normal access route to the UCSF Mission Bay hospitals, the failure to report change in severity of impact is a critical flaw in the SEIR. Similar results are reported for the Early Evening hour.

SEIR Fails to Consider a Critical Scenario

Considering the details of severity of impacts at the key intersection of Sixteenth, Seventh and Mississippi Streets reveals another flaw. In the Existing + Giants Game scenario, as noted above the subject intersection functions just above the LOS F threshold (delay 84.7 seconds per TR-191). The SEIR and Appendix TR do not consider the scenario of Existing + Giants Game + Project + No Event. However, comparison of the Existing + No Giants scenario (delay 68.6 seconds/LOS E per TR-179) to the Existing + No Giants + Project + No Event scenario (delay 87.8 seconds/LOS F per TR275) reveals a differential of 19.2 seconds delay increment caused by the Project without an arena event. Hence, by extrapolation, the Existing + Giants + Project + No Event scenario would cause an overall delay at Sixteenth, Seventh and Mississippi Streets in the pm peak hour of 103.9 seconds or worse. This is almost 30 percent above the LOS F threshold. So adding the Project, even without a Project arena event, would cause a substantial increase in severity of pm peak impact at Sixteenth, Seventh and Mississippi Streets whenever there is a Giants game.

How often would this more severe but unanalyzed condition affecting the key emergency access intersection to the UCSF Mission Bay hospitals occur? The maximum number of Giants games that could be played on weeknights between April 1 and October 30 reflecting current schedule patterns and assuming the

¹ The formal definition of 80 seconds average control delay per vehicle is implied in these statements.

team reaches the World Series and that all playoff series go the maximum number of games is about 57 games. Based on the event expectations for the Project's arena disclosed on Appendix TR, page TR-19, there could probably be about 60 weekday events at the Project over those same 7 months when the Giants could be playing. There are about 156 weekdays in that 7 month period. So if there are no overlaps, the unstudied, increased severity condition could occur up to 57 times. However, when overlaps do occur, the almost doubled severity condition that was studied would occur.

Effect of At-Grade Rail Crossing of Sixteenth Street

We have carefully re-examined the SEIR response to comment on the effect of the SEIR response to our comment on the effect of the Caltrain grade crossing of 16th on the operation of the intersection of Seventh/Mississippi/16th. The SEIR response on this issue from SEIR Volume 4, pages 13.11-55 and 13.11-56 is reproduced indented and in distinctive font, with our further observations in normal font and margins.

The SEIR analysis did not explicitly include the delay associated with the at-grade crossing of Caltrain at the study intersections of Seventh/Mississippi/16th and Seventh/Mission Bay Drive, but the delay and LOS presented in the summary tables does reflect traffic conditions, including automatic gate operations.

How the delay and LOS does reflect gate closure during rail preemption is not made evident in the subsequent discussion in any way. The only thing clear is that "the SEIR analysis did not explicitly include the delay associated with the at-grade crossing of Caltrain".

As noted on SEIR page 5.2?6, the analysis of existing conditions assumes implementation of the 22 Fillmore Transit Priority Project, which includes converting one of the two mixed-flow travel lane in each direction on 16th Street to a side-running transit-only lane.

Changing the number of general traffic lanes which pass through the subject intersection and the at-grade rail crossing is a confounding assumption which makes any comparison to observed conditions irrelevant.

Prior to incorporating the 22 Fillmore Transit Priority Project into the intersection LOS analysis, the LOS conditions were verified based on field surveys of intersection operations conducted as part of this project and the UCSF Long Range Development Plan (LRDP) analysis. The results were also compared to the LOS analysis for existing conditions presented in the EIR prepared for the Caltrain electrification project⁹. The LOS results obtained for

these two study intersections for the weekday p.m. peak hour were found to be generally consistent with field observations and the analyses presented at the two aforementioned reports.

This is disguised and misleading self-referencing, not validation relative to independently performed studies. Fehr & Peers, the consultants that did the Synchro delay/LOS calculations for the SEIR also did the work on both the Caltrain study and the UCSF LRDP study. It is entirely unclear what “generally consistent” means since the only “existing condition” analyzed in the DSEIR at the subject location assumes the general traffic lane reductions associated with the 22 Fillmore project to be in place, those in the other cited studies actually only analyzed the intersection under the actual existing configuration with Sixteenth having 2 through lanes in each direction.

The Caltrain EIR had the 2013 “existing condition” in the PM peak hour at 45.9 seconds/LOS D (with or without Giants game not specified) but without taking two through lanes off 16th to create the bus priority lanes. This is dramatically better than the 68.6 seconds delay the SEIR projects for the Existing No Giants scenario assuming the 22 Fillmore bus lanes in place. The Caltrain future forecasts are confusing. They show a delay of 67.7 seconds for year 2020 with no electrification project but a slightly lesser 4.5 seconds delay with the electrification project – this despite the admission that the electrification project would increase the crossing gate down time at 16th from 8 minutes/6 seconds to 11 minutes/38 seconds, an increase of 3 minutes/32 seconds. Hence, the future forecast findings of the Caltrain study at this location are completely illogical and no basis for justification of what was done in the SEIR.

The UCSF LRDP EIR reports the pm peak at the subject intersection at 44 seconds delay in 2014 – fairly comparable to the existing condition compiled in the Caltrain study – and a future condition upon completion of the LRDP of 46 seconds delay. But both of these values relate to the existing condition of 16th Street – without the bus priority lanes taking away 2 of the 4 general traffic lanes that exist on the street.

The SEIR never presented an Existing No Fillmore Priority Lanes computation. So the words in the response “generally consistent with field observations and the analyses presented at the two aforementioned reports” are unsupported because “field observations” cannot validate a future change in field conditions (i.e., dedicating one lane each direction to bus priority) that does not yet exist, and the previous studies did not consider this future change.

At the intersection of Seventh/Mississippi/16th, the SEIR and both analysis efforts identified LOS D for weekday p.m. peak hour conditions for conditions without a SF Giants evening game.

This is incorrect and misleading. Both the Caltrain Electrification and the UCSF LRDP EIRs identified the Existing Condition without a weekday evening Giants game as LOS D with delays of 45.9 and 44 seconds respectively. However, the SEIR identifies the Existing without Giants game as LOS E, not D, with a delay of 68.6 seconds (see Appendix TR-179). This significant difference, apparently mostly attributable to the change on 16th to provide the 22 Fillmore priority lanes, provides no basis for concluding things are “generally consistent” or adequately reflect the interruptions in traffic due to rail crossings.

The response continues, finding every other pm peak scenario and the ‘early evening’ scenarios involving a basketball game at LOS F, without differentiating among severity. This is an important flaw for two reasons. First, while most scenarios are just a few seconds over the 80 second LOS F threshold, three scenarios - the pm peak with the project and overlapping basketball and Giants games superimposed on existing traffic, and the early evening hour with the project and a basketball game superimposed on existing traffic with or without a Giants game – all have delay levels from almost double to more than double the 80 second LOS F threshold. This means the critical intersection of Seventh/Mississippi/16th will be vastly more severely gridlocked at those times and scenarios than the others. Second, because the intersection will be at LOS F in most pm and early evening scenarios, queues that build when trains interrupt traffic operations will not be able to dissipate and will continue to build.

The response concludes as follows:

As a reference, the Peninsula Corridor Electrification Project Final EIR included an analysis of the impacts associated with Caltrain electrification, including the additional delay associated with the extra trains that would be implemented as part of that project. At the intersection of Seventh/Mississippi/16th, the average aggregate gate down time during the weekday p.m. peak hour, which is currently about 8 minutes 6 seconds, is projected to increase to 11 minutes 38 seconds. These represent an additional average delay of approximately five seconds per vehicle per traffic signal cycle (212 additional seconds of delay divided by 45 cycles per hour). Project vehicles would also be subject to the increased delay.

Although the information regarding gate down time is factually correct, the assumption that the down time can be cut up and spread in average amounts over all signal cycles in an hour is a misrepresentation of the situation. When the gates come down, they stay down for about 45 seconds, directly impacting one or possibly two signal cycles. During that down time large queues build. If the intersection is at or close to LOS F, it does not have the capability of dissipating those queues that build while the gates are down. Further compounding the situation is the fact that the train preemptions – when the gates are down – do not occur at even intervals.

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Page 7

Some crossings are closely bunched. This is a set of circumstances that can only be analyzed by a scientific simulation using a program such as VISSIM which is why we make that recommendation. Any computation through an averaging technique to approximate the effect of the rail grade crossing preemption unreasonably understates and minimizes the disclosure of impact in this particular situation.

Thank you for the opportunity to make these additional comments.

Sincerely,

Smith Engineering & Management
A California Corporation



Daniel T. Smith Jr., P.E.
President



Qualitative Studies/Statements:

Calthorpe Associates: Project Sheets-TOD Guidelines

<http://www.calthorpe.com/Project%20Sheets/TOD%20Guidelines.pdf>

Briefly defines TODs as mixed-use districts within a comfortable walking distance of transit – about 2,000 feet

Dittmar, H., and G. Ohland, eds. *The New Transit Town: Best Practices in Transit-Oriented Development*. 2004. Island Press. Washington, D.C. p. 120.

“Locate development close to transit. Effective TOD places residential and office space as close to transit as possible. The optimal walking distance between a transit station or stop and a place of employment is 500 to 1,000 feet. Residents are willing to walk slightly longer distances to get to transit, between a quarter- and a half-mile.”

Envisioning Neighborhoods with Transit-Oriented Development Potential

<http://transweb.sjsu.edu/publications/envisioning/Envisioning.htm>

Defines walking distance (<1/2 mile), bicycling distance (<2 miles), and five-mile driving or transit distance. These ranges of analysis include the areas where residents of possible TODs might work, shop, or prefer to go for services. Case studies are from bay Area of San Francisco (Campbell light rail, Fruitvale BART in Oakland, Hayward BART, Mountain View CalTrain/light rail, Redwood City CalTrain, and the Sacramento 65th Street Station). Study uses these distances as a starting point, not as a point of research.

TOD Manuals from Other Jurisdictions/Transit Agencies

Jurisdiction	Walking Distance Referenced
Mass Transit Administration (Maryland)	1500 ft. (0.28 mi.)
Mid-America Regional Council (Kansas City, Missouri)	1500 ft. (0.28 mi.)
NJTransit (New Jersey)	¼ - ½ mi
Ontario Ministry of Transportation	400m (0.25 mi.)
Regional Plan Association (NY, CT, NJ Tri-metro area)	¼ mi.
Snohomish County Trans. Authority (Snohomish Cty, Washington)	1000 ft. (0.19 mi.)

EXHIBIT A

Mass Transit Administration (1988) *Access by Design: Transit's Role in Land Development*. Maryland Department of Transportation.

Recommended spacing for bus stops is calculated based on a catchment area of 1500 feet (0.28 mi.) from each side of the road traveled, defined as the area from which most passengers can easily walk to access transit service. Passengers within this distance are considered to be "adequately served." Closer spacing is recommended for higher density areas (section 5.1.2).

Mid-America Regional Council (No Date) *Transit-Supportive Development Guidebook*. (Kansas City, Missouri). <http://www.marc.org/transportation/TSD%20Guidebook.pdf>

Indicates most people are willing to walk 1500 feet (0.28 mi.) to shopping or transit (Chapter 4, Pedestrian Scale Blocks, p. 48), and suggests that short, walkable blocks increase the attractiveness of pedestrian transit.

NJTransit (1994) *Planning for Transit-Friendly Land Use A Handbook for New Jersey Communities*.

Defines reasonable walking distance by general understanding of willingness to walk 5-15 minutes to get to or from a transit stop, corresponding to ¼ to ½ mile, but varies based on topography, sense of safety and security, presence of interesting activity (Section 1.3).

Ontario Ministry of Transportation (1992) *Transit-Supportive Land Use Planning Guidelines*. Ontario Ministry of Municipal Affairs.
http://www.mah.gov.on.ca/userfiles/page_attachments/business/transuppguid/transuppguid-e.pdf

Transit-oriented design guidelines developed by the Ontario Ministry of Transportation reference 400m (1/4 mile) walking distance throughout this document as a basis for recommendations.

Regional Plan Association (1997) *Building Transit-Friendly Communities A Design and Development Strategy for the Tri-State Metropolitan Region*. (New York, New Jersey, Connecticut).

Defines transit-friendly communities as intensively developed areas within ¼ - ½ mile of rail stations. A distance that can be comfortably walked in 5-10 minutes and a distance most people are willing to walk to train stations or other community uses. These areas include mixed uses, pedestrian connections, and traffic calming design. Cites a study showing that residents living within ¼ mi. of

rail stations are five-to-seven times more likely to use rail than other area residents (Relationship Between Transit and Urban Form Handbook, Transit Cooperative Research Program TCRP H-1, November 1995, page 29.)

Snohomish County Transportation Authority (1989) *A Guide to Land Use and Public Transportation for Snohomish County, Washington*. (Snohomish County, Washington). <http://ntl.bts.gov/DOCS/GL.html>

“People can be expected to walk no more than 1,000 feet to a bus stop or a park-and-ride parking space. The walking distance increases slightly, to 1,320-1,758 feet (1/4 to 1/3 of a mile), for rail station access.” (Chapter 3).

Quantitative Studies:

Ewing, R. (1999) *Best Development Practices: A Primer*. EPA Smart Growth Network, pp. 1-29. <http://www.epa.gov/dced/pdf/BestDevprimer.pdf>

See p. 8. Suggest destinations to which we expect people to walk should be no further than ¼ mile distance. (References data from: Tabulations from the 1990 Nationwide Personal Transportation Survey (NPTS).)

Ewing, R. (2000) *Pedestrian- and Transit-Friendly Design: A Primer for Smart Growth*. EPA Smart Growth Network, pp. 1-22. http://www.epa.gov/dced/pdf/ptfd_primer.pdf

Also cites the same 1990 NPTS Study (see page 5). These documents both present brief summary of quantitative analysis not discussed in these publications. References: P.N. Seneviratne, "Acceptable Walking Distances in Central Areas," *Journal of Transportation Engineering*, Vol. 3, 1985, pp. 365-376 (Abstract can be found at: <http://www.pubs.asce.org/WWWdisplay.cgi?8501920> . For registered subscribers of *The Journal of Transportation Engineering*, full text is available at: <http://scitation.aip.org/getabs/servlet/GetabsServlet?prog=normal&id=JTPEDI000129000006000684000001&idtype=cvips&gifs=yes>) From footnote: "Travel distances were estimated assuming everyone walked at the National Personal Transportation Survey average speed of 3.16 mph. Curves were smoothed to account for people's tendency to round off travel times."

Bureau of Transportation Statistics:

http://www.bts.gov/programs/national_household_travel_survey/

National Household Travel Survey: <http://nhts.ornl.gov/2001/index.shtml>

TCRP Report 102: "Transit-Oriented Development in the United States: Experiences, Challenges and Prospects" Transportation Research Board, 2004.

http://onlinepubs.trb.org/onlinepubs/tcrp/tcrp_rpt_102.pdf

Cites 1987 WMATA study by JHK and Associates (Development-Related Survey I)

*See attached Table 8.1 "Modal Splits for Residential Projects Near Metrorail Stations, Washington (D.C.) Metropolitan Area, 1987.

Relationship Between Transit and Urban Form Handbook, Transit Cooperative Research Program TCRP H-1, November 1995, page 29

Digest version: http://onlinepubs.trb.org/onlinepubs/tcrp/tcrp_rrd_07.pdf

Study of ridership among housing and commercial developments near 4 rail stations in Canada found a "walking impact zone" as far as 4,000 feet (3/4 mile) from a station, a "distance that can accommodate around 1,200 acres of development, sufficient to create strong transit-oriented communities."

Study by JHK and Associates in 1986, 1989 showed that the “share of trips by rail or bus transit declined by around .65 percent for every 100-foot increase in distance of a residential site from a Metrorail station portal.”

Cervero et. al 1993—In the Bay Area, 92 percent of those living within ¼ mile of a BART station and commuting to San Francisco where parking costs were over \$2 per day commute via rail transit.

Paget, Donnelly, Price, Williams and Associates. Rail Transit Impact Studies: Atlanta, Washington, San Diego. March 1982. p. 28. (used in Fairfax County Metro Station Areas Study, 1982)

In the Washington metropolitan area, it was found that the average walk to/from a Metrorail station ranged between ¼ to 1/3 mile.

Walking time/distance ratios appear to coincide with actual land use development in the stations vicinity—station area development had occurred primarily within ¼ mile of the station.

BART's First Five Years; Transportation and Travel Impacts (April 1979) DOT-P-30-79-8. (used in Fairfax County Metro Station Areas Study, 1982)

(This study surveyed mode of access which was then converted to distance)

In the San Francisco Bay Area Rapid Transit System (BART), 80% of the pedestrians using BART during peak hour periods walked less than 10 minutes to the station, while somewhat over half of those pedestrians walking under 6 minutes to reach their destination. The distance for a 6 minute walk was estimated to be a quarter of a mile.

1976 survey data included in Appendix:

- 30% of trips walked to BART station
- Of that 30% who walked, **80% walked less than 10 minutes** (45% walked under 6 minutes (approximately 1350 feet) and 35% walked between 6-10 minutes, approximately 1350 to 2250 feet)
- **Distance for a 6 minute walk was estimated to be about ¼ mile**
- Overall average walking time for all who walked to the BART stations was 8.8 minutes
- Generally considered that the average person walks about 225 feet per minute
- Overall average length of walk was probably about 1,980 feet (.375 miles)
- Average walking time for walkers to their destination at end of trip was 7.2 minutes or about 1,600 feet (1/3 mile)

Gladstone Associates. Northern Virginia Metro Station Impact Study: Development Potentials at Metro Stations. June 1974, p. 23. (used in Fairfax County Metro Station Areas Study, 1982)

Gladstone study identified a primary area of development potential within 1000 feet (.19 miles) of a Metrorail entrance and a secondary area within one half mile of the station site. Planned station areas in Alexandria and Arlington County generally reflect this concept.

Alexandria's King Street Station study area is within a 5 minute walk (approx. 1300 feet, .25 miles) of the station with the remaining area within a 10 minute, one half mile walk.

Arlington's Ballston and Courthouse planning areas encompass acreage generally within .4 and .3 miles, respectively, of the station.)

Montgomery County's Takoma Park station had a primary transit impact area within 1000 foot radius of the station with the secondary area of impact encompassing acreage within a half mile radius. The transit impact area for the Forest Glen, Glenmont and White Flint stations was identified as acreage within a 2000 foot radius from the station.

Note that natural or man-made barriers such as floodplains, railroads and highways affected that actual area studied (for example King Street's adjacent railroad right-of-way formed the western boundary to the study area even though a portion of the acreage on the opposite side was within ¼ mile of the station.

Gruen, Victor, The Heart of Our Cities. The Urban Crisis: Diagnosis and Cure. Simon and Schuster 1964, New York, p. 250: (used in Fairfax County Metro Station Areas Study, 1982)

Chart to illustrate people's tolerance for walking:

	Minutes	Feet
In a highly attractive, completely weather-protected and artificially climatized environment	20	5,000
In a highly attractive environment in which sidewalks are protected from sunshine and rain	10	2,500
In an attractive but not weather-protected area during periods of inclement weather	5	1,250
In an unattractive environment (parking lot, garage, traffic-congested streets)	2	600

Ritter, Paul, Planning for Man and Motor, Pergamon Press, New York, 1964, p. 14 (used in Fairfax County Metro Station Areas Study, 1982)

“An average walk is at a speed of 2.5 miles per hour. This converts to 13,200 feet per hour or 220 feet per minute. On this basis, a 5-minute walk would be 1,100 feet and a 10-minute walk would be 2,200 feet.”

Pushkarev and Zupan. Public Transportation and Land Use Policy. Indiana University Press from a study by Regional Plan Association of New York (RPA). (used in Fairfax County Metro Station Areas Study, 1982)

- “In Montreal, in order to maximize pedestrian access to stations, the stations were planned 0.6 miles apart assuming maximum reasonable walking distance of .3 miles.
- Tri-State Regional Planning Commission's 1963 Home Interview Survey indicates that, outside downtown areas, people reported their walk to a bus to be, on the average, in the 3-4 minute range, their walk to a subway or rail station to be in the 5-10 minute range, and their drive to rail stops to average 7-15 minutes.
- The pedestrian access trip to stations responds to station spacing only in a very limited manner. The median walk to subway stations does increase

from 0.17 miles in midtown Manhattan, where stations are very closely spaced, to about 0.32 miles at the edge of the subway-served territory.

- **It appears that no matter how station-spacing increases, 50 percent of the people will not walk more than 6 minutes or 0.3 miles to a non-downtown rail station, even if there is a fraction of 1 percent who will walk over 30 minutes or more than 1.5 miles.** This is not inconsistent with the finding that a distance of 2,500 feet or a 9-minute walking time (assuming, all the while, an average walking speed of 3.1 miles per hour), 50 percent or more of those traveling that distance will prefer a feeder bus to walking, even in a low-income area, with a double fare.”

WMATA 2005 Development Related Ridership Survey Final Report, March 2006
http://www.wmata.com/bus2bus/jd/2005_Development-Related_Ridership

Update to 1989 survey to determine if changes in population growth, the regional economy, and the built environment had affected modal splits at certain types of land uses in Metrorail station areas, and if certain physical attributes of these land uses impact transit ridership. Dunn Loring station in Fairfax County included in survey.

“2005 survey results confirmed previous findings that the walking distance between a site and the Metrorail station affects transit ridership. In general, the closer a site is to the station, the greater the likelihood those traveling to/from a site choose Metrorail as their travel mode. Based on the survey results, this relationship was stronger for residential sites than for office sites.”

*See attached Table S-2, Figure 14 and Figure 15

O’Sullivan, Sean and John Morrall. Walking Distances to and from Light-Rail Transit Stations. Transportation Research Record 1538.

<http://scholar.google.com/scholar?hl=en&lr=&q=cache:oEPEiEPfnFAJ:www.enhancemnts.org/trb%255C1538-003.pdf+O%27Sullivan+S.+and+Morrall,+J>

Abstract:

“...For the city of Calgary the average walking distance to suburban stations is 649 m with a 75th-percentile distance of 840 m. At CBD stations the average walking distance is 326 m and the 75th-percentile distance is 419 m.”

- Average walking distance to suburban station=649m=2129 feet=0.4 miles
 - 75th percentile (suburban stations): 840m=0.52 miles
- In CBD, average walking distance = 326m=0.2 miles
 - 75th percentile (CBD): 419m=0.26 miles
- Calgary, Canada: pedestrians are more than 25% of peak-period trips to or from suburban stations
- General walking distance is about 5 minutes or 400m (.25 miles)
- Analysis in San Francisco and Edmonton, Canada found that 1750m (1.08 mi) was maximum that people would walk to a

station, and that walking accounts for more than 50% of the access mode from distances up to approximately 900m (0.56 mi).

