



SAN FRANCISCO PLANNING DEPARTMENT

MEMO

Notice of Electronic Transmittal

Planning Department Response to the Appeal of Categorical Exemption for the SFMTA – 13th Street Eastbound Bicycle Facility Project

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DATE: June 27, 2017
TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: Lisa Gibson, Environmental Review Officer – (415) 575-9032
Christopher Espiritu, Environmental Planner (415) 575-9022
RE: BOS File No. 170638 [Planning Case No. 2017-001180ENV]
Appeal of Categorical Exemption for the SFMTA – 13th Street Eastbound
Bicycle Facility Project

HEARING DATE: June 27, 2017

In compliance with San Francisco's Administrative Code Section 8.12.5 "Electronic Distribution of Multi-Page Documents," the Planning Department has submitted a multi-page response to the Appeal of Categorical Exemption for the SFMTA – 13th Street Eastbound Bicycle Facility Project [BF 170638] in digital format. Hard copies of this response have been provided to the Clerk of the Board for distribution to the appellants and project sponsor by the Clerk of the Board. A hard copy of this response is available from the Clerk of the Board. Additional hard copies may be requested by contacting the Christopher Espiritu of the Planning Department at 415-575-9022 or Christopher.Espiritu@sfgov.org.

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SAN FRANCISCO PLANNING DEPARTMENT

MEMO

Categorical Exemption Appeal

SFMTA – 13th Street Eastbound Bicycle Facility Project

DATE: June 27, 2017
TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: Lisa Gibson, Environmental Review Officer – (415) 575-9032
Devyani Jain, Acting Deputy Environmental Review Officer – (415) 575-9051
Wade Wietgreffe – (415) 575-9050
Christopher Espiritu – (415) 575-9022
RE: Planning Case No. 2017-001180ENV
Appeal of Categorical Exemption for SFMTA – 13th Street Eastbound Bicycle Facility Project
HEARING DATE: June 27, 2017
ATTACHMENTS: D – APPEAL LETTERS DATED JUNE 16, 2017 AND JUNE 23, 2017

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PROJECT SPONSOR: Jennifer Wong, Transportation Planner, San Francisco Municipal Transportation Agency (SFMTA), (415) 701-4551
APPELLANT: Mary Miles, Attorney for Coalition for Adequate Review

INTRODUCTION

This memorandum is a response (“Supplemental Appeal Response”) to the letter of appeal (“Supplemental Appeal Letters” to the Board of Supervisors (the “board”) regarding the Planning Department’s (the “department”) issuance of a Categorical Exemption under the California Environmental Quality Act (“CEQA Determination”) for the proposed San Francisco Municipal Transportation Agency (the “SFMTA”) – 13th Street Eastbound Bicycle Facility Project (the “project”). Department staff submitted an appeal response memorandum on June 19, 2017 (“Original Appeal Response”), addressing concerns raised in the original May 18, 2017, Letter of Appeal (“Original Appeal Letter”).

Please refer to the department’s original appeal response for a description of the approval process of the CEQA Determination.

The decision before the board is whether to uphold the department’s decision to issue a categorical exemption and deny the appeal, or to overturn the department’s decision to issue a categorical exemption and return the project to the department for additional environmental review.

PROJECT DESCRIPTION

Please refer to the department's original appeal response for a description of the project.

BACKGROUND

Please refer to the department's original appeal response for background information on the project.

APPELLANT CONCERNS AND PLANNING DEPARTMENT RESPONSES

The concerns raised in Ms. Miles' supplemental appeal letters from June 16, 2017 and June 23, 2017 repeat some of the appellant's previous concerns stated in the original appeal letter, among them that the project would result in significant impacts, the lack of noticing, vision zero, and appropriateness of the categorical exemption classes for the project. The department has already provided responses to these concerns (and others) in the original appeal response and those responses are incorporated herein by reference. The concerns below are identified as "Supplemental Concern 2" and "Concern 7" through "Concern 8" to reflect the numbering of the issues addressed in the department's original appeal response, which ended with Concern 6. Also, the attachment to this supplemental appeal response (referred to below) is identified as "Attachment D" to continue the sequencing of the attachments to the department's original appeal response.

Supplemental Concern 2: The department failed to accurately state existing and project conditions.

Supplemental Concern 2: The department did accurately describe existing and project conditions and the appellant misunderstands the exemption certificate.