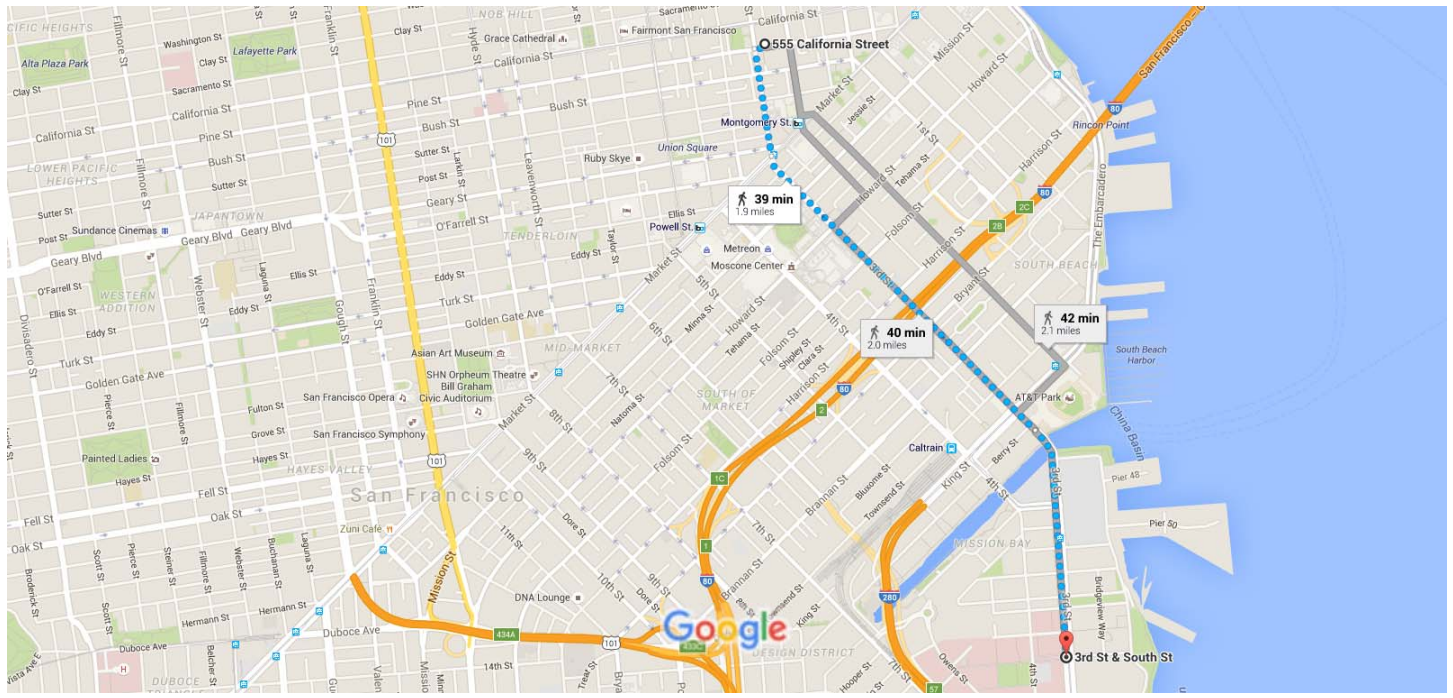
- Survey of walking distance guidelines used by North American companies
 - Canada: guidelines range from 300m to 900m (0.18 mi to 0.56 mi)
 - U.S.: generally between 400m and 800m (0.25 mi to 0.50 mi)

EXHIBIT 13



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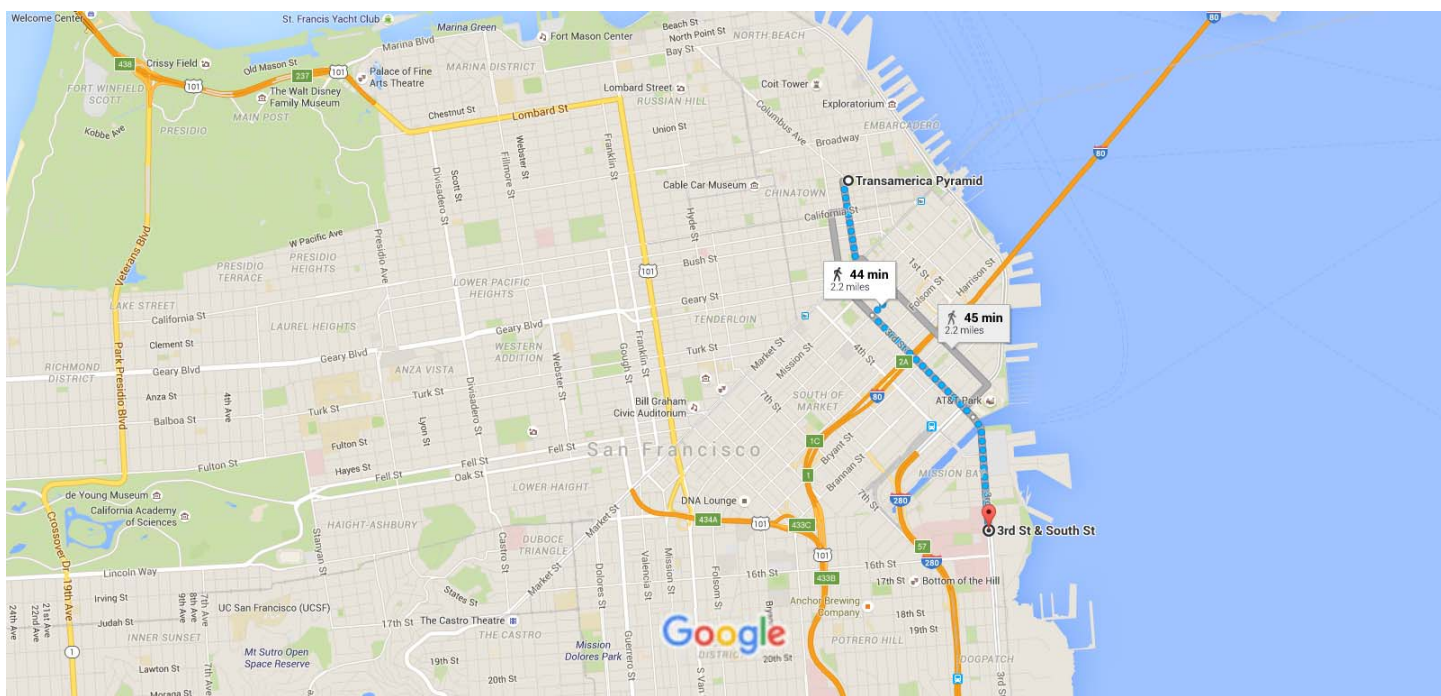


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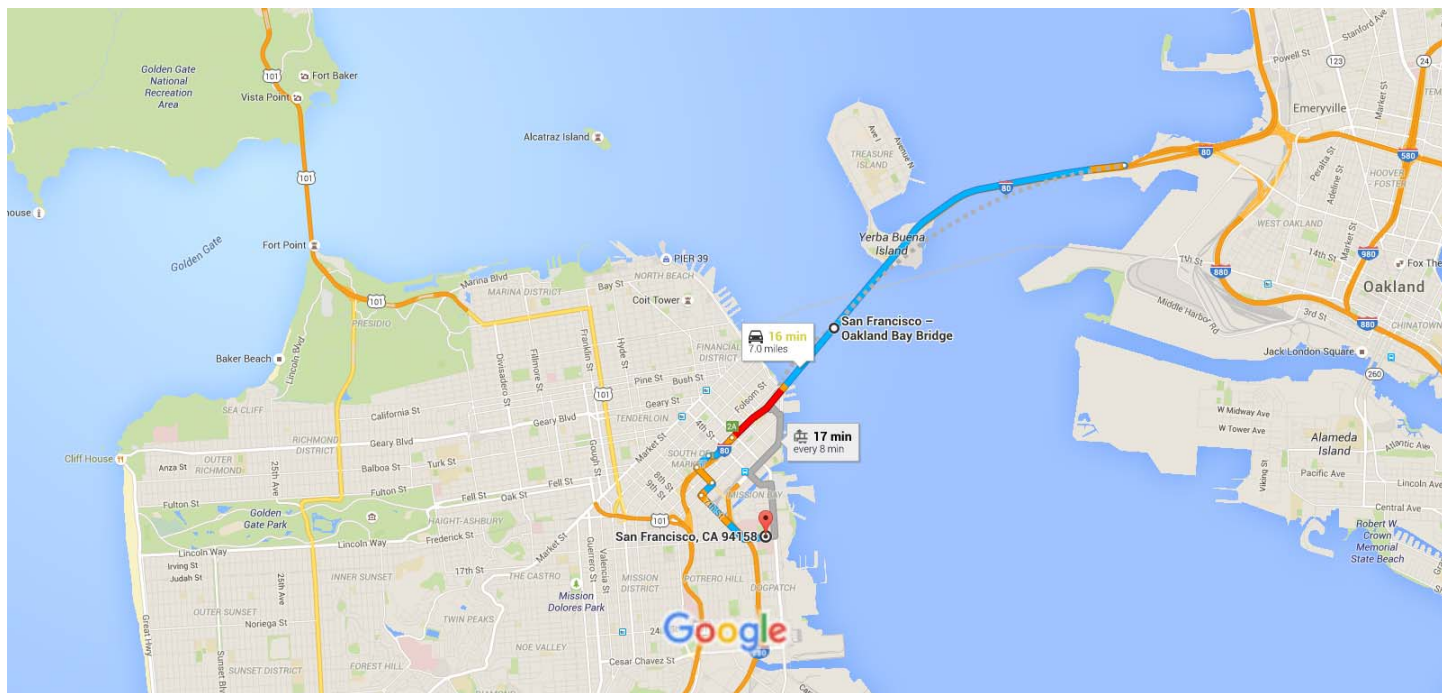
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EXHIBIT 14



Search for links to various services

Hours: 2:00 PM - 5:00 PM



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via I-80 W

11 min without traffic

⚠️ 1 mi, 15 min, 15 min

5:00 PM

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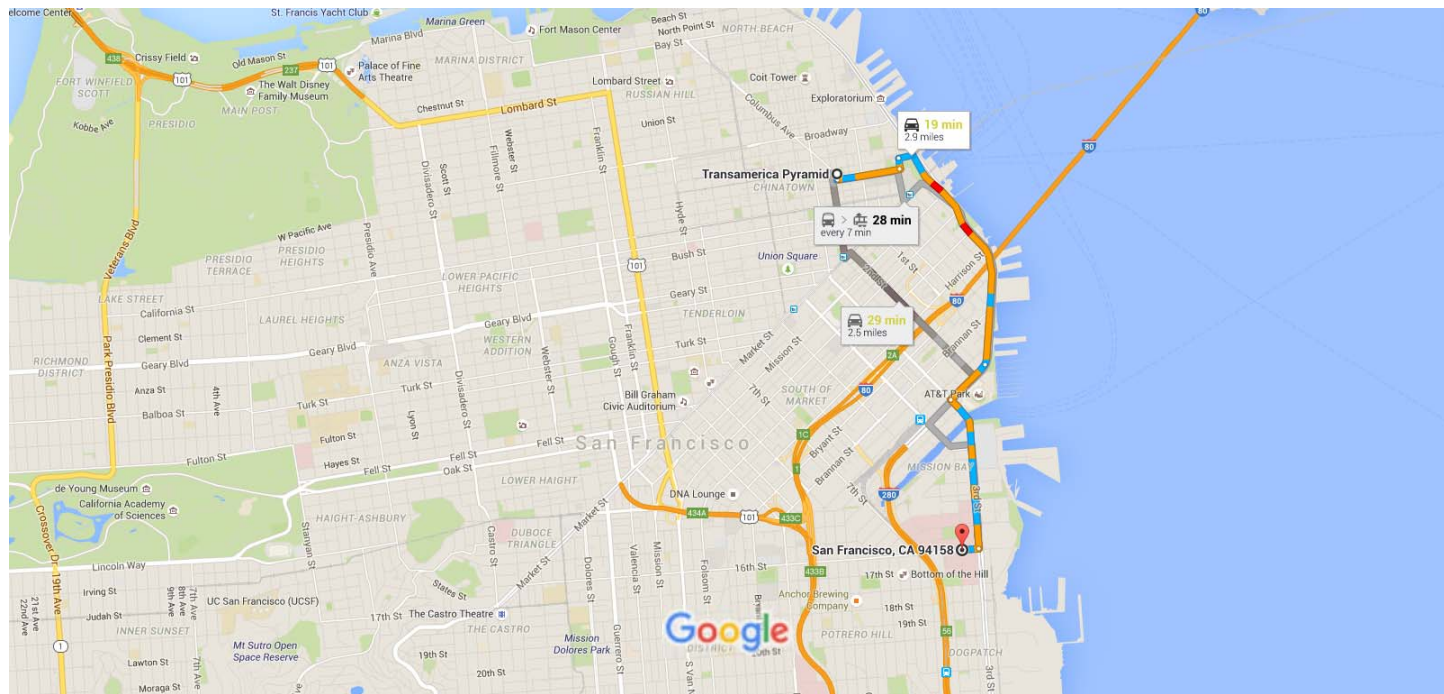
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17 min



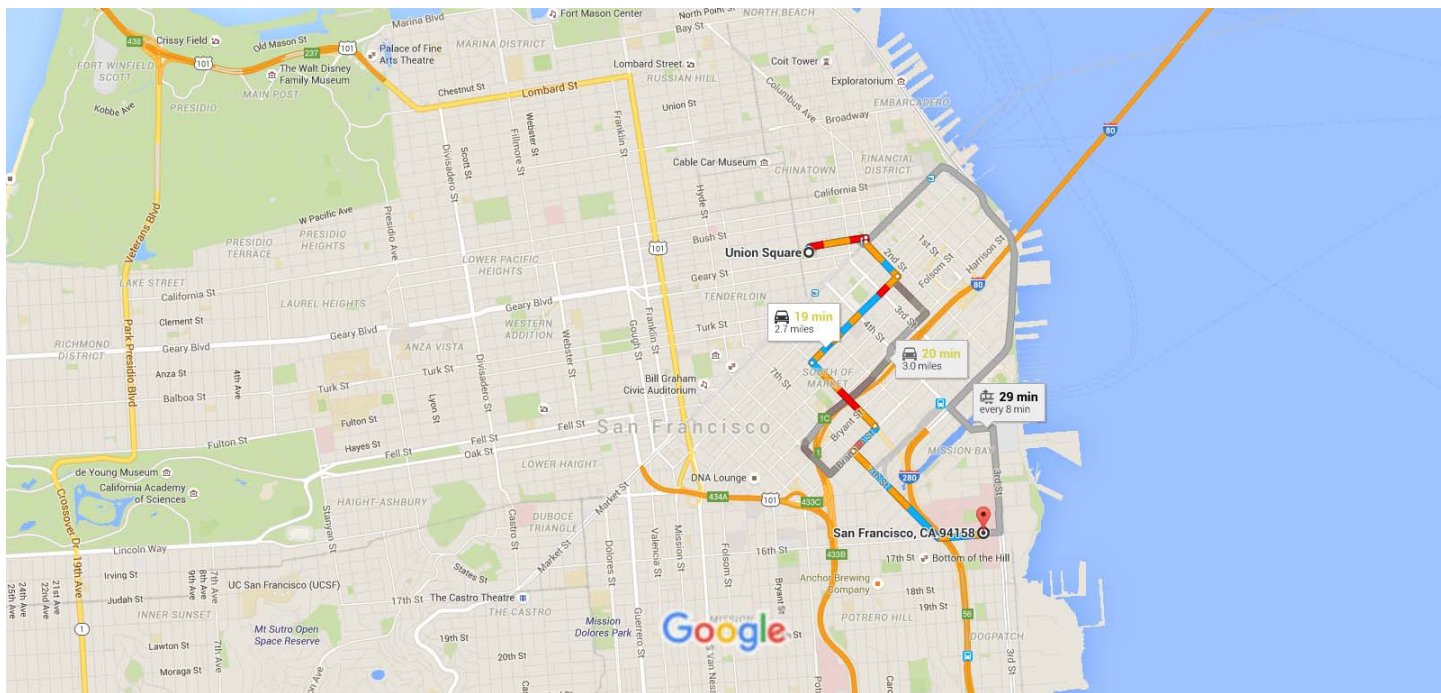
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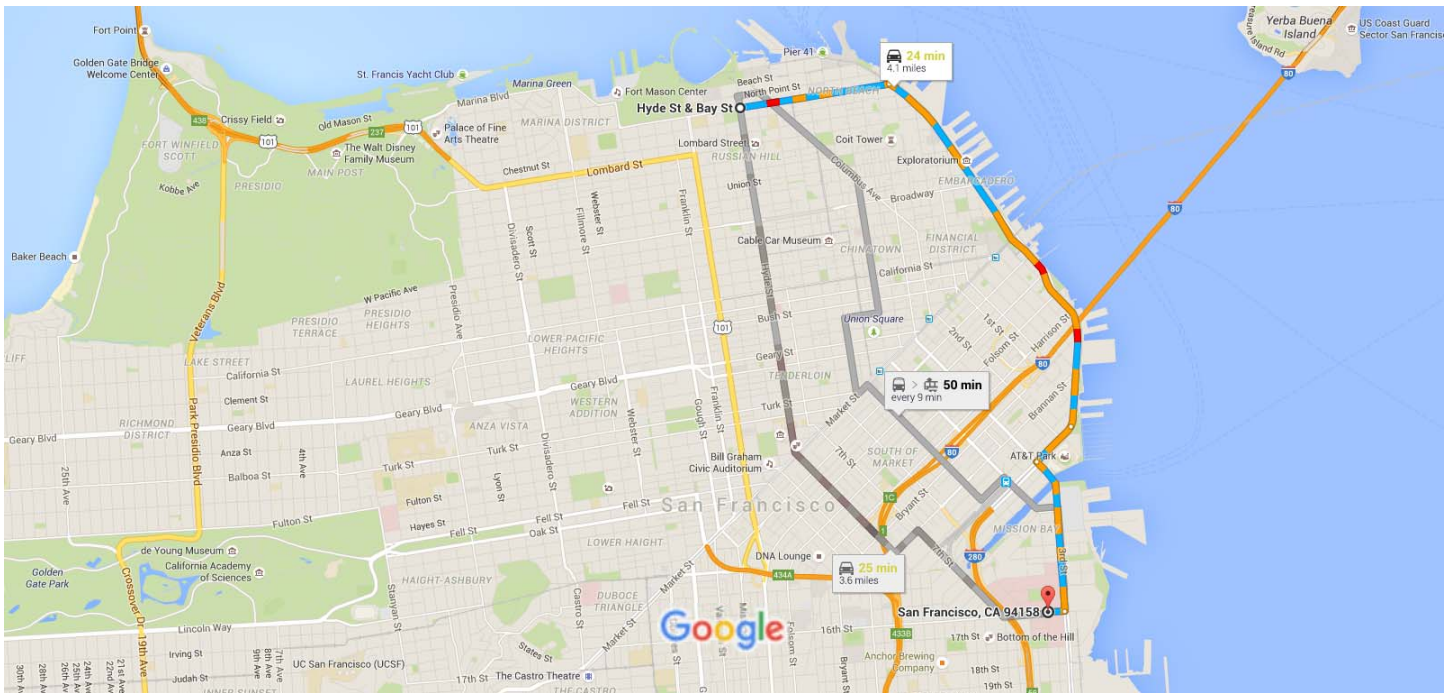
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Carroll, John (BOS)

From: Tom Lippe <lippelaw@sonic.net>
Sent: Monday, November 30, 2015 10:02 AM
To: BOS Legislation, (BOS)
Cc: Carroll, John (BOS); dkelly@warriors.com; CPC-WarriorsAdmin; Givner, Jon (CAT); Stacy, Kate (CAT); Malamut, John (CAT); Nuru, Mohammed (DPW); Sanguinetti, Jerry (DPW); Sweiss, Fuad (DPW); Storrs, Bruce (DPW); Sanchez, Scott (CPC); Jones, Sarah (CPC); Rodgers, AnMarie (CPC); Starr, Aaron (CPC); Pearson, Audrey (CAT); Rahaim, John (CPC); Bollinger, Brett (CPC); Ionin, Jonas (CPC); kaufhauser@warriors.com; CMiller@stradasf.com; BOS-Supervisors; BOS-Legislative Aides; Calvillo, Angela (BOS); Somera, Alisa (BOS); Patrick Soluri; Osha Meserve; Susan Brandt-Hawley
Subject: Re: Mission Bay Alliance, Warriors EIR CEQA Appeal; Appellants' Partial Brief, 4th of 4 emails
Attachments: Exhs 15 SENT Excerpts from CEQA Docs compress.pdf
Categories: 150990

Dear Clerk of the Board of Supervisors,

This email is the fourth of four. Attached is:

- Exhibits 8-14 of 15 to Appellant's Partial Brief Re: Public Comment, Air Quality, Transportation, Water Quality, Biological, and Noise

Tom Lippe
Law Offices of Thomas N. Lippe APC
201 Mission St., 12th Floor
San Francisco, CA 94105
Tel 415 777-5604 x 1
Fax 415 777-5606
e-mail: lippelaw@sonic.net
Web: www.lippelaw.com

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On 11/30/2015 10:00 AM, Tom Lippe wrote:

Dear Clerk of the Board of Supervisors,

This email is the third of four. Attached are

- Exhibits 8-14 of 15 to Appellant's Partial Brief Re: Public Comment, Air Quality, Transportation, Water Quality, Biological, and Noise

Tom Lippe
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On 11/30/2015 9:59 AM, Tom Lippe wrote:

Dear Clerk of the Board of Supervisors,

This email is the second of four. Attached are
- Exhibits 5-7 of 15 to Appellant's Partial Brief Re: Public Comment, Air Quality, Transportation, Water Quality, Biological, and Noise

Tom Lippe
Law Offices of Thomas N. Lippe APC
201 Mission St., 12th Floor
San Francisco, CA 94105
Tel 415 777-5604 x 1
Fax 415 777-5606
e-mail: lippelaw@sonic.net
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On 11/30/2015 9:57 AM, Tom Lippe wrote:

Dear Clerk of the Board of Supervisors

Attached, in .pdf format please find the above referenced appeal brief with exhibits.

Due to the size of the files, the brief and exhibits it will be transmitted in four (4) separate emails.

This email is the first of four. Attached are
- Appellant's Partial Brief Re: Public Comment, Air Quality, Transportation, Water Quality, Biological, and Noise
- Exhibits 1-4 of 15

Eighteen hard copies of same will be hand delivered to your office today by 12noon.

Thank you for your attention to this matter.

Tom Lippe
Law Offices of Thomas N. Lippe APC
201 Mission St., 12th Floor
San Francisco, CA 94105
Tel 415 777-5604 x 1
Fax 415 777-5606

e-mail: lippelaw@sonic.net
Web: www.lippelaw.com

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On 11/24/2015 9:25 AM, Carroll, John (BOS) wrote:

Good morning,

I am resending this message in order to update the recipients list for this and future document distributions. If you received this message previously, feel free to ignore these links; I have not updated them.

The Office of the Clerk of the Board has scheduled a hearing date for Special Order before the Board of Supervisors on **December 8, 2015, at 3:00 p.m.** Please find linked below a letter regarding the Final Subsequent Environmental Impact Report certification and Tentative Map appeals for the proposed Golden State Warriors Event Center Project, as well as direct links to the Office of Community Investment and Infrastructure's timely filing determination for the CEQA appeal.

[Clerk of the Board Letter Re: FSIER Appeal - November 23, 2015](#)
[OCII Memo Re: FSEIR Appeal - November 16, 2015](#)

[Clerk of the Board Letter Re: Tentative Map Appeal - November 23, 2015](#)

I invite you to review the entirety of both matters on our [Legislative Research Center](#) by following the links below.

[Board of Supervisors File No. 150990 - FSEIR Appeal](#)
[Board of Supervisors File No. 151204 - Tentative Map Appeal](#)

Thank you,

John Carroll
Legislative Clerk

Board of Supervisors
San Francisco City Hall, Room 244
San Francisco, CA 94102
(415)554-4445 - Direct | (415)554-5163 - Fax
john.carroll@sfgov.org | bos.legislation@sfgov.org



Click [here](#) to complete a Board of Supervisors Customer Service Satisfaction form.

The [Legislative Research Center](#) provides 24-hour access to Board of Supervisors legislation and archived matters since August 1998.

***Disclosures:** Personal information that is provided in communications to the Board of Supervisors is subject to disclosure under the California Public Records Act and the San Francisco Sunshine Ordinance. Personal information provided will not be redacted. Members of the public are not required to provide personal identifying information when they communicate with the Board of Supervisors and its committees. All written or oral communications that members of the public submit to the Clerk's Office regarding pending legislation or hearings will be made available to all members of the public for inspection and copying. The Clerk's Office does not redact any information from these submissions. This means that personal information—including names, phone numbers, addresses and similar information that a member of the public elects to submit to the Board and its committees—may appear on the Board of Supervisors website or in other public documents that members of the public may inspect or copy.*

EXHIBIT 15

DEIR

DRAFT ENVIRONMENTAL IMPACT REPORT

5M Project

PLANNING DEPARTMENT
CASE NO. 2011.0409E

STATE CLEARINGHOUSE NO. 2013011055



SAN FRANCISCO
PLANNING
DEPARTMENT

Draft EIR Publication Date:	OCTOBER 15, 2014
Draft EIR Public Hearing Date:	NOVEMBER 20, 2014
Draft EIR Public Comment Period:	OCTOBER 15, 2014 - DECEMBER 1, 2014

Written comments should be sent to:

Sarah Jones, Environmental Review Officer | 1650 Mission Street, Suite 400 | San Francisco, CA 94103
or sarah.b.jones@sfgov.org

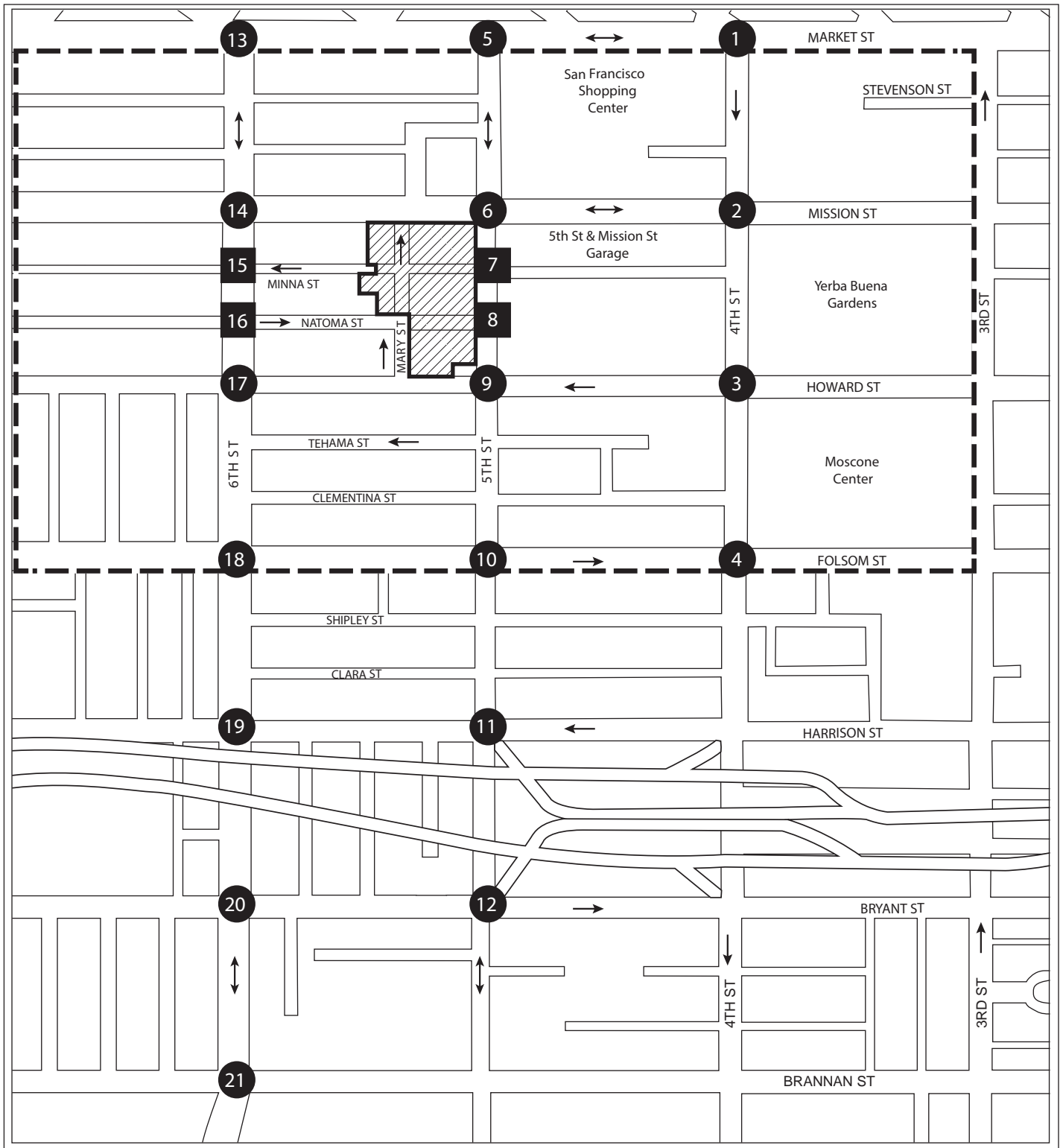





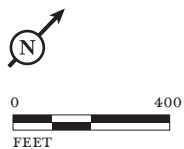


FIGURE IV.D-1

LSA

-  PROJECT SITE
-  SIGNALIZED INTERSECTION
-  UNSIGNALIZED INTERSECTION
-  DIRECTION OF TRAVEL
-  PARKING AND TRANSIT STUDY AREA



SOURCE: LCW CONSULTING, 2014.

5M Project EIR
Study Area and Analysis Locations

Seventeen of the 21 study intersections are signalized; and the four intersections of Minna and Natoma Streets with Fifth and Sixth Streets are unsignalized. The operating characteristics of intersections are described by the concept of Level of Service (LOS). LOS is a qualitative description of an intersection's performance based on the average delay per vehicle. Intersection levels of service range from LOS A, which indicates free flow or excellent conditions with short delays, to LOS F, which indicates congested or overloaded conditions with extremely long delays. LOS A through D are considered excellent to satisfactory service levels, LOS E is undesirable, and LOS F conditions are unacceptable.

Table IV.D-1: Intersection Level of Service

Intersection	Delay ^a	LOS ^b
1. Fourth/Market/Stockton	56.1	E
2. Fourth/Mission	28.0	C
3. Fourth/Howard	52.5	D
4. Fourth/Folsom	> 80 (1.09)	F
5. Fifth/Market	55.9	E
6. Fifth/Mission	15.1	B
7. Fifth/Minna	2.5 (sb)	A
8. Fifth/Natoma	38.2 (eb)	E
9. Fifth/Howard	15.1	B
10. Fifth/Folsom	27.6	B
11. Fifth/Harrison	58.7	E
12. Fifth/Bryant	> 80 (1.25)	F
13. Sixth/Market	44.6	D
14. Sixth/Mission	32.3	C
15. Sixth/Minna	> 50 (wb)	F
16. Sixth/Natoma	> 50 (eb)	F
17. Sixth/Howard	35.5	D
18. Sixth/Folsom	43.3	D
19. Sixth/Harrison	31.6	C
20. Sixth/Bryant	> 80 (1.43)	F
21. Sixth/Brannan	74.4	E

^a Delay presented in seconds per vehicle.
^b Intersections operating at LOS E or LOS F highlighted in **bold**.

Source: Source: *5M Project Transportation Impact Study*, October 2014.

Table IV.D-1 presents the results of the intersection LOS analysis for the existing weekday PM peak hour conditions. During the weekday PM peak hour, nine of the 17 signalized study intersections currently operate at LOS E or LOS F conditions. The signalized intersections of Fourth/Market/Stockton, Fourth/Folsom, Fifth/Market, Fifth/Harrison, Fifth/Bryant, Sixth/Bryant and Sixth/Brannan Streets operate at LOS E or LOS F conditions during the PM peak hour. In addition, the eastbound approaches at the unsignalized intersections of Fifth/Natoma and Sixth/Natoma Streets operate at LOS F conditions; however, due to the low volumes on Natoma Street, traffic signal warrants are not

At the study intersections of Fourth/Howard, Sixth/Folsom and Sixth/Brannan Streets, the worsening of intersection LOS conditions from LOS D to LOS E or LOS F, and from LOS E to LOS F would be considered a significant impact at these intersections.

Table IV.D-11: Intersection Level of Service – Existing Plus Project Conditions, Weekday PM Peak Hour

Intersection	Existing		Existing Plus Project	
	Delay ^a	LOS ^b	Delay	LOS
1. Fourth/Market/Stockton	56.1	E	64.6	E
2. Fourth/Mission	28.1	C	36.5	D
3. Fourth/Howard	52.5	D	74.8	E
4. Fourth/Folsom	> 80 (1.09)	F	> 80 (1.12)	F
5. Fifth/Market	55.9	E	56.8	E
6. Fifth/Mission	15.1	B	15.5	B
7. Fifth/Minna ^c	2.5 (sb)	A	3.0 (sb)	A
8. Fifth/Natoma ^c	38.2 (eb)	E	40.9 (eb)	E
9. Fifth/Howard ^e	15.1	B	17.5	B
10. Fifth/Folsom	27.2	C	46.5	D
11. Fifth/Harrison	58.7	E	60.7	E
12. Fifth/Bryant	> 80 (1.25)	F	> 80 (1.28)	F
13. Sixth/Market	44.6	D	45.3	D
14. Sixth/Mission	32.3	C	53.4	D
15. Sixth/Minna ^c	> 50 (wb)	F	> 50 (wb)/[22.0]	F/[C]
16. Sixth/Natoma ^{c,d}	> 50 (eb)	F	> 50 (eb)	F
17. Sixth/Howard	35.5	D	45.8	D
18. Sixth/Folsom	43.3	D	> 80 (1.16)	F
19. Sixth/Harrison	31.6	C	44.6	D
20. Sixth/Bryant	> 80 (1.43)	F	> 80 (1.47)	F
21. Sixth/Brannan	74.4	E	> 80 (1.14)	F

- ^a Delay presented in seconds per vehicle. Intersections operating at LOS E or LOS F highlighted in **bold**.
- ^b Shaded = project impact.
- ^c Intersection stop sign-controlled. Delay and LOS presented for the approach with the highest delay.
- ^d Contracting for installation of planned signal at the intersection of Sixth/Minna Streets is underway, and planned to be operational by the end of 2014. Average vehicle delay and LOS for Existing plus Project conditions with signalization presented in [brackets]. With signalization, the intersection would operate at LOS C conditions, and therefore, traffic impacts at this intersection would be considered less than significant.
- ^e Existing and Existing plus Project intersection LOS analyses were also conducted at the intersection of Fifth/Howard Streets for AM peak hour conditions. Under Existing conditions, during the AM peak hour, the intersection of Fifth/Howard Streets currently operates at LOS B conditions with an average vehicle delay of 15.3 seconds per vehicle, and under Existing plus Project conditions the average vehicle delay would increase to 16.5 seconds per vehicle and the intersection would operate at LOS B conditions.

Source: *5M Project Transportation Impact Study*, October 2014.



**DRAFT ENVIRONMENTAL IMPACT
REPORT**

801 Brannan and One Henry Adams Streets Project

PLANNING DEPARTMENT CASE NO. 2000.618E

STATE CLEARINGHOUSE NO. 2003112070

Draft EIR Publication Date:	June 22, 2011
Draft EIR Public Hearing Date:	July 28, 2011
Draft EIR Public Comment Period:	June 23, 2011 – August 8, 2011



**SAN FRANCISCO
PLANNING
DEPARTMENT**

Written comments should be sent to:
Environmental Review Officer | 1650 Mission Street, Suite 400 | San Francisco, CA 94103

D. TRANSPORTATION AND CIRCULATION

This section analyzes the potential project-level and cumulative impacts on transportation and circulation resulting from implementation of the proposed project or either variant. Transportation-related issues of concern that are addressed include traffic on local roadways, transit, bicycles, pedestrians, loading, emergency vehicle access, and construction-related activities. Additionally, a parking analysis is included for informational purposes. Transportation impacts are assessed for the proposed project for weekday p.m. peak period. This section also identifies mitigation measures that would reduce or avoid significant impacts, and recommends improvement measures to reduce less-than-significant impacts.

This section is based on information contained within the 801 Brannan Street and One Henry Adams Street Transportation Impact Study, March 7, 2011, prepared for this project by LCW Consulting.¹¹⁰ The transportation study analysis includes analysis for development of the BMR parcel by the Mayor's Office of Housing (MOH); therefore, the study results include transportation impacts resulting from the proposed development at the One Henry Adams site as well as both the project sponsor-funded and City-funded aspects of the proposed development of the 801 Brannan site including the two variants for the 801 Brannan site.

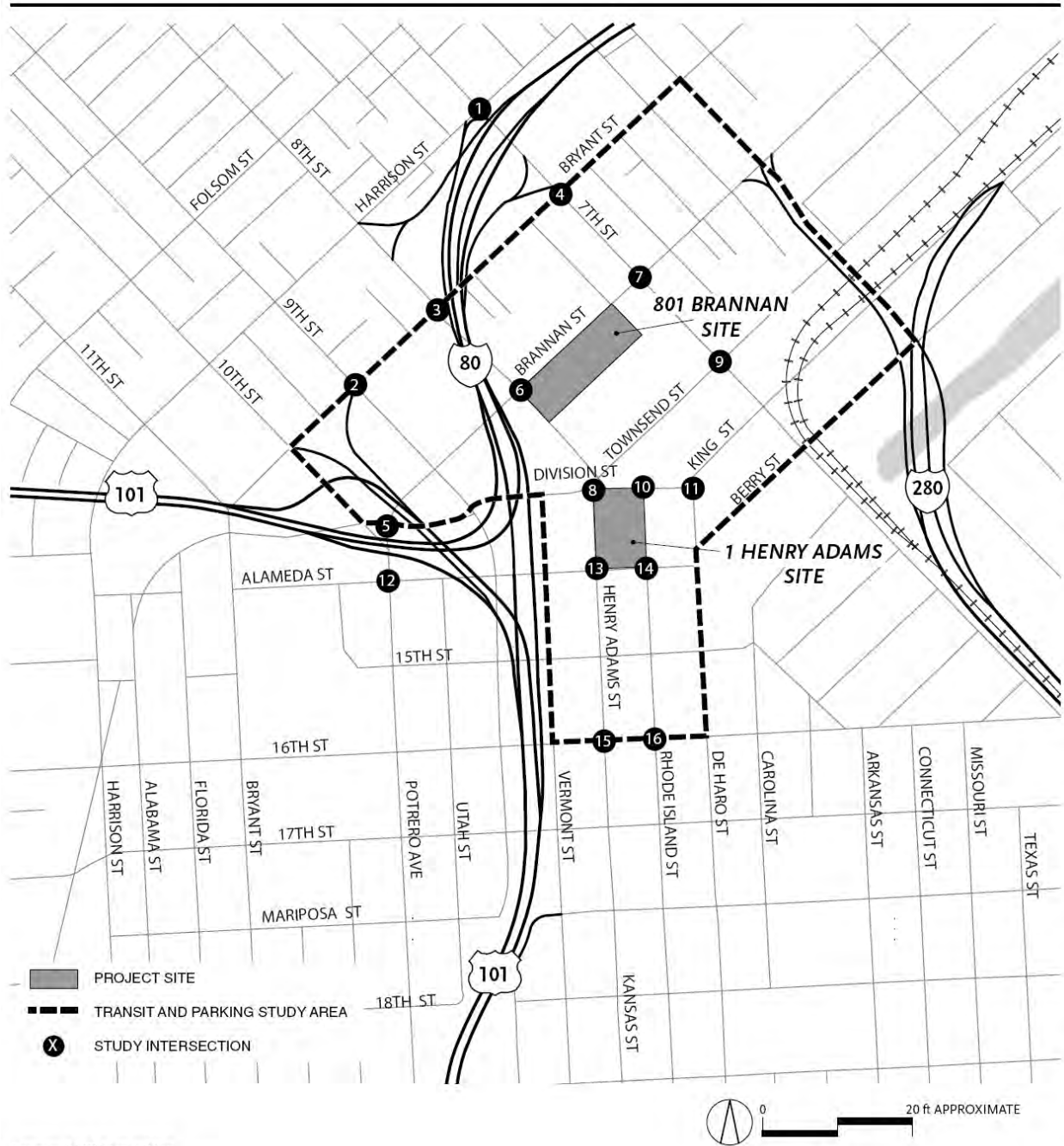
SETTING

The transportation study area includes all aspects of the transportation network that may be measurably affected by the proposed project. The transportation study area is defined by the travel corridors and by facilities such as bus stops and transit stations. For this analysis, 16 intersections were identified as the key locations likely to be affected by the proposed project. These intersections are shown on Figure 34, page 154). Transit and parking conditions were assessed for a study area bounded by Bryant Street, Sixth Street/I-280, Berry Street, De Haro Street, Sixteenth Street, US 101/I-80, Division Street, and Tenth Street (see Figure 34, page 154).

Roadway Network

Travel to and from the project sites involves the use of regional and local transportation facilities, highways, and transit services that link San Francisco with other parts of the Bay Area and northern

¹¹⁰ LCW Consulting, 801 Brannan Street & One Henry Adams Street Transportation Impact Study, Final, March 7, 2011. This document is available for public review at the Planning Department, 1650 Mission Street, Suite 400, San Francisco, as part of 2000.618E



Source: LCW Consulting

67-11

Transportation Study Intersections Figure 34

Table 2 Intersection Level of Service Existing Conditions – Weekday PM Peak Hour		
Intersection (keyed to Figure 34)	Delay ¹	LOS
Signalized		
1. Seventh/Harrison	29.8	C
2. Ninth/Bryant	40.8	D
3. Eighth/Bryant	23.0	C
4. Seventh/Bryant	21.5	C
5. Division/Brannan/Potrero/Tenth	57.8	E
6. Eighth/Brannan	55.4	E
7. Seventh/Brannan ⁵	49.6	D
9. Seventh/Townsend	37.0	D
12. Alameda/Potrero	11.3	B
15. Sixteenth/Kansas/Henry Adams	17.4	B
Unsignalized		
8. Eighth/Townsend/Division/Henry Adams ²	18.1 (wb)	C
10. Division/Rhode Island ³	24.6 (nb)	C
11. Division/King/De Haro ²	10.8 (sb)	B
13. Alameda/Henry Adams ²	11.4 (nb/sb)	B
14. Alameda/Rhode Island ⁴	11.7 (wb)	B
16. Sixteenth/Rhode Island ⁴	48.7 (nb)	E

Notes:

1. Delay presented in seconds per vehicle. Intersections operating at LOS E or LOS F highlighted in **bold**.
 2. Intersections 4-way STOP-controlled. Delay and LOS presented for worst approach, indicated in (.). wb = westbound, sb = southbound, nb = northbound, eb = eastbound.
 3. Uncontrolled T-intersection. Northbound Rhode Island Street traffic yields to eastbound/westbound Division Street traffic. Analyzed assuming STOP-sign control for northbound Rhode Island Street.
 4. Intersection 2-way STOP-controlled.
- Source: LCW Consulting, 2011

Transit Network

The project sites are served by public transit, with both local and regional service provided in the vicinity of the proposed project. Local service is provided by the San Francisco Municipal Railway (Muni) bus lines, which can also be used to access regional transit operators (including BART, AC Transit, Golden Gate Transit, SamTrans, and Caltrain).