The proposed project includes the reduction in one travel lane on eastbound 13th Street within the project limits of South Van Ness Avenue and Bryant Street. The appellant misunderstands the project by interpreting through lanes as travel lanes and the reallocation to a non-through movement would result in queuing. The provision of two new left turn lanes to accommodate vehicles traveling to the I-80 ramp on Bryant/8th street would facilitate PM peak hour vehicles proceed to the intersection, rather than queue on the other travel lanes on 13th Street. The project would maintain access to eastbound 13th Street with one travel lane in the eastbound direction and would accommodate the estimated 400 vehicles traveling at this direction, based on the April 19, 2016 traffic counts.

The appellant misunderstands the role that CEQA provides to lead agencies in developing thresholds of significance. The CEQA Guidelines section 15064.7 states that each "public agency is encouraged to develop and publish thresholds of significance that the agency uses in the determination of the significance of environmental effects." It further states that in circumstances where public agencies decide to develop thresholds of significance for general use, those thresholds of significance must be formally adopted through a public review process and supported by substantial evidence. As stated in the appeal response, which footnotes the staff report for the removal of automobile delay in assessing impacts on the environment pursuant to CEQA, San Francisco complied with this requirement. Public Resources Code section 21099, regarding the removal of automobile delay, does not prevent a lead agency from making

this change prior to the Office of Planning and Research transmitting to the Secretary of the Natural Resources Agency and the secretary subsequently adopting revisions to the CEQA Guidelines.

The appellant also misinterprets the statutory language regarding the removal of automobile delay. The full text of Public Resources Code section 21099: “Upon certification of the guidelines by the Secretary of the Natural Resources Agency pursuant to this section, automobile delay, as described solely by level of service or similar measures of vehicular capacity or traffic congestion shall not be considered a significant impact on the environment pursuant to this division, except in locations specifically identified in the guidelines, if any.” The appellant ignores the “except in locations specifically identified in the guidelines, if any.” In the materials prepared by the Office of Planning and Research,¹ they have not identified any locations where automobile delay should be considered as an impact in CEQA.

Furthermore, the City did analyze the environmental impacts to other components of the transportation system (e.g., bicycle, walking, etc.). Vehicular traffic and parking do not constitute the entirety of the transportation system. In addition, as documented in the exemption certificate and appeal response, the department also assessed the potential for significant impacts from the secondary effects of vehicular traffic (e.g., noise, air quality, etc.). Therefore, the appellant’s rebuttal is invalid.

Concern 7: The department’s existing conditions data, including traffic volumes, are unsupported and conflict with MTA’s traffic data.

Response 7: The traffic volumes collected for the project are valid.

The appellant contends that the traffic volumes used to assess existing conditions in the categorical exemption vary significantly from SFMTA’s previous traffic volume counts, and the department fails to provide the dates, times, sites, and who conducted the traffic counts, or to describe the methodology used. In response to the appellant’s Immediate Disclosure Request on June 20, 2017, the department extended a courtesy by coordinating with SFMTA to obtain all reasonably available traffic count data for the project intersections in question.² SFMTA provided available traffic counts for each study area intersection for the years 2006, 2009-2011, and 2013-2016, and this includes traffic count data used for the analysis of the project (April 2016). As described below, SFMTA obtains traffic counts from various qualified consultants and vendors.

The general scope of work with the vendors includes conducting speed and vehicle classification counts, intersection turning movement counts, and bicycle and/or pedestrian counts. Other specialized types of counts may also be collected based on SFMTA’s needs. The SFMTA uses standard transportation industry methods and practices to collect traffic data. For these standard methods, counts are generally only collected on a Tuesday, Wednesday or Thursday and not on or near a public school holiday. The following standard methods used by the SFMTA are described below.

¹ Materials are available online here: https://www.opr.ca.gov/s_sb743.php.

² All materials in support of the immediate disclosure request were provided to the appellant on June 27, 2017.

- **Tube Counts:**

Contractors generally use one or more pair of pneumatic tubes to measure speed, volumes and/or vehicle classifications across two lanes of undivided roadway. Data collection on dates and times coinciding with street cleaning are avoided to prevent damage to the equipment.

- **Intersection Turning Movement Counts:**

Contractors generally collect two-hour AM and two-hour PM peak period manual or video traffic counts at intersections requested by SFMTA. Manual counts involve one or two in-field staff who observe the number and direction of vehicles and pedestrian and bicycle movements. For video counts, contractors staff watch the video footage and manually record the number of turning vehicles. Fully automated video count technology is emerging but is not currently employed by the SFMTA.

- **Video Bicycle and Pedestrian Counts:**

Contractors generally collect 24-hour bicycle and/or pedestrian counts at roadways requested by SFMTA using video recording equipment. Traffic counting firm staff watch the video footage and manually record the number of bicyclists and/or pedestrians.