Transit service within the City and County of San Francisco is provided by Muni, including bus (both diesel and electric trolley), light rail (Muni Metro), cable car, and electric streetcar lines. Muni operates

Table 10
Intersection Level of Service
Existing plus Proposed Project and Variant Conditions – Weekday PM Peak Hour

Intersection	Existing		Existing plus Project		Existing plus Project w/ Variant 1		Existing plus Project w/ Variant 2	
	Delay ¹	LOS	Delay	LOS	Delay	LOS	Delay	LOS
Signalized								
1. Seventh/Harrison	29.8	C	36.9	D	36.9	D	36.9	D
2. Ninth/Bryant	40.8	D	41.8	D	41.8	D	41.8	D
3. Eighth/Bryant	23.0	C	24.5	C	24.6	C	24.6	C
4. Seventh/Bryant	21.5	C	22.1	C	22.1	C	22.1	C
5. Division/Brannan/Potrero/Tenth	57.8	E	61.5	E	61.5	E	61.5	E
6. Eighth/Brannan	55.4	E	77.5	E	77.4	E	77.5	E
7. Seventh/Brannan ⁵	49.6	D	41.8	D	42.2	D	41.9	D
9. Seventh/Townsend	37.0	D	53.3	D	53.7	D	53.5	D
12. Alameda/Potrero	11.3	B	11.4	B	11.4	B	11.4	B
15. Sixteenth/Kansas/Henry Adams	17.4	B	23.1	C	23.3	C	23.2	C
Unsignalized								
8. Eighth/Townsend/Division/Henry Adams ²	18.1 (wb)	C	23.9 (sb)	C	24.1 (sb)	C	24.0 (sb)	C
10. Division/Rhode Island ³	24.6 (nb)	C	39.1 (nb)	E	39.5 (nb)	E	39.2 (nb)	E
11. Division/King/De Haro ²	10.8 (sb)	A	10.9 (sb)	B	10.9 (sb)	B	10.9 (sb)	B
13. Alameda/Henry Adams ²	11.4 (nb)	B	15.0 (nb)	C	15.1 (nb)	C	15.1 (nb)	C
14. Alameda/Rhode Island ⁴	11.7 (wb)	B	12.3 (wb)	B	12.3 (wb)	B	12.3 (wb)	B
16. Sixteenth/Rhode Island ⁴	48.7 (nb)	E	>50	F	>50 (nb/sb)	F	>50 (nb/sb)	F

Notes:

1. Delay presented in seconds per vehicle. Intersections operating at LOS E or LOS F highlighted in **bold**. 2. Intersections 4-way STOP-controlled. Delay and LOS presented for worst approach, indicated in (). wb = westbound, sb = southbound, nb = northbound, eb = eastbound.
3. Uncontrolled T-intersection. Northbound Rhode Island Street traffic yields to eastbound/westbound Division Street traffic. Analyzed assuming STOP-sign control for northbound Rhode Island Street.
4. Intersection 2-way STOP-controlled.
5. At the intersection of Seventh/Brannan, SFMTA planned improvement for early 2011 were assumed for the analysis of “plus project” conditions. Improvements include restriping of westbound and eastbound approaches. Additional adjustments to signal timing assumed.

Source: LCW Consulting, 2011.

Table 11 Intersection Level of Service 2025 Cumulative Conditions – Weekday PM Peak Hour				
Intersection	Existing		2025 Cumulative	
	Delay ¹	LOS	Delay	LOS
Signalized				
1. Seventh/Harrison	29.8	C	>80	F
2. Ninth/Bryant	40.8	D	60.6	E
3. Eighth/Bryant	23.0	C	>80	F
4. Seventh/Bryant	21.5	C	>80	F
5. Division/Brannan/Potrero/Tenth	57.8	E	>80	F
6. Eighth/Brannan	55.4	E	>80	F
7. Seventh/Brannan ⁵	49.6	D	75.7	E
8. Eighth/Townsend/Division/Henry Adams ²	18.1(wb)	C	44.1	D
9. Seventh/Townsend	37.0	D	>80	F
12. Alameda/Potrero	11.3	B	13.8	B
15. Sixteenth/Kansas/Henry Adams	17.4	B	>80	F
16. Sixteenth/Kansas/Rhode Island ⁶	48.7 (nb)	E	>80	F
Unsignalized				
10. Division/Rhode Island ³	24.6 (nb)	C	>50 (nb)	F
11. Division/King/De Haro ³	10.8 (sb)	A	18.3 (sb)	C
13. Alameda/Henry Adams ³	11.4 (nb)	B	22.0 (nb)	C
14. Alameda/Rhode Island ⁴	11.7 (wb)	B	13.9 (wb)	B

Notes:

1. Delay presented in seconds per vehicle. Intersections operating at LOS E or LOS F highlighted in bold, and v/c ratio provided for signalized intersections.
2. Intersection signalized as part of Mission Bay Development Plan improvements.
3. Intersections 4-way STOP-controlled. Delay and LOS presented for worst approach, indicated in (). wb = westbound, sb = southbound, nb = northbound.
4. Intersection 2-way STOP-controlled.
5. At intersection of Seventh/Brannan, SFMTA planned improvement for early 2011 were assumed for the analysis of 2025 Cumulative conditions. Improvements include restriping of westbound and eastbound approaches. Additional adjustments to signal timing assumed.
6. Signalization of intersection by SFMTA. Implementation anticipated by the end of 2011.

Source: LCW Consulting, 2011.



DRAFT ENVIRONMENTAL IMPACT REPORT

222 Second Street Office Project

PLANNING DEPARTMENT
CASE NO. 2006.1106E

STATE CLEARINGHOUSE NO. 2007052113



SAN FRANCISCO
PLANNING
DEPARTMENT

Draft EIR Publication Date:	January 27, 2010
Draft EIR Public Hearing Date:	March 4, 2010
Draft EIR Public Comment Period:	January 27 - March 15, 2010

Written comments should be sent to:
Environmental Review Officer | 1650 Mission Street, Suite 400 | San Francisco, CA 94103

Impact Analysis

Travel Demand Analysis

The project would generate about 10,950 total person trips per day, with a total of about 1,075 total person trips during the p.m. peak hour, of which about 250 would be vehicle trips,⁵³ 510 would be transit trips, 155 would be walking trips, and the remainder by other modes such as bicycle, motorcycle and taxi.⁵⁴

The project would be subject to a variety of transportation management requirements under *Planning Code* Section 163, whose intent is to assure that adequate measures are undertaken and maintained to minimize transportation effects of added office employment in the downtown and South of Market area, by facilitating the effective use of transit, encouraging ridesharing, and employing other practical means to reduce commute travel by single-occupant vehicles.

Traffic Impacts

Impact TR-1: Traffic generated by the proposed project would degrade level of service at certain local intersections. (Significant but Mitigable)

Of the 250 net new p.m. peak-hour vehicle trips generated by the project, about 54 percent would be to or from locations within San Francisco, while the remainder would be headed to or from the East Bay, the Peninsula/South Bay, and the North Bay. East Bay-bound vehicles would make up approximately one-fifth of the outbound vehicle trips, or about 40 additional cars heading for the East Bay (assumed to be via the Bay Bridge) in the p.m. peak hour. These 40 additional cars would incrementally contribute to the substantial queuing that currently occurs on access routes to the Bay Bridge, such as First Street. Peninsula/South Bay-bound traffic would amount to about 25 new vehicles, which likewise would incrementally contribute to queuing that now occurs at southbound access routes, such as the on-ramp at Fourth/Harrison Streets.

As shown in Table 2, eight of the 11 signalized intersections studied currently operate at good (LOS D⁵⁵ or better) service levels during the p.m. peak hour. Two of the three intersections that operate at unacceptable LOS E or F conditions are located on the primary approaches to I-80 and the Bay Bridge (Harrison/ First Streets, and Harrison/Fourth Streets), and traffic to the bridge passes through the third intersection (Harrison/Second Streets). The one unsignalized study intersection, Second/Tehama Streets, operates at an acceptable LOS D. The intersections selected for analysis were chosen because they would be the most likely to be affected by project traffic. While project-generated vehicles would also travel through other intersections, it would have less impact on intersections farther from the project site, as vehicles would disperse among the available streets as they travel away from the site.

⁵³ The 250 vehicle trips represent 365 person-trips by vehicle; the number of vehicle trips is less than the number of person trips by vehicle because some person trips are made in vehicles carrying more than one person.

⁵⁴ Travel demand for the proposed project was calculated on the basis of trip generation rates, and p.m. peak-hour percentage of daily traffic, for Office and Retail uses presented in the San Francisco Planning Department, *Guidelines for Environmental Review: Transportation Impacts* (Appendices 1 and 2).

⁵⁵ Traffic operations are characterized using a p.m. peak-hour level of service (LOS) analysis, which provides a standardized means of rating an intersection's operating characteristics on the basis of traffic volumes, intersection capacity and delays. LOS A represents free-flow conditions, with little or no delay, while LOS F represents congested conditions, with extremely long delays; LOS D (moderately high delays) is considered the lowest acceptable level in San Francisco.

TABLE 2
PM PEAK-HOUR INTERSECTION LEVELS OF SERVICE (LOS)
AND AVERAGE STOPPED DELAY IN SECONDS PER VEHICLE^a

Intersection	Existing (2007)		Existing + Project		Cumulative (2025) ^b		Project Contribution ^c
	LOS ^d	Delay ^d	LOS ^d	Delay ^d	LOS ^d	Delay ^d	
1. Mission Street / Third Street	D	38.0 (v/c = 0.74)	D	42.9 (v/c = 0.76)	F	>80 (v/c = 1.24)	2.3%
2. Howard Street / Third Street	B	19.2 (v/c = 0.70)	C	20.0 (v/c = 0.72)	F	>80 (v/c = 0.98)	5.2%
3. Howard St / New Montgomery St	D	36.8 (v/c = 0.92)	D	36.8 (v/c = 0.93)	F	>80 (v/c = 1.23)	6.5%
4. Howard Street / Second Street	C	25.1 (v/c = 0.92)	D	51.8 (v/c = 1.08)	F	>80 (v/c = 2.17)	4.1%
5. Howard Street / First Street	C	26.2 (v/c = 1.00)	C	26.3 (v/c = 1.00)	F	>80 (v/c = 1.79)	0.5%
6. Howard Street / Fremont Street	C	20.2 (v/c = 0.71)	C	20.3 (v/c = 0.71)	F	>80 (v/c = 1.16)	0.6%
7. Folsom St. / Hawthorne St.	D	47.7 (v/c = 0.86)	D	47.7 (v/c = 0.86)	E	76.6 (v/c = 1.09)	1.1%
8. Folsom Street / Second Street	D	36.8 (v/c = 0.99)	E	60.5 (v/c = 1.08)	F	>80 (v/c = 2.13)	7.4%
9. Harrison Street/ Fourth Street	E	62.0 (v/c = 0.98)	E	68.1 (v/c = 0.99)	F	>80 (v/c = 1.25)	2.7%
10. Harrison Street / Second Street	E	55.7 (v/c = 1.29)	E	64.2 (v/c = 1.47)	F	>80 (v/c = 4.10)	5.1%
11. Harrison Street / First Street	F	>80 (v/c = 1.51)	F	>80 (v/c = 1.58)	F	>80 (v/c = 2.32)	2.7%
12. Second Street / Tehama Street (side-street stop-controlled)	D	28.7	F	>50	F	>50	N/A

^a Levels of service (LOS) were determined using the analysis methodologies presented in the 2000 *Highway Capacity Manual*.

^b Cumulative volumes were derived on the basis of information about traffic growth patterns, which used the San Francisco County Transportation Authority countywide travel demand forecasting model, taking into account the development anticipated in the vicinity of 222 Second Street, plus the expected growth in housing and employment for the remainder of San Francisco and the nine-county Bay Area.

^c Project's percent contribution to the 2007-to-2025 growth in cumulative traffic volumes at intersections projected to operate at LOS E or F. **Bold** typeface signifies a cumulatively considerable contribution to LOS F conditions (a significant impact), based on the project's contribution to the intersection's critical turning movements; that is, whether the project would add a substantial number of vehicles to these movements (see page 83 for further discussion of the method for determining impact significance).

^d The LOS and delay for signalized intersections represent conditions for the overall intersection. The LOS and delay for side-street stop-controlled unsignalized intersections represent conditions for the worst (most congested) movements (typically left turns from the side street onto the main street). For an intersection operating at LOS E or F under any analyzed scenario, the volume-to-capacity ratio (v/c) is presented to provide another measure of how the intersection is operating.

Bold typeface indicates a significant project or cumulatively impact.

SOURCES: Environmental Science Associates and AECOM

With the addition of project traffic,⁵⁶ operating conditions at the Folsom/Second Streets intersection would degrade from LOS D to an unacceptable LOS E, which would constitute a significant project impact. Also, while the Harrison/Second Streets intersection would remain at the same unacceptable

LOS E, because project traffic would constitute about 16 percent of the southbound left turn volume (which would operate with unacceptable LOS F conditions), the increased delay at this intersection would constitute a significant project traffic impact. At the unsignalized study intersection of Second/Tehama Streets, the addition of project-generated traffic would cause side-street left turns to degrade to unacceptable LOS (eastbound Tehama left turns from LOS C to LOS F, and westbound Tehama left turns from LOS D to LOS E), which would constitute a significant project traffic impact.⁵⁷ Traffic conditions would satisfy the Peak Hour Signal Warrant for the Second/Tehama intersection. Conditions would also worsen from existing conditions at two other study intersections (Howard/Third Streets and Howard/Second Streets), but would remain at an acceptable LOS D or better in each case, and therefore project traffic would not result in a significant impact at these two intersections.

Implementation of Mitigation Measures M-TR-1a, p. 89, and M-TR-1b, p. 89, would reduce project impacts to a less-than-significant level at the intersections of Second and Tehama Streets and Folsom and Second Streets. However, no mitigation is available for the impacts at the intersection of Second and Harrison Streets, and this impact would be significant and unavoidable.

Cumulative Traffic Impacts

Impact TR-2: Traffic generated by the proposed project, in conjunction with past, present, and reasonably foreseeable future projects would further degrade level of service at certain local intersections. (Significant and Unavoidable)

Cumulative traffic impacts were assessed by adding projected traffic increases from anticipated future local and development (including projects proposed within the Transit Center Plan study area) to future baseline volumes derived from the San Francisco County Transportation Authority countywide travel demand forecasting model.⁵⁸ Due to the substantial increase in development anticipated for the South of Market area by 2025, all 12 study intersections would operate at unacceptable LOS E or F under 2025 cumulative conditions (as compared to three intersections operating at LOS E or F under Existing conditions).

⁵⁶ Analysis of project effects conservatively assumed that all project-generated vehicular traffic would use parking spaces provided in the on-site garage. Additionally, while vehicles currently parking in the on-site parking lot (to be eliminated) would be redistributed to other parking facilities in the area, those vehicles were conservatively assumed to continue to travel through the study intersections.

⁵⁷ Currently most drivers leaving the project site's surface parking lot exit onto Howard Street, and nearly all who exit via Tehama turn right onto Second Street (only about 5 percent of exiting traffic turns left onto northbound Second Street). Left turns from Tehama onto Second are potentially dangerous (near collisions were observed) mainly because sight distance is restricted by parked vehicles and by buses at the bus stop just north of Tehama Street.

⁵⁸ The cumulative analysis was prepared in advance of the more recent Transportation Authority modeling efforts undertaken in connection with the proposed Transit Center Plan and EIR. However, a list of reasonably foreseeable developments in the Transit Center Plan area was developed that is comparable to growth anticipated under the Transit Center Plan and provides a reasonable projection of cumulative conditions in 2025.

To assess the effect of added traffic generated by the project on the above-described LOS E or F cumulative 2025 conditions, the percent contribution of project trips to future volumes was determined and, for intersections where the project contribution to cumulative growth would be 5 percent or greater, the project contribution to the traffic volumes at the critical movements are evaluated further to determine whether the project contribution to a critical movement would be substantial. As shown in Table 2, in addition to the project-specific significant traffic impact at the Folsom/Second, Harrison/Second, and Second/Tehama intersections for Existing Plus Project conditions, the project's share of future traffic growth at the intersections of Howard/Third Streets, Howard/New Montgomery Streets, Folsom/Second Streets, and Harrison/Second Streets would constitute a cumulatively considerable traffic contribution to adverse 2025 cumulative traffic conditions, and would be considered a significant impact. That determination was reached based on the examination of the traffic volumes for the vehicle movements that determine the overall level of service performance at the intersections projected to operate at LOS E or F under 2025 cumulative conditions. The project would add substantial numbers of vehicles to turning movements that determine the overall LOS F performance (i.e., "critical" movements) at these four intersections.

The project's traffic contribution to adverse cumulative traffic conditions at the other seven signalized intersections projected to operate at LOS E or F would be considered less than significant. That was also determined based on the examination of the traffic volumes for the traffic movements that determine overall level of service performance at the intersections of Mission/Third, Howard/Second, Howard/First, Howard/Fremont, Folsom/Hawthorne, Harrison/Fourth, and Harrison/First. In these case, the project would either add traffic to movements that would continue to operate satisfactorily, or would add a small number of vehicles to intersection movements that would operate poorly under cumulative conditions.

It is noted that the Transbay Terminal / Rincon Hill areas of the City have been, and currently are being (as part of the proposed Transit Center Plan analysis), studied for possible development scenarios, and associated road network configurations to best support that development (including possible conversion of portions of Folsom and Howard Streets from one-way to two-way configuration). The effect of possible reconfiguration of roads on traffic flow in the project area has not been quantified, but in general, two-way streets have a lower carrying capacity than one-way streets (with resulting worse LOS at intersections). However, some travel paths (including those between the project garage and trip origins and/or destinations) could be less circuitous with two-way streets than with one-way streets. Until road network changes are formally proposed, their effect on impacts described herein for the 222 Second Street project is considered speculative. Nevertheless, it can be stated with a high degree of certainty that the proposed 222 Second Street project would not result in such a substantial contribution to traffic congestion that it would make a considerable contribution to potential cumulative impacts at intersections other than those noted above, regardless of potential future changes in the street network. Therefore, the project would not result in a significant impact with respect to network changes that might be proposed as part of the proposed Transit Center District Plan or other such planning efforts.

As with existing-plus-project conditions, traffic from the 222 Second Street project and from other projects considered in the cumulative analysis would affect intersections other than those included in the project-specific analysis for 222 Second Street. Traffic destined for the Bay Bridge and for other freeway

on-ramps in or near the Transbay Study Area would continue to experience congestion in the p.m. peak hour, and the project would contribute incrementally to increased delays at some of these intersections. As with existing-plus-project conditions, however, project traffic would have less impact on intersections farther from the project site as vehicles bound for different destinations disperse.

Projected congestion levels could be somewhat less if measures to enhance transit service and encourage the use of alternate means of transportation are successful. Similarly, congestion levels in the area could be somewhat greater if the capacity of street segments is reduced or if the rate at which vehicles can enter the freeway is reduced.

No mitigation is available for the above-described significant impacts beyond Measures M-TR-1a and M-TR-1b, discussed above. However, those measures would not reduce the cumulative impacts to a less-than-significant level at the intersections of Howard and Third Streets, Howard and New Montgomery Streets, Folsom and Second Streets, and Harrison and Second Streets.

Transit

Impact TR-3: Transit ridership generated by the proposed project would not result in unacceptable levels of transit service, or cause a substantial increase in delays or operating costs. (Less than Significant)

The project would generate approximately 510 net new p.m. peak-hour transit trips. Of these trips, about 300 would be on Muni, and would be dispersed over the 17 Muni routes (local and express buses, streetcar and Metro trains) that serve the project area. Project transit ridership would incrementally increase p.m. peak-period capacity utilization⁵⁹ on the four Muni screenlines (which are imaginary cordon lines drawn around the greater downtown area for purposes of analyzing Muni ridership by corridor). All Muni screenlines currently operate better than Muni's service standard of 85 percent capacity utilization,⁶⁰ although the Metro corridors (Southwest screenline), and Other Lines (Southeast screenline) currently exceed the standard. However, the increase in ridership due to the project would be no more than 1 percentage point on any corridor, and would not be significant, inasmuch as the increased ridership would be dispersed over dozens of Muni vehicles and would not result in exceedances of Muni capacity. The project would be subject to the Transit Impact Development Fee, which is a one-time fee assessed against downtown office projects to offset increased capital costs to Muni to provide additional capacity to serve the increased demand from new development.

Project ridership on regional carriers would total about 200 (some riders would also take Muni), with about 40 percent traveling to the East Bay on BART, and another 20 percent on AC Transit; most of the rest would travel to the Peninsula on BART. Project transit trips would increase East Bay BART and AC Transit p.m. peak-period capacity utilization by less than 1 percentage point, and would not measurably

⁵⁹ Capacity utilization is the aggregate number of passengers divided by the aggregate design capacity of the transit vehicles, and may include varying numbers of standees, depending on the transit carrier.

⁶⁰ Muni's service standard is based on differing capacities of its fleet's various sizes of buses and rail vehicles.

E. TRANSPORTATION AND CIRCULATION

This section summarizes and incorporates the results of the *Transportation Impact Study* (TIS) prepared by the transportation subconsultant for the proposed project (included in this EIR as Appendix E).¹ The TIS describes existing and future 2030 transportation conditions (roadway traffic, transit, pedestrian access, bicycle access, loading, and parking) in the vicinity of the proposed project and evaluates its environmental effects. The following transportation scenarios were examined: existing, existing plus the proposed project, and cumulative conditions in 2030.

SETTING

The transportation study area for the proposed project is the area bounded by Market Street, Second Street, Folsom Street, and Fifth Street. The proposed project would include the conveyance of the existing subsurface Jessie Square Garage from the San Francisco Municipal Transportation Agency (SFMTA) to the project sponsor and the conversion of the garage from a publicly owned garage to a privately owned garage. The basement mezzanine and upper basement levels would remain open to the public. On the mezzanine level of the existing garage, there is an existing space underneath the Contemporary Jewish Museum that is currently blocked off from the rest of the garage. As part of the proposed project, this existing space would be connected to the rest of the garage by removal of a wall and would be striped to accommodate about 38 parking spaces. Ten existing parking spaces on various levels of the garage would need to be removed for vehicular access and circulation. As a result, there would be a net increase of 28 parking spaces, and the total number of parking spaces in the garage would increase from 442 to 470. The proposed project also would use Jessie Square Garage for access to the proposed on-site loading areas.

Currently, there are two curb cuts on the existing project site: one on Third Street, which provides access to the existing loading area in the Aronson Building, and one on Mission Street, which provides an exit for the Jessie Square Garage. The current entrance for the Jessie Square Garage is on Stevenson Street. Egress from the garage is available from either Stevenson Street or Mission Street. See Figure II.32: Vehicular Access – Proposed Project, in Chapter II, Project Description, p. II.65.

¹ LCW Consulting, *706 Mission Street Transportation Study, 2008.1084E, Final Report* (hereinafter referred to as “TIS”), January 24, 2012. This document is included in this EIR as Appendix E and is also available for review at the Planning Department, 1650 Mission Street, Suite 400, San Francisco, California, as part of Case File No. 2008.1084E.

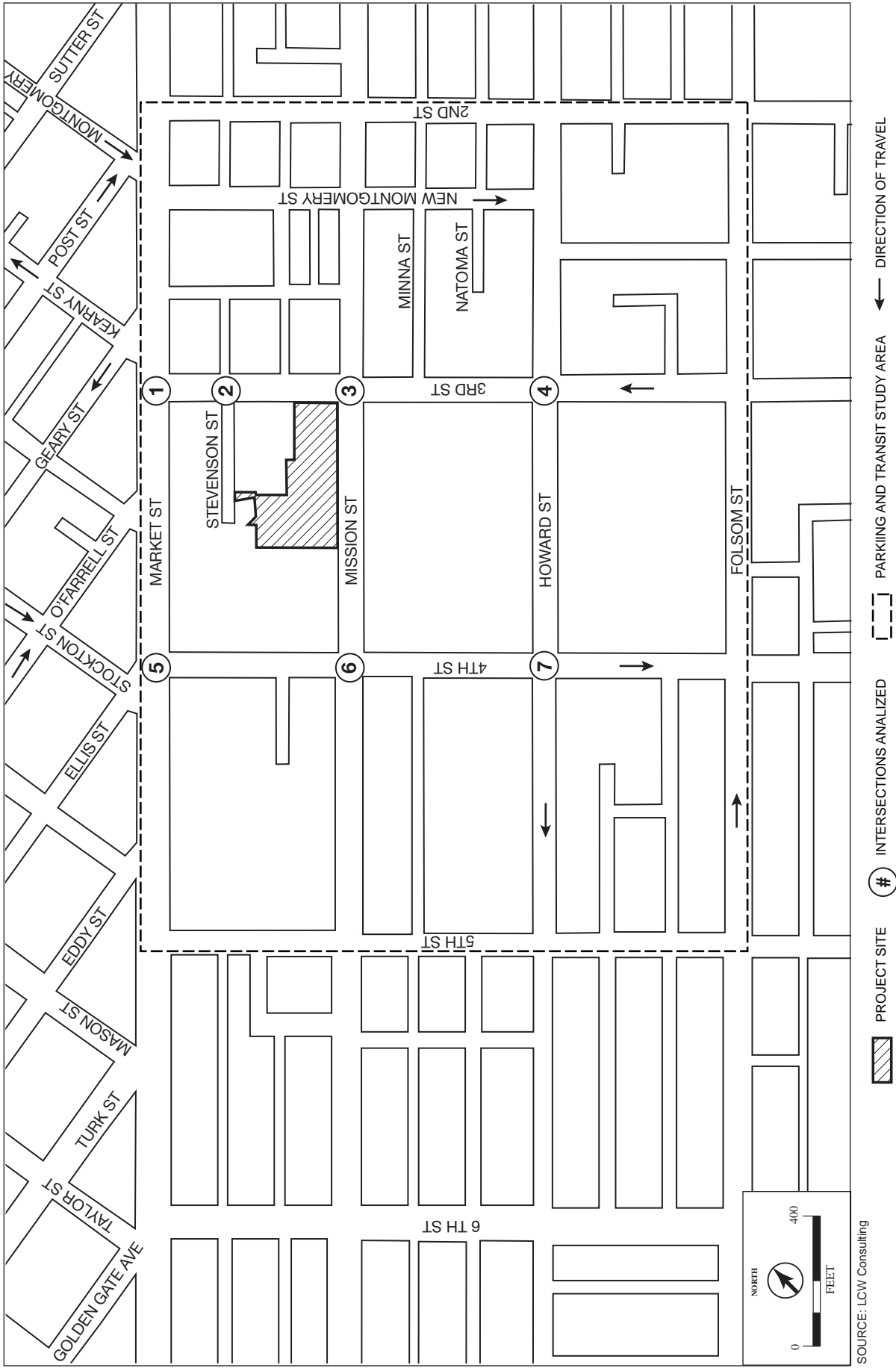


FIGURE IV.E.1: TRANSPORTATION STUDY AREA AND INTERSECTIONS ANALYZED

706 MISSION STREET

Table IV.E.1: Intersection Levels of Service, Existing (Weekday PM Peak Hour)

Intersection^{a,b}	Delay^c	Level of Service	Volume / Capacity^d
1. Third / Market	56.2	E	0.79
2. Third / Stevenson	12.1	B	
3. Third / Mission	20.1	C	
4. Third / Howard	36.1	D	
5. Fourth / Market	>80	F	1.08
6. Fourth / Mission	41.8	D	
7. Fourth /Howard	42.5	D	

Notes:

> means greater than

^a Intersections are numbered to key with Figure IV.E.1 on p. IV.E.5.

^b Intersections operating at LOS E and F are shown in **bold**.

^c Delay is presented in seconds per vehicle.

^d Volume to Capacity ratio presented for signalized intersections operating at LOS F.

Source: LCW Consulting, January 2012

which is further away than typical placement, and this placement may contribute to pedestrians not noticing the “Don’t Walk” signal.

Transit

The project site is well-served by public transit, with both local and regional service provided nearby. Local service is provided by the Muni bus lines, which can be used to access regional transit. Service to and from the East Bay is provided by BART, AC Transit, and ferries; service to and from the North Bay is provided by Golden Gate Transit buses and ferries; service to and from the Peninsula and South Bay is provided by Caltrain, SamTrans, and BART. Figure IV.E.2: Existing Transit Network Near Proposed Project, presents the transit routes and local bus stop locations in the vicinity of the proposed project.

Muni

Muni provides transit service within the City and County of San Francisco, including bus (both diesel and electric trolley), light rail (Muni Metro), cable car, and electric streetcar lines. Muni operates a number of bus lines in the vicinity of the proposed project. Immediately adjacent to the project site, on Mission and Third Streets, Muni operates frequent bus service, including electric and diesel, standard and articulated vehicles. On Third Street, a transit-only lane is provided on the east curb lane, across from the project site. Muni uses the west-side travel lanes for non-revenue turnbacks of Market Street buses (i.e., buses do not pick up passengers), including the 5 Fulton, 6 Parnassus, 9 San Bruno, 21 Hayes, and 31 Balboa. Two sets of electric trolley wires, in the east and west curb lanes, are provided for electric buses. On Mission Street, Muni operates the various 14 Mission lines.

Table IV.E.15: Intersection Levels of Service, Existing and Existing Plus Project

Intersection	Existing		Existing Plus Project	
	Delay ^a (v/c)	LOS	Delay ^a (v/c)	LOS
Third / Market	56.2	E	63.2	E
Third / Stevenson	12.1	B	12.7	B
Third / Mission	20.1	C	20.9	C
Third / Howard	36.1	D	40.4	D
Fourth / Market	>80 (1.1)	F	>80 (1.1)	F
Fourth / Mission	41.8	D	45.6	D
Fourth / Howard	42.5	D	44.5	D

Notes: > means greater than

^a Delay presented in seconds per vehicle. Intersections operating at LOS E or LOS F are in **bold**. The volume to capacity ratio is presented for those intersections operating at LOS F.

Source: LCW Consulting, January 2012

The addition of 149 project-generated vehicle trips would result in small increases in the average delay per vehicle at the study intersections and all study intersections would continue to operate at the same LOS as under existing conditions. The intersection of Third and Market Streets would continue to operate at LOS E, and the intersection of Fourth/Market Streets would continue to operate at LOS F. The contribution of the proposed project to the critical movements that operate poorly was reviewed to determine if the contribution would be significant.

At the Third and Market Streets intersection, the proposed project would add 34 vehicle trips during the PM peak hour to the northbound movement, which represents 1.8 percent of the total PM peak hour northbound approach volume of 1,939 vehicles. Thus, the project contribution to this approach would not be considerable, and therefore the contribution to the overall intersection LOS E conditions would not be considered significant.

At the Fourth and Market Streets intersection, the proposed project would add 31 vehicle trips during the PM peak hour. At this intersection, the southbound movement currently operates at LOS F conditions. The project would add 12 vehicle trips to the southbound movement, which represent less than 1 percent of the PM peak hour southbound volume of 1,302 vehicles. The project contribution to this approach would not be considerable, and therefore the contribution to the overall intersection LOS F conditions would not be considered significant.

Project-generated vehicle traffic would not cause any intersection LOS to deteriorate from LOS D or better to LOS E or F or from LOS E to F, and would not represent a considerable contribution to the Existing plus Project intersection conditions for intersections already operating at LOS E or F, and therefore the proposed project would result in less-than-significant traffic impacts at these intersections, and impacts on traffic overall would be less than significant. No mitigation is necessary.



SAN FRANCISCO PLANNING DEPARTMENT

Preliminary Mitigated Negative Declaration

Date: May 13, 2015
Case No.: **2014.0198E**
Project Title: **850 Bryant Street – Hall of Justice
Rehabilitation and Detention Facility Project**
Zoning: Western SoMa Special Use District
Public Use (P) Zoning District
105-J Height and Bulk District
Service/Arts/Light Industrial (SALI) Zoning District
30-X Height and Bulk District
Block/Lot: 3759/009 through 012, 014, 043, 045, a portion of 042, and Harriet Street and
Ahern Way street rights-of way
Lot Size: 40,276 square feet
Project Sponsor Jumoke Akin-Taylor
San Francisco Department of Public Works
Building, Design and Construction, Project Management
(415) 557-4751
Dan Santizo
City and County of San Francisco Sheriff's Department
Sheriff's Bureau of Building Services
(415) 522-8123
Lead Agency: San Francisco Planning Department
Staff Contact: Christopher Espiritu - (415) 575-9022
christopher.espiritu@sfgov.org

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

PROJECT DESCRIPTION:

The site for the proposed Hall of Justice (HOJ) Rehabilitation and Detention Facility (RDF) project is located in San Francisco's South of Market neighborhood, at the intersection of Bryant and Sixth streets, and consists of eight parcels: Assessor's Block 3759, Lots 9 through 12, 14, 43, 45, a portion of Lot 42, and portions of the Harriet Street and Ahern Way rights-of-way. The western portion of the project site (the HOJ site), located at 850 Bryant Street, contains the existing eight-story, 117-foot-tall (105 feet to the rooftop plus an additional 12-foot-tall mechanical penthouse), 610,000-gsf HOJ, constructed between 1958 and 1961. The existing HOJ serves as one of the primary County Jail Facilities for the San Francisco Sheriff's Department. County Jails No. 3 (CJ#3) and No. 4 (CJ#4) are located on the 6th and 7th floors of the existing HOJ. Other uses within the existing HOJ include the justice center for the San Francisco County Superior Court, the Chief Medical Examiner and morgue, and the current operational headquarters for the San Francisco Police Department. County Jails No. 3 (CJ#3) and No. 4 (CJ#4) are located on the 6th and 7th floors of the existing HOJ. Directly east of the HOJ site is the project building site, which is bounded by Ahern Way to the north, Sixth Street to the east, Bryant Street to the south, and Harriet Street to the west. The 40,276-sf project building site contains two vacant lots, areas of surface parking, and five existing buildings: a one-story, 6,000-gsf office building, constructed in 1956 (444 Sixth Street); a one-story, 5,100-gsf commercial building, constructed in 1959 (450 Sixth Street); a three-story, 7,150-gsf,

involve the installation of structures that could interfere with air space. Therefore, Topic E.4(c) is not applicable to the proposed project.

SETTING

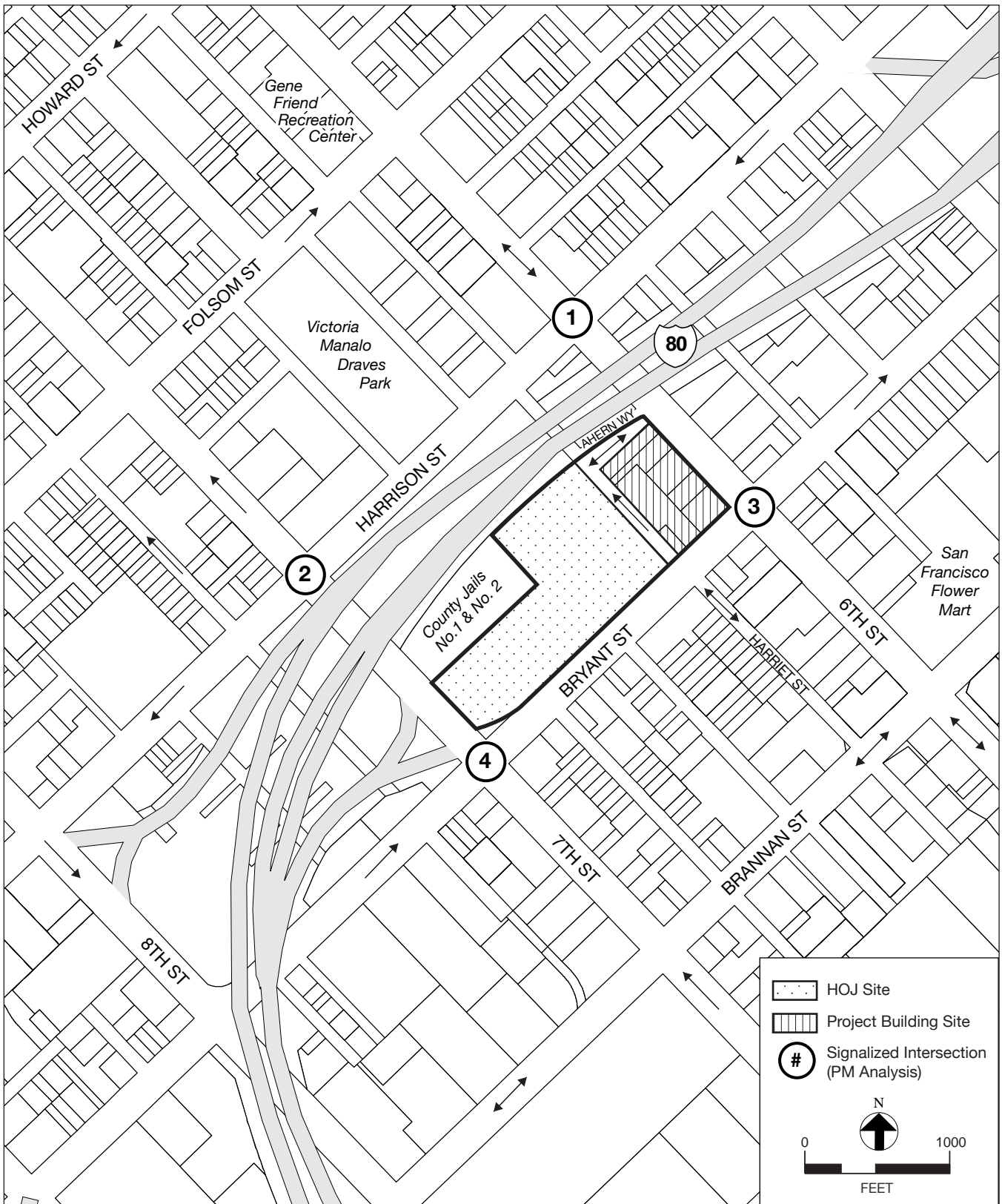
Transportation conditions were evaluated for a study area generally bounded by Harrison Street to the north, Sixth Street to the east, Bryant Street to the south, and Seventh Street to the west (see **Figure 15: Transportation Study Area**). In the South of Market area, streets that run in the northwest/southeast direction are considered north-south streets (e.g., Sixth Street), whereas streets that run in the southwest/northeast direction are considered east-west streets (e.g., Bryant Street).

Traffic Conditions

The project site is generally bounded by Sixth, Bryant and Seventh streets and the I-80 freeway structure. The project building site is located on the block bounded by Sixth, Bryant and Harriet streets, and Ahern Way immediately south of the I-80 freeway. Local vehicular access to and from the project building site is provided primarily via Bryant and Sixth streets. Sixth Street has two travel lanes in each direction, while Bryant Street has four eastbound travel lanes. Harriet Street is one-way northbound, with two travel lanes between Bryant Street and Ahern Way, adjacent to the project building site. Most other streets in the project vicinity, including Ahern Way, have one travel lane in each direction. The intersections of Sixth Street/Ahern Way and Harriet Street/Ahern Way are stop-controlled on the minor approach of Ahern Way eastbound and Harriet Street northbound.

Regional access to the project site is provided by U.S. 101 and I-280. U.S. 101 connects to I-80, which connects San Francisco to the East Bay and other locations east via the San Francisco-Oakland Bay Bridge. U.S. 101 and I-280 serve San Francisco and the South Bay, and U.S. 101 provides access north via the Golden Gate Bridge. Access from I-80 eastbound is via the off-ramp at Bryant/Seventh streets, and access to I-80 eastbound is via the on-ramp at Bryant/Eighth streets. Access from I-80 westbound is via the off-ramp at Harrison/Eighth streets, and access to I-80 westbound is via the on-ramp at Harrison/Seventh. The closest access to I-280 is provided via on- and off-ramps at the intersection of Sixth/Brannan streets.

Harrison Street runs in the east-west direction between The Embarcadero and 13th/Division streets, operating one-way westbound between Third and Tenth streets. Harrison Street runs in the north-south direction between 13th/Division and Norwich streets. In the downtown area, Harrison Street is a primary route to the I-80 freeway, with on-ramps at the First Street and Essex Street intersections, and to U.S. 101 southbound, with an on-ramp at Fourth Street and another at Seventh Street. In the *San Francisco General Plan*, it is a designated Major Arterial in the Congestion Management Network (between The Embarcadero and Division Street), a Primary Transit



SOURCE: LCW Consulting

HALL OF JUSTICE REHABILITATION AND DETENTION FACILITY

Case No. 2014.0198E

FIGURE 15: TRANSPORTATION STUDY AREA AND STUDY INTERSECTIONS

Table 1: Intersection LOS – Existing Conditions - Weekday P.M. Peak Hour

Intersection	Average Vehicle Delay ^a	LOS
1. Harrison Street/Sixth Street ^b	31.6	C
2. Harrison Street/Seventh Street ^c	30.2	C
3. Bryant Street/Sixth Street ^b	>80	F
4. Bryant Street/Seventh Street ^c	18.7	B

Notes:^a Delay is presented in seconds per vehicle.^b Traffic counts conducted in September 2012.^c Traffic counts conducted in September 2009.*Source:* LCW Consulting (LOS analysis taken from Central SoMa Plan Transportation Impact Study, October 2014).

Intersection turning movement volume counts at the unsignalized intersections of Sixth Street/Ahern Way, Harriet Street/Bryant Street, and Harriet Street/Harrison Street were conducted on Wednesday, February 11, 2015 during the weekday p.m. peak period to estimate vehicle trips on Harriet Street and Ahern Way. During the weekday p.m. peak hour, there are about 50 vehicles traveling on Harriet Street between Bryant Street and Ahern Way, and about 40 vehicles on Ahern Way between Sixth and Harriet streets (i.e., about 30 eastbound and 10 westbound vehicles). There are about 80 vehicles exiting Harriet Street at Harrison Street during the weekday p.m. peak hour.⁴² As noted above, both Harriet Street and Ahern Way provide access to the ambulance loading area for the Office of the Chief Medical Examiner; the below-grade parking in the existing HOJ; the surface parking lots under the I-80 structure reserved for HOJ, Sheriff’s Department, and SFPD use; and to on-street parking spaces that are generally occupied by marked and unmarked official City vehicles. Thus, the majority of vehicles on these streets are related to existing HOJ activities. While not observed during field surveys, some vehicles, such as the SFPD police cars that double park on Bryant Street in front of the HOJ, may use Harriet Street to travel between Bryant and Harrison streets.

Transit Conditions

The project site is well served by public transit. Local service is provided by the San Francisco Municipal Railway (Muni) bus routes, which can be used to transfer to other bus lines, cable car lines, the F Market & Wharves historic streetcar line, and Muni Metro light rail lines. Service to and from the East Bay is provided by Bay Area Rapid Transit (BART) along Market and Mission streets, and AC Transit buses from the Transbay Terminal. Service to and from the North Bay is provided by Golden Gate Transit along Van Ness Avenue and at the Transbay Terminal, and ferry service from the Ferry Building. Service to and from the Peninsula and South Bay is provided by Caltrain at its terminal located at Fourth and Townsend streets, and by the San Mateo County Transit District (SamTrans) at the Transbay Terminal.

⁴² Ibid.

Table 6: Intersection LOS – Existing and 2040 Cumulative Conditions - Weekday P.M. Peak Hour

Intersection	Existing Conditions		2040 Cumulative Conditions	
	Average Vehicle Delay ^a	LOS	Average Vehicle Delay ^a	LOS
1. Harrison Street/Sixth Street ^b	31.6	C	66.5	E
2. Harrison Street/Seventh Street ^c	30.2	C	67.1	E
3. Bryant Street/Sixth Street ^b	>80	F	>80	F
4. Bryant Street/Seventh Street ^c	18.7	B	39.5	D

Notes:

^a Delay is presented in seconds per vehicle.

^b Traffic counts conducted in September 2012.

^c Traffic counts conducted in September 2009.

Source: LCW Consulting (LOS analysis taken from Central SoMa Plan Transportation Impact Study, October 2014).

would be closed to through traffic in both directions, and only HOJ and RDF-related official service vehicles, scheduled delivery and service vehicles, and emergency response vehicles would be allowed access. Non-HOJ related drivers on the portions of Harriet Street and Ahern Way that would be restricted would need to divert to other streets. Given the limited amount of traffic that utilizes Ahern Way and Harriet Street, this level of traffic diversion to other nearby streets would not substantially affect cumulative traffic conditions in the project vicinity.

For the above reasons, the proposed project, in combination with past, present and reasonably foreseeable development in San Francisco, would result in less-than-significant cumulative traffic impacts and no mitigation is necessary.

Cumulative Transit Impacts

Impact C-TR-2: The proposed project in combination with past, present and reasonably foreseeable development would not contribute to significant cumulative transit impacts on local or regional transit capacity. (*Less than Significant*)

Future year 2040 Cumulative transit conditions were utilized to assess the cumulative effects of a proposed project and other development that would occur through the year 2040. Consistent with San Francisco Planning Department guidance the impact assessment is conducted for the San Francisco downtown and regional screenlines.⁵⁸ The 2040 Cumulative transit screenline analysis accounts for ridership and/or capacity changes associated with the TEP and the Central Subway Project (which is scheduled to open in 2019), among other transit projects. The 2040 Cumulative transit screenlines were developed in coordination with SFMTA based on the SFCTA travel demand model analysis. Forecasted future hourly ridership demand was then compared to expected hourly capacity, as determined by the likely route and headway changes identified in the TEP to estimate capacity utilization under 2040 Cumulative conditions. As noted above, the year 2040

⁵⁸ Planning Department Transportation Team, *Regional & Local 2014 Cumulative Transit Screenlines for Transportation Impact Studies*, Memo to Planning Department Transportation Consultants, March 10, 2014. A copy of this document is available for review at the San Francisco Planning Department, 1650 Mission Street, Suite 400, in Case File No. 2014.0198E.

CHAPTER 4 Environmental Setting and Impacts

4.0 INTRODUCTION TO THE ANALYSIS

Chapter 4 contains a discussion of the possible direct and indirect environmental effects of the proposed Academy of Art University (AAU) Project (Proposed Project). This chapter is the primary component of the environmental impact report (EIR), as it provides information on the existing conditions in the City of San Francisco, the type and magnitude of the Proposed Project's potential individual and cumulative environmental impacts, and feasible mitigation measures that could reduce or avoid such impacts.

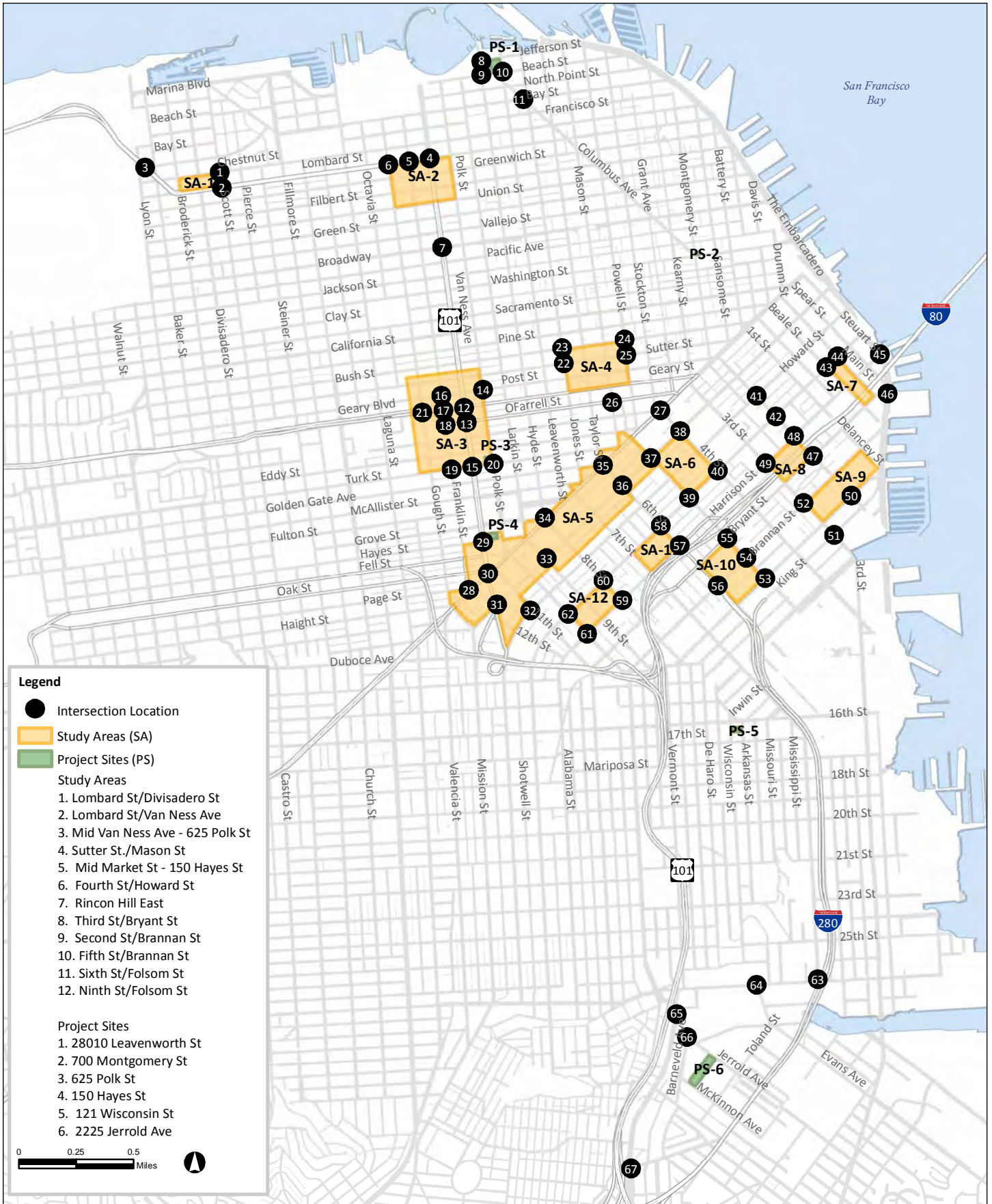
4.0.1 Scope of the EIR

■ CEQA Methodological Requirements

CEQA Guidelines Section 15151 describes standards for the preparation of an adequate EIR. Specifically, the standards under Section 15151 are listed below.

- An EIR should be prepared with a sufficient degree of analysis to provide decision-makers with information that enables them to make a decision that intelligently takes into account environmental consequences
- An evaluation of the environmental impacts of a project need not be exhaustive; rather, the sufficiency of an EIR is to be reviewed in light of what is reasonably feasible
- Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts

In practice, the above points indicate that EIR preparers should adopt a reasonable methodology upon which to estimate impacts. This approach means making reasonable assumptions using the best information available. In some cases, typically when information is limited or where there are possible variations in project characteristics, EIR preparers will employ a "reasonable worst-case analysis" in order to capture the largest expected potential change from existing baseline conditions that may result from implementation of a project.



SOURCE: AAU, 2012; Atkins, 2013.

ACADEMY OF ART UNIVERSITY EIR
FIGURE 4.6-2: PROJECT STUDY INTERSECTIONS

Table 4.6-1 Existing Intersection Levels of Service

Study Area/Project Site	Intersection Number	Intersection Location	AM Peak Hour		PM Peak Hour	
			Average Delay (seconds)	LOS	Average Delay (seconds)	LOS
SA-1, Lombard St/Divisadero St	1	Scott St / Chestnut St ^b	—	—	NB/EB-11.0	B
	2	Scott St / Lombard St	—	—	11.5	B
	3	Richardson St / Francisco St	—	—	17.4	B
SA-2, Lombard St/Van Ness Ave	4	Van Ness Ave / Lombard St	19.0	B	22.4	C
	5	Franklin St / Lombard St	—	—	22.0	C
	6	Gough St / Lombard St	—	—	8.3	A
	7	Broadway / Van Ness Ave	20.9	C	24.2	C
PS-1, 2801 Leavenworth St (The Cannery)	8	Hyde St/ Jefferson St ^b	—	—	WB-9.3	A
	9	Hyde St/ Beach St	—	—	12.1	B
	10	Leavenworth St/ Beach St ^b	—	—	EB/WB-7.8	A
	11	Bay St/ Columbus Ave	—	—	22.4	C
SA- 3, Mid Van Ness Ave; PS-3, 625 Polk St	12	Van Ness Ave / Geary Blvd	20.1	C	20.7	C
	13	Van Ness Ave / O'Farrell St	20.0	C	21.7	C
	14	Post St / Polk St	—	—	12.4	B
	15	Van Ness Ave / Turk St	16.4	B	19.0	B
	16	Franklin St / Post St	—	—	11.7	B
	17	Franklin St / Geary Blvd	—	—	18.1	B
	18	Franklin St / O'Farrell St	—	—	22.5	C
	19	Franklin St / Turk St	—	—	18.4	B
	20	Polk St / Turk St	—	—	18.4	B
	21	Gough St/ Geary Blvd	24.7	C	21.7	C
SA-4, Sutter St/Mason St	22	Jones St / Sutter St	—	—	12.4	B
	23	Jones St / Bush St	—	—	10.9	B
	24	Powell St / Bush St	—	—	10.9	B
	25	Powell St / Sutter St	—	—	12.0	B
	26	O'Farrell St / Mason St	—	—	14.0	B
	27	Stockton St / Ellis St / Market St/ Fourth St	—	—	17.6	B

Table 4.6-1 Existing Intersection Levels of Service

Study Area/Project Site	Intersection Number	Intersection Location	AM Peak Hour		PM Peak Hour	
			Average Delay (seconds)	LOS	Average Delay (seconds)	LOS
SA-5, Mid-Market St; PS-4, 150 Hayes St	28	Franklin St / Market St	—	—	28.1	C
	29	Van Ness Ave / Hayes St	21.8	C	23.8	C
	30	Van Ness Ave / Market St	30.4	C	39.7	D
	31	S. Van Ness Ave / Mission St	—	—	40.2	D
	32	11th St / Howard St	—	—	21.8	C
	33	Ninth St / Mission St	—	—	12.3	B
	34	Eighth St / Market St	—	—	26.3	C
	35	Sixth St / Market St	—	—	20.1	C
	36	Sixth St / Mission St	—	—	25.9	C
SA-6, Fourth St/Howard St	37	Fifth St / Mission St	—	—	16.4	B
	38	Fourth St / Mission St	—	—	14.1	B
	39	Fifth St / Folsom St	—	—	15.7	B
	40	Fourth St / Folsom St	—	—	32.8	C
SA-8, Third St/Bryant St ^a	See 37	Fifth St / Mission St	—	—	16.4	B
	41	Second St/Howard St	—	—	12.0	B
SA-7, Rincon Hill East	42	Second St/Folsom St	—	—	15.7	B
	43	Folsom St / Beale St	—	—	13.7	B
	44	Folsom St / Main St	—	—	11.1	B
	45	Embarcadero / Harrison St	—	—	14.6	B
SA-8, Third St/Bryant St	46	Bryant St / The Embarcadero	—	—	21.7	C
	47	Second St / Bryant St	—	—	11.2	B
	48	Second St / Harrison St	—	—	13.4	B
SA-9, Second St/Brannan St	49	Third St / Harrison St	—	—	15.9	B
	50	Second St / Townsend St	—	—	13.6	B
	51	Third St / King St	—	—	34.4	C
SA-10, Fifth St/Brannan St	52	Third St / Brannan St	—	—	16.8	B
	53	Fifth St / Townsend St ^b	—	—	WB-24.0	C
	54	Fifth St / Brannan St	—	—	20.6	C
	55	Fifth St / Bryant St	—	—	64.3	E
SA-11, Sixth St/Folsom St	56	Sixth St / Brannan St	—	—	36.2	D
	57	Sixth St / Harrison St	—	—	12.5	B
	58	Sixth St / Folsom St	—	—	17.7	B

Table 4.6-1 Existing Intersection Levels of Service

Study Area/Project Site	Intersection Number	Intersection Location	AM Peak Hour		PM Peak Hour	
			Average Delay (seconds)	LOS	Average Delay (seconds)	LOS
SA-12, Ninth St/Folsom St	59	Eighth St / Harrison St	—	—	21.6	C
	60	Eighth St / Folsom St	—	—	14.5	B
	61	10th St / Harrison St	—	—	18.9	B
	62	10th St / Folsom St	—	—	17.4	B
PS-6, 2225 Jerrold Ave	63	Pennsylvania Ave / Cesar Chavez St / I-280 NB Off-Ramp	—	—	42.1	D
	64	Cesar Chavez St / Evans Ave	—	—	20.2	C
	65	Jerrold Ave / Barneveld Ave ^b	—	—	WB-18.7	C
	66	Bayshore Blvd / Jerrold Ave	—	—	30.5	C
	67	Industrial St / Bayshore Blvd	—	—	36.8	D

SOURCE: Atkins (2014).

- a. Intersections #41 and #42 are included because an area near Second St/Howard St was under consideration at one time but is no longer part of the Proposed Project. These intersection analyses were retained because AAU growth in SA-8 would contribute vehicle trips to these intersections.
- b. For unsignalized intersections the LOS is reported for highest-delay approach and that movement (for example WB = westbound) is noted. For signalized intersections LOS E or LOS F are reported in **bold**.

Overview of Conditions at Project Sites

PS-1, 2801 Leavenworth Street (The Cannery): PS-1 consists of The Cannery building at 2801 Leavenworth Street. PS-1 is bordered by Leavenworth Street to the east, Jefferson Street to the north, Hyde Street to the west, and Beach Street to the south. No vehicle access or driveways are located on The Cannery building site. In the vicinity of the project site, Leavenworth Street has one travel lane in each direction with metered parking on both sides of the street; and Jefferson Street has two westbound travel lanes with metered parking on both sides of the street. As detailed in the *Fisherman’s Wharf Public Realm Plan, 2010*, proposed enhancements to the Jefferson Street corridor (between Powell Street and Hyde Street) include a contra-flow bike lane, on-street loading pockets for passenger and freight loading, and conversion of the semi-exclusive streetcar transit lane to a fully exclusive transit lane.

PS-2, 700 Montgomery Street: PS-2 is bordered by Washington Street to the south, Montgomery Street to the west, Jackson Street to the north, and Hotaling Place to the east. No vehicle access or driveways are located at the project site. In the vicinity of the project site, Montgomery Street has one travel lane in each direction and metered and unmetered parking on both sides of the street; and, Washington Street has three westbound travel lanes and metered parking on both sides of the street.

PS-3, 625 Polk Street: PS-3 is bordered by Turk Street to the south, Eddy Street to the north, Van Ness Avenue to the west, and Polk Street to the east. No vehicle access or driveways are located at the project site. In the project vicinity, Polk Street has one travel lane in each direction with metered

Table 4.6-28 Cumulative (2035) and Cumulative plus Project LOS E or LOS F AM and PM Peak Hour Intersections

Study Area/ Project Site	Intersection		Cumulative (2035)		Cumulative plus Project Option 1 – SA-10/SA-11 Sub option	
	#	Location	LOS	Average Delay (seconds) ^a	LOS	Average Delay (seconds) ^a
AM Peak Hour						
SA-2, Lombard St/Van Ness Ave (Program Level)	7	Broadway St/Van Ness Ave	F	>80 (1.41)	F	>80 (1.41)
SA-5, Mid-Market St/ PS-4, 150 Hayes St (Program/Project Level)	29	Van Ness Ave/Hayes St	E	65.2	E	67.4
	30	Van Ness Ave/Market St	F	>80 (1.47)	F	>80 (1.47)
PM Peak Hour						
SA-5, Mid-Market St/ PS-4, 150 Hayes St (Program/Project Level)	30	Van Ness Ave/Market St	F	>80 (1.27)	F	>80(1.27)
	31	S. Van Ness Ave/Mission St	F	>80 (1.10)	F	>80 (1.10)
	34	Eighth St/Market St	E	70.8	E	72.7
	35	Sixth St/Market St	F	>80 (0.91)	F	>80 (0.91)
	36	Sixth St/Mission St	E	71.2	E	72.8
SA-8, Third St/Bryant St (Program Level) ^b	42	Second St/Folsom St	E	55.4	E	60.4
SA-9, Second St/Brannan St (Program Level)	51	Third St/King St	F	>80 (1.30)	F	>80 (1.31)
SA-10, Fifth St/Brannan St (Program Level)	55	Fifth St/Bryant St	F	>80 (1.54)	F	>80 (1.54)
	56	Sixth St/Brannan St	F	>80 (1.15)	F	>80 (1.16)
SA-11, Sixth St/Folsom St (Program Level)	58	Sixth St/Folsom St	E	63.6	E	69.2
SA-12, Ninth St/Folsom St (Program Level) PS-6, 2225 Jerrold Ave (Project Level)	63	Pennsylvania Ave/Cesar Chavez St/I-280 NB Off-Ramp	F	>80 (1.26)	F	>80 (1.27)
	64	Cesar Chavez St/Evans Ave	F	>80 (1.53)	F	>80 (1.53)
	65*	Jerrold Ave/Barneveld Ave	F	WB>50	F	WB>50
	67	Industrial St/Bayshore Blvd	F	>80 (1.56)	F	>80 (1.56)

SOURCE: Atkins, 2014

Bold indicates that the intersection would operate at unacceptable LOS conditions (LOS E or F).

* For the unsignalized intersection, WB>50 stands for worst approach (i.e., LOS for unsignalized intersections is based on the worst approach LOS).

a. Volume-to-Capacity (V/C) ratio presented for signalized intersections operating at LOS F.

b. This intersection is located adjacent to SA-8, but not located within the study area. However, the intersection is described as under SA-8 for purposes of the traffic analysis and to characterize traffic conditions in and adjacent to SA-8.

Table 4.6-29 Cumulative (2035) AM & PM Peak Hour Project Trip Contributions to LOS E and LOS F Intersections

Intersection		Critical Movement Volumes		
#	Location	Critical Movement ^a	Project Trips	% Change
AM Peak Hour				
7	Broadway St/Van Ness Ave	SBL	18	2.04%
		EBT	1	0.13%
29	Van Ness Ave/Hayes St	NBT	11	0.66%
		WBT	5	0.13%
30	Van Ness Ave/Market St	NBT	10	0.41%
		EBT	0	0%
PM Peak Hour				
30	Van Ness Ave/Market St	NBT	3	0.18%
		WBT	0	0%
31	S Van Ness Ave/Mission St	SBT	5	0.50%
		WBL	0	0%
34	Eighth St/Market St	SBR	0	0%
35	Sixth St/Market St	NBT	3	0.18%
36	Sixth St/Mission St	NBT	3	0.23%
42	Second St/Folsom St	EBR	5	1.68%
51	Third St/King St	NBT	0	0%
		EBL	0	0%
		WBT	22	1.72%
55	Fifth St/Bryant St	EBT	0	0%
56	Sixth St/Brannan St	NBR	10	1.25%
		EBT	4	0.76%
58	Sixth St/Folsom St	EBT	46	2.15%
63	Pennsylvania Ave/Cesar Chavez St/I-280 NB Off-Ramp	NBL	0	0%
		EBL	0	0%
64	Cesar Chavez St/Evans Ave	NBL	0	0%
		WBL	5	0.65%
65	Jerrold Ave/Barneveld Ave	WB Approach	29	4.45%
67	Industrial St/Bayshore Blvd	NBL	0	0%
		SBR	0	0%
		EBL	1	0.36%
		WBT	8	0.54%

SOURCE: CHS Consulting Group and Atkins, *Academy of Art University Transportation Impact Study*, Planning Department Case No. 2008.0586I (February 2014).

Cumulative plus Project LOS results are presented for Option 1 – SA-10/SA-11 Sub option.

a. LOS E or F Critical Movements are abbreviated (e.g., NBT = Northbound Through, WBL = Westbound Left, SBR = Southbound Right)



SAN FRANCISCO PLANNING DEPARTMENT

Addendum to Environmental Impact Report

Addendum Date: September 26, 2012
Case No.: 2011.1381E
Project Title: Art & Design Educational Special Use District (1111 8th Street)
EIR: Eastern Neighborhoods Rezoning and Area Plans Final EIR
SCL No. 1984061912, certified August 7, 2008
Zoning: PDR-1-D; 58-X Height and Bulk District
Block/Lots: 3808/004, 3820/002, 3820/003, 3913/002, 3913/003
Lot Size: varies
Project Sponsor: Supervisor Malia Cohen, District 10
Sponsor Contact: Andrea Bruss, Legislative Aide, 415.554.7670
Lead Agency: San Francisco Planning Department
Staff Contact: Michael Jacinto – 415.575.9033
michael.jacinto@sfgov.org

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

The purpose of this Addendum to the Eastern Neighborhoods Rezoning and Area Plans Final EIR is to substantiate the Planning Department's determination that no supplemental environmental review is required for the proposed "Art and Design Special Use District" legislation (Board of Supervisors File No. 111278) because the environmental effects of implementation of this legislation have been adequately analyzed pursuant to the California Environmental Quality Act ("CEQA") in a Final Environmental Impact Report ("FEIR") previously prepared for the Eastern Neighborhoods Rezoning and Area Plans project. This memorandum describes the proposed legislation's relationship to the Eastern Neighborhoods Rezoning and Area Plans FEIR and Showplace Square/Potrero Hill Area Plan, analyzes the proposed legislation in the context of the previous environmental review, and summarizes the potential environmental effects that may occur as a result of implementing the legislation.

PROPOSED LEGISLATION

The project is proposed legislation that would amend the San Francisco Planning Code by adding Section 249.66 to create the Art and Design Special Use District ("SUD"). The SUD would apply to five lots on three blocks in the Showplace Square/Potrero Hill area of San Francisco. The amendment would facilitate continued operation of the California College of the Arts ("CCA") and provide a regulatory scheme for a potential future expansion of the campus, including permitting student housing which would be limited to 750 beds on any parcel within the SUD boundaries. The proposed ordinance would also amend the San Francisco Planning Code Sectional Map SU08 of the City and County's Zoning Map to reflect the creation of the Art and Design Special Use District. The legislation further stipulates that for any potential housing project within the SUD, standards for development, project review, entitlement process, and impact fees of the Urban Mixed Use ("UMU") district would apply.¹

PROJECT DESCRIPTION

Background

The Eastern Neighborhoods Rezoning and Area Plans Project was adopted in December 2008. The Project was adopted in part to support housing development in some areas previously zoned for industrial uses,

¹ See Planning Code Section 843 et seq. for more information.

In the cumulative context, the Final EIR found that adoption of the preferred Eastern Neighborhoods use districts and zoning controls would result in a significant, adverse impact in the cumulative supply of land for PDR uses and would not be mitigable without substantial change in use controls on land under Port of San Francisco jurisdiction. The finding was based on supply, demand and land use projections prepared for the Eastern Neighborhoods Final EIR.¹⁰

The FEIR found that industrially-zoned land and PDR building space is expected to decrease over the foreseeable future. The use districts and zoning controls adopted as part of the Eastern Neighborhoods Rezoning and Area Plans project are expected to accommodate housing and primarily management, information, and professional service land uses within the area over time. While the SUD would apply to CCA's parcels, including the 101,705-square-foot vacant parcel where design-related PDR uses are permitted, potential increases in cultural, institutional and educational space of upwards of 225,000 to 260,000 square feet within the neighborhood were forecasted and envisioned as part of the local planning process. Additionally, upwards of 2,600 housing units are anticipated within the Plan area through the year 2025. Permitting student housing within the CCA SUD would address residential demands generated by the institution as well as represent a portion of the areawide forecasted demand for this type of land use.

Because the type of housing that may be permitted is limited to student housing and because the geography of the SUD is confined to those parcels under control of and related to the California College of the Arts and not the surrounding PDR-1-D district at large, implementation of the SUD would not contribute in a considerable manner to the adverse, cumulative land use impact associated with the adoption of area-wide rezoning. The cumulative land use effect of the proposed SUD would be therefore less than considerable.

Transportation

Traffic

The FEIR included a level of service analysis at 40 study intersections within the plan area. Within Showplace Square/Potrero Hill, the FEIR included 15 study intersections and found significant, adverse impacts would occur at the following intersections: Seventh/Harrison, 13th/Bryant, 13th/Folsom, South Van Ness/Howard/13th, Seventh/Brannan, Seventh/Townsend, Eighth/Bryant, Eighth/Harrison, Third/César Chávez, Third/Evans, and César Chávez/Evans. With the exception of the intersections of DeHaro/Division/King, Rhode Island/16th, and Rhode Island/Division Streets, the FEIR identified no feasible measures associated with the above intersection impacts to mitigate them to less-than-significant levels. Other mitigation cited in the FEIR could include implementation of Intelligent Traffic Management Systems ("ITMS") strategies, improvement and enhancement of streets, promotion of alternate means of travel, and parking management to discourage driving.

Implementation of the proposed SUD legislation would not directly generate new person or automobile trips. Subsequent development projects proposed within the context of the SUD would be reviewed at a project-level to determine trip generation, assignment and mode split in order to determine the potential for future projects to result in operational impacts on signalized intersections or cause major traffic hazards or contribute considerably to cumulative traffic increases that would cause deterioration in levels of service to unacceptable levels.

¹⁰ *Eastern Neighborhoods Rezoning and Area Plans Final EIR*, p. 77. This document is available for review in Case File No. 2011.1381E at the Planning Department, 1650 Mission Street, Suite 400, San Francisco, CA.



DRAFT ENVIRONMENTAL IMPACT REPORT

Moscone Center Expansion Project

PLANNING DEPARTMENT
 CASE NO. **2013.0154E**
 STATE CLEARINGHOUSE NO. 2014012050



SAN FRANCISCO
PLANNING
 DEPARTMENT

Draft EIR Publication Date:	APRIL 30, 2014
Draft EIR Public Hearing Date:	JUNE 5, 2014
Draft EIR Public Comment Period:	MAY 1, 2014, THROUGH JUNE 16, 2014

Written comments should be sent to:

Sarah B. Jones, Environmental Review Officer
 1650 Mission Street, Suite 400 | San Francisco, CA 94103

ENVIRONMENTAL PLANNING | SAN FRANCISCO PLANNING DEPARTMENT

IV.A Transportation and Circulation

This section analyzes the potential project-level and cumulative impacts on transportation and circulation resulting from implementation of the Moscone Center Expansion Project. Transportation-related issues of concern that are addressed include traffic on local and regional roadways, transit, bicycles, pedestrians, parking, loading, and construction-related activities. This section provides an overview of existing transportation conditions, a description of applicable transportation regulations and policies, methodologies and assumptions used in the impact analysis, and impact assessment and mitigation measures. This section is based on information and analysis contained in the Moscone Center Expansion Project Transportation Impact Study (TIS).¹

Environmental Setting

The transportation study area for the proposed project is bounded by Market Street to the north, Fifth Street to the west, Bryant Street to the south, and New Montgomery/Hawthorne Street to the east. A total of 24 intersections within the transportation study area (see **Figure IV.A-1**, p. IV.A-2) were identified as the intersections most likely to be affected by the proposed project. All of the study intersections are signalized. No freeway segments were analyzed because the proposed project would not measurably affect the operation of the freeway system.

The transportation setting within the study area is presented first, and is followed by a description of transportation operations at the Moscone Center.

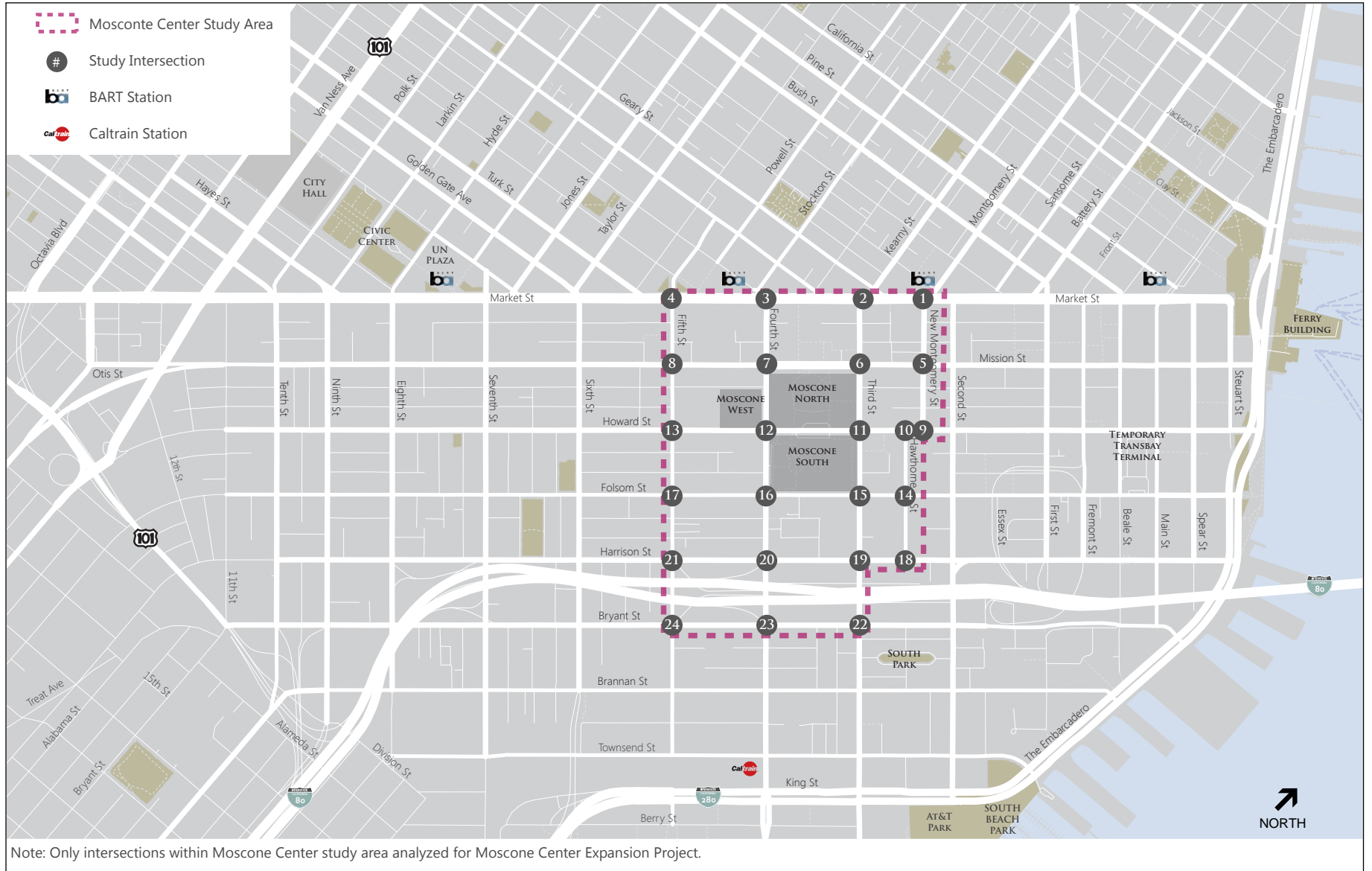
Regional and Local Roadways

Regional Access

Interstate 80 (I-80) provides the primary regional access to the proposed project site. Interstate 80 runs through the southern portion of the study area and connects San Francisco to the East Bay and other points east via the San Francisco-Oakland Bay Bridge. There are two sets of on-ramps and off-ramps in the study area (at Fifth Street and at Fourth Street) that provide access to and from eastbound and westbound I-80. Within the study area, I-80 has eight lanes (four in each direction).

U.S. Highway 101 (U.S. 101) provides access to the north and south of the study area. Interstate 80 joins U.S. 101 to the southwest of the study area and provides access to the Peninsula and South Bay. U.S. 101 connects San Francisco and the North Bay via the Golden Gate Bridge. There is no direct access to U.S. 101 within the study area. Within the northern part of San Francisco, U.S. 101 operates on surface streets (i.e., Van Ness Avenue and Lombard Street). Van Ness Avenue and Lombard Street are part of the Citywide Pedestrian Network outlined in the Transportation Element of the *San Francisco General Plan*.

¹ Advant Consulting, Fehr & Peers and LCW Consulting, *Moscone Center Expansion Project Transportation Impact Study*, April 2014. A copy of this document is available for review at the San Francisco Planning Department, 1650 Mission Street, Suite 400, as part of Case File No. 2013.0154E.



SOURCE: LCW Consulting, Fehr & Peers, 2014

**TABLE IV.A-15
INTERSECTION LEVEL OF SERVICE – WEEKDAY P.M. PEAK HOUR
EXISTING, EXISTING PLUS PROJECT, AND 2040 CUMULATIVE CONDITIONS**

Intersection	Existing ¹		Existing plus Project		2040 Cumulative	
	Average Delay ²	LOS ³	Average Delay ²	LOS ³	Average Delay ²	LOS ³
1. Market St/N. Montgomery St	66.8	E	66.8	E	> 80 (1.09)	F
2. Market St/Third St	44.1	D	46.2	D	> 80 (0.88)	F
3. Market St/Fourth St	57.7	E	58.0	E	> 80 (0.92)	F
4. Market St/Fifth St	59.3	E	60.0	E	> 80 (0.89)	F
5. Mission St/N. Montgomery St	70.7	E	70.9	E	> 80 (1.78)	F
6. Mission St/Third St	71.9	E	74.9	E	> 80 (> 2)	F
7. Mission St/Fourth St	32.6	C	34.4	C	> 80 (1.39)	F
8. Mission St/Fifth St	15.4	B	15.5	B	30.6	C
9. Howard St/N. Montgomery St	47.5	D	47.5	D	58.6	E
10. Howard St/Hawthorne St	21.2	C	21.2	C	38.2	D
11. Howard St/Third St	>80 (1.29)	F	>80 (1.31)	F	> 80 (1.89)	F
12. Howard St/Fourth St	65.7	E	69.5	E	> 80 (>2)	F
13. Howard St/Fifth St	15.6	B	15.8	B	> 80 (1.59)	F
14. Folsom St/ Hawthorne St	78.4	E	79.2	E	> 80 (> 2)	F
15. Folsom St/Third St	>80 (1.22)	F	>80 (1.22)	F	> 80 (> 2)	F
16. Folsom St/Fourth St	>80 (1.11)	F	>80 (1.12)	F	> 80 (> 2)	F
17. Folsom St/Fifth St	28.6	C	28.8	C	> 80 (1.78)	F
18. Harrison St/Hawthorne St	48.2	D	48.2	D	> 80 (1.49)	F
19. Harrison St/Third St	28.5	C	28.5	C	> 80 (> 2)	F
20. Harrison St/Fourth St	42.0	D	43.1	D	> 80 (1.76)	F
21. Harrison St/Fifth St	60.4	E	60.7	E	>80 (1.37)	F
22. Bryant St/Third St	52.0	D	52.1	D	> 80 (> 2)	F
23. Bryant St/Fourth St	27.7	C	27.7	C	> 80 (0.76)	F
24. Bryant St/Fifth St	>80 (1.26)	F	>80 (1.26)	F	> 80 (1.76)	F

NOTES:

¹ Existing conditions reflect an 85th percentile Moscone event design day of 22,000 attendees per day.

² Average delay reported as seconds per vehicle.

³ Intersections operating at LOS E or LOS F conditions are highlighted in **bold**. The volume-to-capacity (v/c) ratio provided in parentheses for intersections operating at LOS F conditions.

SOURCE: Moscone Center Expansion Project Transportation Impact Study, April 2014.



DRAFT ENVIRONMENTAL IMPACT REPORT

San Francisco 2004 and 2009 Housing Element

Volume I: Draft EIR (Section I to Section V.G)

PLANNING DEPARTMENT
CASE NO. **2007.1275E**

STATE CLEARINGHOUSE NO. 2008102033

Draft EIR Publication Date:	June 30, 2010
Draft EIR Public Hearing Date:	August 5, 2010
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**SAN FRANCISCO
PLANNING
DEPARTMENT**

Written comments should be sent to:
Environmental Review Officer | 1650 Mission Street, Suite 400 | San Francisco, CA 94103

V. ENVIRONMENTAL SETTING AND IMPACTS

F. TRANSPORTATION AND CIRCULATION

INTRODUCTION

This section addresses the potential impacts of the 2004 Housing Element and 2009 Housing Element related to the circulation system, congestion management system, air traffic patterns, the adequacy of emergency access, the adequacy of parking capacity, and potential conflicts with adopted policies and programs that support alternative transportation. The Planning Department prepared a transportation study, consistent with the Department's *Transportation Impact Analysis Guidelines for Environmental Review (SF Guidelines)*, to identify the impacts of the proposed Housing Elements on the transportation and circulation system, which serves as the data source for this section unless otherwise noted.¹

Existing transit conditions are described in terms of available routes, transit ridership and capacity at the screenlines for San Francisco Municipal Railway (Muni) and regional transit carriers. A public transit screenline analysis was performed on key Muni routes and regional transit carriers under the study scenarios. Existing pedestrian and bicycle conditions are described qualitatively. Existing parking conditions in the city are also described qualitatively, with emphasis on the Residential Parking Permit program and its locations. The existing traffic conditions were evaluated at 60 study intersections during the p.m. peak period for a typical weekday. The peak period analyzed was between 4:00 p.m. and 6:00 p.m., which is generally the period of peak demand on the transportation network. The study intersections were identified by the Planning Department as the intersections citywide that experience the most congestion or represent the constraints on the transportation network.

ENVIRONMENTAL SETTING

The transportation study area is defined as the entirety of the City and County of San Francisco and is depicted in Figure IV-1 (Section IV. Project Description). The following section describes the existing transportation network.

Existing Roadway Network

The following describes of the existing transportation network, including descriptions of the existing roadway and transit network, parking, pedestrian, and bicycle conditions. Descriptions of the roadway system serving the project site use the classifications from the Transportation Element of the San Francisco General Plan. The Transportation Element of the General Plan classifies roadways within the City as Freeways, Major Arterials, Transit Conflict Streets, Secondary Arterials, Recreational Streets, Collector Streets, and Local Streets. It also identifies Transit Preferential Streets, which include Primary

¹ *San Francisco General Plan Housing Element Final Transportation Impact Study* (hereinafter referred to TIS), TJKM Transportation Consultants, June 18, 2010. (See Appendix F).



SAN FRANCISCO PLANNING DEPARTMENT

Second Street Improvement Project Draft Supplemental Environmental Impact Report Supplement to the San Francisco Bicycle Plan Environmental Impact Report

Appendices



City and County of San Francisco Planning Department
Case No. 2007.0347E
State Clearinghouse No. 2008032052

Draft Supplemental EIR Publication Date: February 11, 2015
Draft Supplemental EIR Public Hearing Date: March 19, 2015
Draft Supplemental EIR Public Review Period: February 12, 2015 – March 30, 2015

Written comments should be sent to:

Sarah B. Jones, Environmental Review Officer
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, CA 94103
or
sarah.b.jones@sfgov.org

1.0 SETTING

This section describes the existing street network and traffic, transit, pedestrian, bicycle, loading, and parking conditions in project study area, which is generally bounded by Market Street to the north, First Street to the east, King Street to the south, and Third Street to the west. Portions of Fifth and Bryant Streets, near the Interstate 80 ramps are also included in the study area.

The majority of traffic, transit, pedestrian, bicycle, emergency vehicle access, loading, and parking data presented herein was provided by San Francisco Planning Department, San Francisco Municipal Transportation Authority (SFMTA) and from relevant past and concurrent projects within the project study area. Additional data collection for project analysis was conducted in September 2013 by CHS Consulting Group and included traffic counts at five study area intersections. CHS also conducted field observations of vehicular queuing patterns, and conflicts among automobiles, bikes, pedestrians, and Muni buses in the vicinity of the proposed project.

2.1 Roadway Network

This section presents a discussion of existing roadway systems in the vicinity of the proposed project, including roadway designation, number of lanes, and traffic flow directions. The functional designation of these roadways was obtained from the *San Francisco General Plan*.¹¹ Detailed definitions of the *San Francisco General Plan*'s roadway classification schemes are included in **Appendix C**. It should be noted that as described in Section 1.1, the existing street layout of Second Street would be reconfigured as part of the proposed project.

2.1.1 Regional Access

This study area is served by three freeways: Interstate 80 (I-80), Interstate 280 (I-280) and U.S. Highway 101. These facilities are described below.

Interstate 80 (I-80) provides the primary regional access to the project area. In the project vicinity this freeway is between Harrison and Bryant Streets. The San Francisco-Oakland Bay Bridge is part of I-80, connecting San Francisco to the East Bay. Between the East Bay and the project site, the primary access points are via the I-80 westbound off-ramp at Fremont and Harrison Streets and the eastbound on-ramp at Essex, Sterling and First Streets.

Interstate 280 (I-280) provides regional access to and from the South Bay. I-280 terminates at three blocks from the study area, at Fifth Street and the traffic merges with King Street traffic. I-280 also has nearby on- and off-ramps at Sixth Street, and Brannan Street intersection. I-280 connects to U.S. 101 approximately four miles south of the Study Area. I-280 and U.S. 101 continue as parallel freeways southbound along the Peninsula before reconnecting in San Jose.

U.S. Highway 101 (U.S. 101) provides regional access to both the north and south of San Francisco. I-80 joins U.S. 101 to the southwest of the project area and provides access to the South Bay and the Peninsula. U.S. 101 connects San Francisco to the North Bay via Van Ness Avenue, Lombard Street, and the Golden Gate Bridge. Access to and from U.S. 101 southbound includes the on- and off-ramps at Seventh/Harrison and Seventh/Bryant Streets, as well as at the intersections of Tenth/Bryant and Ninth/Bryant Street, respectively.

¹¹ *San Francisco General Plan*, Transportation Element, July 1995. Available online at http://www.sf-planning.org/ftp/General_Plan/I4_Transportation.htm. Accessed April 14, 2014.



Figure 2
Study Intersections



DRAFT ENVIRONMENTAL IMPACT REPORT

San Francisco Museum of Modern Art Expansion / Fire Station Relocation and Housing Project

PLANNING DEPARTMENT
CASE NOS. 2009.0291E and 2010.0275E

STATE CLEARINGHOUSE NO. 2010102047

Draft EIR Publication Date:	JULY 11, 2011
Draft EIR Public Hearing Date:	AUGUST 11, 2011
Draft EIR Public Comment Period:	JULY 11, 2011 - AUGUST 25, 2011



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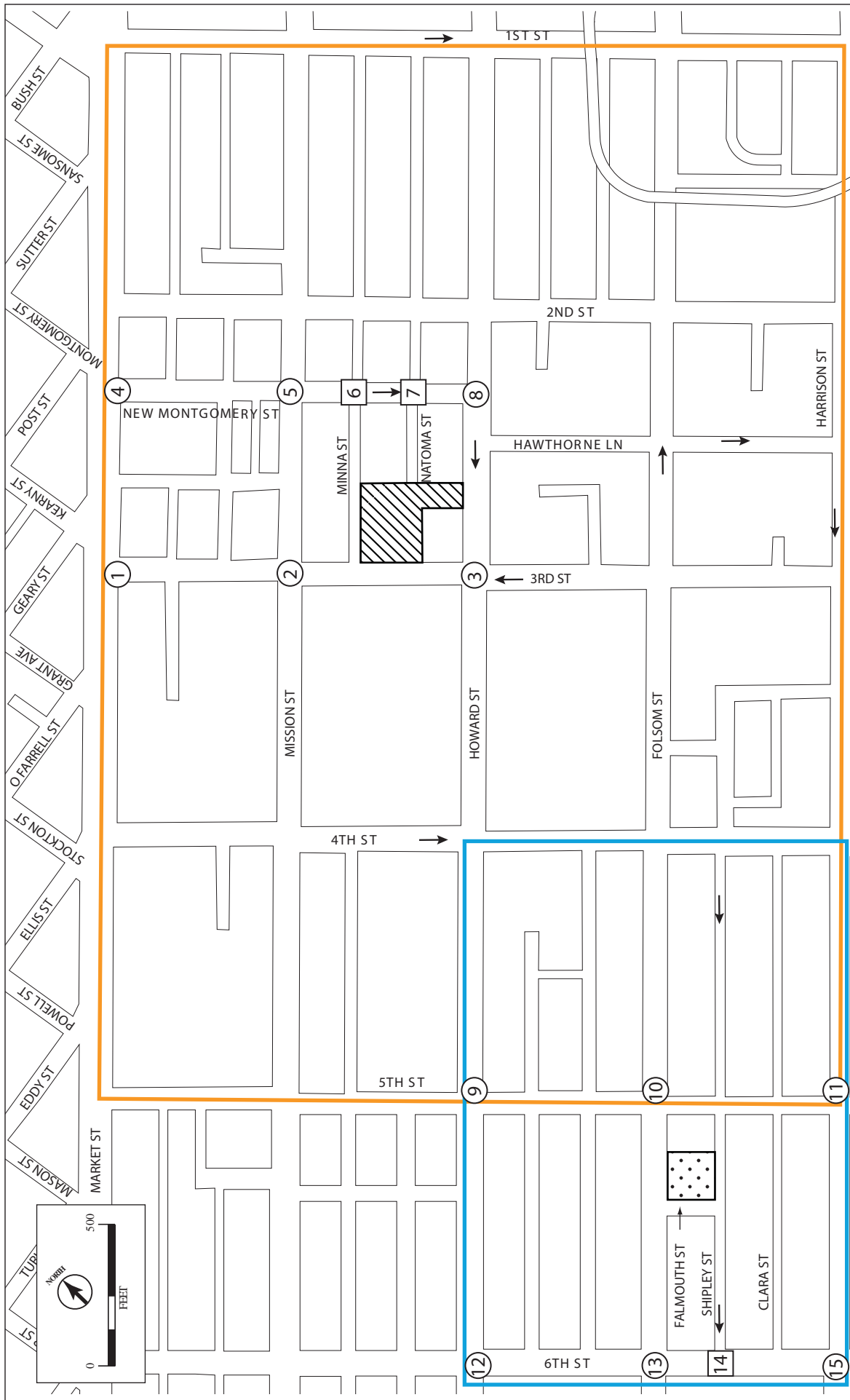


FIGURE IV.D-1

- SFMOMA EXPANSION SITE
- FIRE STATION RELOCATION + HOUSING PROJECT SITE
- SFMOMA EXPANSION TRANSIT + PARKING STUDY AREA
- FIRE STATION RELOCATION TRANSIT + PARKING STUDY AREA
- # SIGNALIZED STUDY INTERSECTION
- ← DIRECTION OF TRAVEL
- # UNSIGNALIZED STUDY INTERSECTION

SFMOMA Expansion and Fire Station Relocation and Housing Project EIR Study Area and Analysis Locations

SOURCES: LCW CONSULTING, 2011.

255 SEVENTH STREET (WESTBROOK PLAZA) PROJECT

Draft Environmental Impact Report

Planning Department Case No. 2004.0588E

State Clearinghouse No. 2006092050

Draft EIR Publication Date: February 24, 2007

Draft EIR Public Hearing Date: April 5, 2007

Draft EIR Public Comment Period: February 24, 2007 until April 9, 2007



during the PM peak hour; 217 daily walking trips of which 33 would be during the PM peak hour; and 27 other daily trips of which five (5) would be during the PM peak hour.

	Residential		South of Market Health Center				Total	
	Daily	PM Peak Hour	Patients		Employees		Daily	PM Peak Hour
			Daily	PM Peak Hour	Daily	PM Peak Hour		
Vehicle	128	22	16	1	31	3	175	26
Transit	121	21	30	3	20	2	171	26
Walk	168	29	46	4	3	0	217	33
Other	27	5	-	-	-	-	27	5

Source: South of Market Health Center, *SMHC Transportation and Trend Data*, November 2005; San Francisco Planning Department, November 2005.

Traffic Impacts

The project site is located at 255 Seventh Street between Howard and Folsom Streets. Within the project site vicinity, Seventh Street is a one-way Major Arterial with four travel lanes in the northbound direction.²⁴ On-street parking is generally provided along both sides of the street with a bicycle lane, and metered parking is provided adjacent to the project site. Seventh Street is part of the #23 bike lane.²⁵ Howard Street is a one-way arterial with four travel lanes in the westbound direction and a bicycle lane. The *San Francisco General Plan* identifies Howard Street as a Major Arterial in the Congestion Management Program (CMP) Network. Howard Street is part of the #30 bike lane. Within the project site vicinity, Folsom Street is a one-way arterial with four travel lanes and a bicycle lane in the eastbound direction. The *San Francisco General Plan* identifies Folsom Street as a Major Arterial in the CMP Network and it is also part of the #30 bike lane. Moss Street is a one-way street with one lane in the southbound direction. Parking is permitted on the west side of the street only.

As discussed above, the proposed project would generate about 175 daily vehicle trips of which 26 would be during the PM peak hour (see Table 3). The number of vehicles that would be added to the PM peak hour by the proposed project is too low to have a perceptible effect on traffic flows on the street network serving the project area, particularly given the relatively high volume of traffic on Seventh, Howard, and Folsom Streets. The average driver would not discern a change in the level of delay or congestion they currently experience. Traffic impacts associated with the proposed project during the PM peak hour would not be a large enough increase to affect a significant increase relative to the existing capacity of the surrounding street system. Accordingly, the proposed project would result in a less-than-significant traffic impact.

²⁴ It should be noted that in the South of Market area, streets that run in the northwest/southeast direction are generally considered north-south streets, whereas streets that run in the southwest/northeast direction are generally considered east-west streets.

²⁵ Department of Parking and Traffic, Map 5: Bicycle Route Network, accessed at http://www.sfgov.org/site/dpt_page.asp?id=13632, November 9, 2005.



SAN FRANCISCO PLANNING DEPARTMENT

Notice of Preparation of an Environmental Impact Report and Notice of a Public Scoping Meeting

Date: May 6, 2015
Case No.: **2014-001272ENV**
Project Title: **Pier 70 Mixed-Use District Project**
Zoning: M-2 (Heavy Industrial) and P (Public)
40-X and 65-X Height and Bulk Districts
Block/Lot: Assessor's Block 4052/Lot 001, Block 4111/ Lot 004
Block 4120/Lot 002, and Block 4110/Lots 001 and 008A
Lot Size: 35 acres (1,524,600 square feet)
Project Sponsor: Port of San Francisco and Forest City Development California, Inc.
Lead Agency: San Francisco Planning Department
Staff Contact: Andrea Contreras – (415) 575-9044
andrea.contreras@sfgov.org

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

PROJECT OVERVIEW

The proposed Pier 70 Mixed-Use District project site is an approximately 35-acre area bounded by Illinois Street to the west, 20th Street to the north, San Francisco Bay to the east, and 22nd Street to the south. (See Figure 1: Project Location.) The project site is south of Mission Bay South, east of the Potrero Hill and Dogpatch¹ neighborhoods, and within the northeastern portion of San Francisco's Central Waterfront Plan Area. In addition, the majority of the project site is located within the Pier 70 area (Pier 70), which is owned by the City and County of San Francisco through the Port of San Francisco (Port).

Two development areas constitute the project site. The "28-Acre Site" is an approximately 28-acre site located between 20th Street, Michigan Street, 22nd Street, and San Francisco Bay that includes Assessor's Block 4052/Lot 001 and Block 4111/Lot 004. The "Illinois Parcels" form an approximately 7-acre site that consists of an approximately 3.4-acre Port-owned parcel, called the 20th/Illinois Parcel, along Illinois Street at 20th Street (Assessor's Block 4110/Lot 001) and an approximately 3.6-acre parcel, called the Hoedown Yard, at Illinois and 22nd streets (Assessor's Block 4120/Lot 002 and Block 4110/Lot 008A),

¹ The Dogpatch neighborhood is bounded by Mariposa Street to the north, I-280 to the west, Cesar Chavez Street to the south, and Illinois Street to the east.



DRAFT ENVIRONMENTAL IMPACT REPORT

San Francisco 2004 and 2009 Housing Element

Volume I: Draft EIR (Section I to Section V.G)

PLANNING DEPARTMENT
CASE NO. **2007.1275E**

STATE CLEARINGHOUSE NO. 2008102033

Draft EIR Publication Date:	June 30, 2010
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Environmental Review Officer | 1650 Mission Street, Suite 400 | San Francisco, CA 94103

Table V.F-1

P.M. Peak Hour Intersection LOS – Existing Conditions and Cumulative (2025) Conditions

ID	Intersection	Existing Conditions			Cumulative (2025) Conditions		
		P.M. Peak			P.M. Peak		
		Delay	LOS	V/C	Delay	LOS	V/C
1	Geary Blvd / 25th Ave	16.0	B		15.9	B	
2	Geary Blvd / Park Presidio Ave	22.9	C		26.8	C	
3	Geary Blvd / Masonic Ave	38.2	D		41.8	D	
4	Geary Blvd / Gough St	22.8	C		38.0	D	
5	Geary Blvd / Franklin St	20.6	C		47.1	D	
6	Geary Blvd / Van Ness Ave	35.9	D		67.2	E	
7	Lombard St / Richardson Ave	45.1	D		61.5	E	
8	Lombard St / Van Ness Ave	22.7	C		23.5	C	
9	Stockton St / Broadway	16.0	B		15.7	B	
10	The Embarcadero / Broadway	53.5	D		>80.0	F	0.768
11	The Embarcadero / Washington St	42.5	D		69.1	E	
12	The Embarcadero / Harrison St	24.2	C		55.0	E	
13	1st St / Market St	67.7	E		>80.0	F	0.750
14	1st St / Mission St	>80.0	F	1.253	>80.0	F	1.307
15	1st St / Harrison St	>80.0	F	1.204	>80.0	F	1.403
16	2nd St / Folsom St	44.7	D		>80.0	F	1.558
17	2nd St / Bryant St	60.3	E		>80.0	F	1.451
18	3rd St / King St	43.7	D		>80.0	F	1.178
19	4th St / King St	35.0	D		57.3	E	
20	4th St / Harrison St	63.2	E		67.4	E	
21	4th St / Bryant St	20.9	C		23.8	C	
22	6th St / Market St	29.1	C		60.2	E	
23	6th St / Mission St	46.0	D		>80.0	F	1.231
24	6th St / Brannan St	>80	F	1.263	>80.0	F	1.418
25	Market St / Van Ness Ave	21.8	C		54.9	D	
26	Mission St / South Van Ness Ave	70.3	E		>80.0	F	0.940
27	10th St / Brannan St / Potrero St / Division St	72.0	E		>80.0	F	1.264
28	9th St / Market St	15.1	B		17.9	B	
29	10th St / Howard St	18.9	B		24.9	C	
30	16th St / Mission St	30.8	C		34.7	C	
31	16th St / Potrero St	19.5	B		>80.0	F	1.722
32	16th St / 3 rd St	35.8	D		37.3	D	
33	Market St / Octavia St	41.9	D		>80.0	F	1.273
34	Market St / Guerrero St / Laguna St	40.1	D		45.1	D	

Table V.F-1

P.M. Peak Hour Intersection LOS – Existing Conditions and Cumulative (2025) Conditions

ID	Intersection	Existing Conditions			Cumulative (2025) Conditions		
		P.M. Peak			P.M. Peak		
		Delay	LOS	V/C	Delay	LOS	V/C
35	Mission St / Otis St / Division St	65.2	E		70.8	E	
36	Fell St / Divisadero St	20.1	C		25.4	C	
37	15th St / Market St / Sanchez St	47.9	D		56.5	E	
38	Fulton St / Stanyan St	47.8	D		70.3	E	
39	Lincoln Way / 19th Ave	>80	F	1.243	>80.0	F	1.229
40	Taraval St / 19th Ave	18.3	B		21.8	C	
41	Sloat Blvd / 19th Ave	>80	F	1.346	>80.0	F	1.411
42	Winston Dr / 19th Ave	62.7	E		>80.0	F	1.373
43	Junipero Serra Blvd / 19th Ave	75.9	E		>80.0	F	1.269
44	Junipero Serra Blvd / Ocean Ave	40.4	D		59.0	E	
45	Phelan Ave / Ocean Ave / Geneva St	17.6	B		34.7	C	
46	Lake Merced Blvd / Brotherhood Way	49.2	D		>80.0	F	1.158
47	Mission St / Geneva St	28.9	C		33.9	C	
48	Mission St / Silver Ave	15.7	B		20.9	C	
49	Mission Street / Ocean Ave	8.2	A		8.9	A	
50	Sunnydale Ave / Bayshore Blvd	23.6	C		>80.0	F	1.523
51	Gilman St / Paul Ave / 3rd St	23.9	C		33.3	C	
52	Industrial St / Bayshore Blvd / Alemany Blvd	51.2	D		>80.0	F	1.150
53	3rd St / Palou Ave	30.1	C		57.1	E	0.713
54	3rd St / Evans Ave	35.7	D		>80.0	F	1.309
55	3rd St / Cesar Chavez St	27.6	C		>80.0	F	0.951
56	Evans Ave / Cesar Chavez St	47.4	D		>80.0	F	1.365
57	Bryant St / Cesar Chavez St	51.4	D		>80.0	F	1.474
58	Mission St / Cesar Chavez St	27.7	C		64.9	E	
59	Mission St / 24th St	28.0	C		36.3	D	
60	San Jose Ave / Randall St	25.8	C		52.9	D	

Note: Delay = Overall average control delay in seconds per vehicle; V/C = overall volume to capacity ratio; LOS = overall level of service

The LOS results for Cumulative 2025 Conditions reveal several traffic operational trends along a number of corridors in San Francisco:

- Existing Embarcadero corridor service levels will deteriorate from acceptable levels under Existing Conditions to unacceptable levels (LOS E/F) under Cumulative 2025 Conditions;



SAN FRANCISCO PLANNING DEPARTMENT

Second Street Improvement Project Draft Supplemental Environmental Impact Report Supplement to the San Francisco Bicycle Plan Environmental Impact Report

Appendices



City and County of San Francisco Planning Department
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State Clearinghouse No. 2008032052

Draft Supplemental EIR Publication Date: February 11, 2015
Draft Supplemental EIR Public Hearing Date: March 19, 2015
Draft Supplemental EIR Public Review Period: February 12, 2015 – March 30, 2015

Written comments should be sent to:

Sarah B. Jones, Environmental Review Officer
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, CA 94103
or
sarah.b.jones@sfgov.org

Table 4 – Intersection Level of Service: Existing Weekday PM Peak Hour

Intersection	Type ¹	Existing (2013)		
		Delay ²	V/C ³	LOS
1 New Montgomery St and Market St	Signal	51.0		D
2 New Montgomery St and Mission St	Signal	61.3	1.04	E
3 New Montgomery St and Howard St	Signal	39.5		D
4 Hawthorne St and Howard St	Signal	19.6		B
5 Hawthorne St and Folsom St	Signal	74.5	1.08	E
6 Hawthorne St and Harrison St	Signal	43.4		D
7 Third St and Bryant St	Signal	41.1		D
8 Third St and Brannan St	Signal	32.0		C
9 Third St and Townsend St	Signal	31.1		C
10 Third St and King St	Signal	> 80	0.97	F
11 Second St and Market St	Signal	10.8		B
12 Second St and Mission St	Signal	15.0		B
13 Second St and Minna St	TWSC	16.5		C (WB)
14 Second St and Howard St	Signal	16.8		B
15 Second St and Folsom St	Signal	64.6	0.94	E
16 Second St and Harrison St	Signal	42.3		D
17 Second St and Bryant St	Signal	> 80	1.30	F
18 Second St and South Park St	TWSC	> 80	N/A	F (EB)
19 Second St and Brannan St	Signal	14.4		B
20 Second St and Townsend St	Signal	14.5		B
21 Second St and King St	Signal	42.9		D
22 Essex St and Folsom	Signal	30.3		C
23 Essex St and Harrison St	Signal	> 80	2.23	F
24 First St and Market St	Signal	14.9		B
25 First St and Mission St	Signal	23.0		C
26 First St and Howard St	Signal	18.3		B
27 First St and Folsom St	Signal	> 80	1.26	F
28 First St and Harrison St	Signal	> 80	1.44	F
29 Fifth/Bryant/I-80 EB on-ramps	Signal	> 80	1.34	F

Source: CHS Consulting Group, 2014.

Notes:

Bold indicates an unacceptable intersection level of service condition (LOS E or F).

1. Signal indicates signalized intersection; TWSC indicates a Two-Way Stop-Controlled intersection.

2. LOS and delay for signalized intersections represent conditions for the overall intersection; LOS and delay for TWSC intersections represent conditions for the side-street stop-controlled approach, eastbound (EB); westbound (WB).

3. Volume-to-Capacity (V/C) ratios are only presented for intersections that operate at unacceptable LOS conditions (LOS E or F), per City standards.



Table 13 – Intersection Level of Service: Cumulative (2040) and Cumulative Plus Project – Weekday PM Peak Hour

Overall Intersection Summary							
#	Study Intersection	2040 Cumulative			Cumulative + Project		
		Delay ¹ (seconds)	V/C ²	LOS	Delay ¹ (seconds)	V/C ²	LOS
1	Market St/ Montgomery St	> 80	1.02	F	> 80	1.13	F
2	Mission St/ New Montgomery St	> 80	1.36	F	> 80	1.47	F
3	Howard St/ New Montgomery St	17.5		B	55.9	1.05	E
4	Howard St/ Hawthorne St	12.0		B	42.7		D ³
5	Folsom St/ Hawthorne St	> 80	1.98	F	> 80	2.05	F
6	Harrison St/ Hawthorne St	30.5		C	> 80	1.38	F
7	Bryant St/ Third St	> 80	2.88	F	> 80	2.91	F
8	Brannan St/ Third St	> 80	1.30	F	> 80	1.51	F
9	Townsend St/ Third St	> 80	1.69	F	> 80	2.40	F
10	King St/Third St	> 80	1.34	F	> 80	1.39	F
11	Market St/ Second St	10.5		B	15.6		B
12	Mission St/ Second St	24.4		C	41.1		D
13	Minna St/ Second St	0.6		A (NB)	0.4		A (NB)
14	Howard St/ Second St	> 80	1.20	F	> 80	1.03	F
15	Folsom St/ Second St	> 80	1.62	F	> 80	1.72	F
16	Harrison St/ Second St	> 80	2.58	F	> 80	3.39	F
17	Bryant St/ Second St	> 80	2.26	F	> 80	2.56	F
18	South Park St/Second St	61.0	N/A	F	10.7		B
19	Brannan St/ Second St	31.8		C	31.6		C
20	Townsend St/ Second St	73.3	1.20	E	> 80	1.34	F
21	King St/ Second St	> 80	1.03	F	> 80	0.90	F
22	Folsom St/ Essex St	> 80	6.50	F	> 80	2.84	F
23	Harrison St/ Essex St	> 80	3.73	F	> 80	3.30	F
24	Market St/ First St	17.8		B	18.2		B
25	Mission St/ First St	33.7		C	27.0		C
26	Howard St/ First St	> 80	1.21	F	> 80	1.24	F
27	Folsom St/ First St	> 80	2.48	F	> 80	2.59	F
28	Harrison St/ First St	> 80	1.55	F	> 80	1.74	F
29	Fifth St/Bryant St/ I-80 EB On-Ramp	> 80	3.37	F	> 80	3.32	F

Notes:

Bold indicates an unacceptable intersection level of service condition (LOS E or F).

Shaded values indicate a *Significant Project-Specific Traffic Impact*.

1. LOS and delay for signalized intersections represent conditions for the overall intersection; LOS and delay for unsignalized (e.g., TWSC) intersections represent conditions for the side-street stop-controlled approach, northbound (NB).

2. Volume-to-Capacity (V/C) ratios are only presented for intersections that operate at unacceptable LOS conditions (LOS E or F), per City standards.

3. Intersection #4 Howard and Hawthorne Street was identified as resulting in a significant impact under Existing plus Project Conditions; therefore, it is identified as having a significant impact in the cumulative condition. Also, this intersection would operate at unacceptable LOS F under Cumulative plus Project conditions if the Central SoMa Plan, and its associated reduction in traffic volumes on Howard Street, was not adopted.

Source: CHS Consulting Group, 2014.



DRAFT ENVIRONMENTAL IMPACT REPORT

San Francisco Museum of Modern Art Expansion / Fire Station Relocation and Housing Project

PLANNING DEPARTMENT
CASE NOS. 2009.0291E and 2010.0275E

STATE CLEARINGHOUSE NO. 2010102047

Draft EIR Publication Date:	JULY 11, 2011
Draft EIR Public Hearing Date:	AUGUST 11, 2011
Draft EIR Public Comment Period:	JULY 11, 2011 - AUGUST 25, 2011



SAN FRANCISCO
PLANNING
DEPARTMENT

Written comments should be sent to:
Environmental Review Officer | 1650 Mission Street, Suite 400 | San Francisco, CA 94103

Table IV.D-1: Intersection Level of Service, Existing Conditions – Weekday PM and Saturday Midday Peak Hours

Intersection	Delay ¹	LOS ²
Weekday PM Peak Hour		
1. Third/Market	56.2	E
2. Third/Mission	20.1	C
3. Third/Howard	36.1	D
4. New Montgomery/Market	42.6	D
5. New Montgomery/Mission	21.3	C
6. New Montgomery/Minna ³	45.3 (wb)/44.3 (eb)	E/E
7. New Montgomery/Natoma ³	30.4 (eb)	D
8. New Montgomery/Howard	56.7	E
9. Fifth/Howard	24.9	C
10. Fifth/Folsom	19.7	B
11. Fifth/Harrison/I-80 off-ramp	50.0	D
12. Sixth/Howard	23.6	C
13. Sixth/Folsom	20.0	B
14. Sixth/Shiopley ³	37.3 (wb)	E
15. Sixth/Harrison	25.7	C
Saturday Midday Peak Hour		
1. Third/Market	26.7	C
2. Third/Mission	16.0	B
3. Third/Howard	16.1	B

Notes:

- ¹ Delay presented in seconds per vehicle.
- ² Intersections operating at LOS E or LOS F highlighted in **bold**.
- ³ Unsignalized intersection. Peak hour signal warrants are not met.

wb = westbound; eb = eastbound

Source: LCW Consulting, 2011.

The signalized intersections of Third/Market and New Montgomery/Howard Streets currently experience the greatest average delay per vehicle, and both intersections operate at an overall intersection operating condition of LOS E. In the vicinity of the SFMOMA Expansion site, Third Street and New Montgomery Street serve as primary routes to and from I-80. The poor operating conditions at the intersection of New Montgomery/Howard Streets are due to the high volumes of traffic on Howard Street westbound and on New Montgomery Street southbound. Conditions at this intersection are exacerbated by the nearby signalized intersection of Hawthorne/Howard Streets.

- Conversion of Natoma Street between First and Second Streets into a pedestrian-only street, and establishment and installation of signalized midblock pedestrian crossings on New Montgomery at Second Street and at Natoma Street.¹⁶

Traffic Impacts. Figure IV.D-16 presents the 2030 Cumulative traffic volumes for the weekday PM peak hour for intersections in the vicinity of the SFMOMA Expansion site, while Figure IV.D-17 presents the PM peak hour volumes for intersections in the vicinity of the Fire Station Relocation and Housing Project site. Table IV.D-27 presents a comparison between the Existing and 2030 Cumulative intersection operating conditions for the weekday PM peak hour. Under 2030 Cumulative conditions, vehicle delays would increase at the study intersections over Existing conditions, and 10 of the 15 study intersections would operate at LOS E or LOS F conditions (as compared with four intersections under Existing conditions).

Table IV.D-27: Intersection Level of Service, Existing and 2030 Cumulative Conditions – Weekday PM Peak Hour

Intersection	Existing		2030 Cumulative	
	Delay (v/c) ¹	LOS	Delay (v/c) ¹	LOS
1. Third/Market Streets	56.2	E	>80 (1.02)	F
2. Third/Mission Streets	20.1	C	>80 (4.78)	F
3. Third/Howard Streets	36.1	D	>80 (1.66)	F
4. New Montgomery/Market Streets	42.6	D	63.2	E
5. New Montgomery/Mission Streets	21.3	C	>80 (1.17)	F
6. New Montgomery/Minna Streets ²	45.3 (wb)	E	>60 (wb/eb)	F
7. New Montgomery/Natoma Streets ²	30.4 (eb)	D	36.8 (eb)	E
8. New Montgomery/Howard Streets	56.7	E	>80 (2.27)	F
9. Fifth/Howard Streets	24.9	C	51.3	D
10. Fifth/Folsom Streets	19.7	B	29.8	C
11. Fifth/Harrison Streets /I-80 off-ramp	50.0	D	>80 (0.97)	F
12. Sixth/Howard Streets	23.6	C	43.3	D
13. Sixth/Folsom Streets	20.0	B	31.0	C
14. Sixth/Shibley Streets ²	37.3 (wb)	E	60.3 (wb)	F
15. Sixth/Harrison Streets	25.7	C	53.0	D

Notes:

¹ Delay presented in seconds per vehicle. Intersections operating at LOS E or LOS F are highlighted in **bold**. Volume-to-capacity (v/c) ratio is presented for signalized intersections operating at LOS F.

² Unsignalized intersection. Peak hour signal warrants are not met.

Source: LCW Consulting, 2011.

¹⁶ The SFMOMA Expansion would complement the proposed Transit Center District Plan improvements, as it would provide a new pedestrian connection between Natoma and Howard Streets. It would also allow for access between Natoma Street and Third Street through the public portion of the museum on the first and second floors.