SFMTA ordinarily provides a suggested location for each count and specifies which type of data to collect on each roadway segment. The contractor determines the exact placement of the equipment within the roadway segment, based on SFMTA's suggestion to obtain a typical volume, speed or other count survey for that segment. Contractors are responsible for equipment performance, performing actual counts, data quality and compiling data in requested formats.

As previously described in the original appeal response, for the project's transportation analysis, SFMTA provided the department with traffic counts collected for three intersections within the project limits: 13th and Folsom streets, 13th and Harrison streets, and 11th, 13th, Bryant, and Division streets. As stated on page 5 in the exemption certificate, the intersection turning movement counts were taken by the SFMTA in April 2016 during the p.m. peak hour (between 4:00 p.m. to 6:00 p.m.). More specifically, the traffic counts were taken on Tuesday April 19, 2016. Pursuant the Planning Department's *Transportation Impact Analysis Guidelines*, to assess normal weekday traffic, counts should be taken on a Tuesday, Wednesday, or Thursday and should be less than two years old. The traffic counts collected for the project's transportation analysis complied with this guidance. Therefore, the appellant's contention that traffic volumes on 13th Street are not valid is incorrect.

Furthermore, based on past traffic counts collected by SFMTA and historically collected for other nearby projects with overlapping intersections, the traffic volumes observed by SFMTA in 2016 do not substantially vary from counts collect since 2009. Those past counts indicate project intersection traffic volumes to be between approximately 9 percent below and 5 percent greater, than those collected in April

April 2016. This weekday variation is within the range expected at an urban intersection.³ Even if the higher end of the counts were to be considered, the impact conclusions in the exemption certificate would not change.

Concern 8: The department failed to adequately analyze the project's impacts on the removal of parking, transportation impacts, as well as other impacts including air quality.

Response 8: The department's analysis of impacts is based upon substantial evidence, the project would not result in significant impacts, and the appellant has not provided substantial evidence to indicate otherwise.

The appellant contention that the project would have a significant impact due to the removal of parking spaces on 13th Street is incorrect. In accordance with CEQA Section 21099 – Modernization of Transportation Analysis for Transit Oriented Projects – aesthetics and parking shall not be considered in determining if a project has the potential to result in significant environmental effects. The project includes the removal of 35 existing vehicle parking spaces on 13th Street, which is contrary to the appellant's contention that hundreds of parking spaces would be removed. Furthermore, the amount of parking removed for this project would not be considered substantial. The Department for many years found that, in the transit-rich urban context of San Francisco, parking loss or deficit in and of itself does not result in direct physical changes to the environment. In other words, the social inconvenience of a person searching in their vehicle for an available parking space is not an environmental impact under the purview of CEQA; instead, the secondary effect of this search in relation to other topics (e.g., air quality, noise) is an environmental impact. The project analyzed the abovementioned secondary effects on air quality and noise and was not found to result in a significant impact.

The appellant also claims that the project would result in air quality impacts due to the removal of travel lanes and the subsequent queuing that would occur on 13th Street. The appellant is incorrect in the assumption that significant impacts would result due to the project resulting in an increase in delay at some locations that and the project would in turn result in increased emissions of criteria pollutants or ozone precursors at those locations. As discussed in the exemption certificate, these increases were determined to likely be minor because drivers would be expected to modify their travel routes, or in some cases change their travel modes. Any changes in travel mode to buses, bicycles, and/or walking would reduce vehicle-generated emissions that would otherwise occur. The project would not generate new vehicle trips, would not divert a substantial number of trips to alternate corridors, and would increase delay at some intersections but this would not be considered substantial, thus the air quality impact related to vehicle delay at intersections would be relatively minor.

An increase in emissions does not automatically equate to a significant impact. The department determined that the travel lane reductions included as part of the project would not be significant based

³ The appellant references supposed eastbound movement counts from 2006 that indicate higher volumes at the intersection of 13th and Mission streets than those presented for the study intersections. The eastbound counts at this intersection are likely higher than the study intersections due to the presence of the on-ramp to Highway 101 at South Van Ness Avenue, west of the project boundary.

upon its experience with air quality analysis for other projects. For example, the Sixth Street Pedestrian Safety project proposes the reduction from four to two vehicle travel lanes (a reduction of one lane in each direction) on Sixth Street between Market and Bryant streets, or approximately 0.6 mile. Existing vehicular traffic volumes along Sixth Street are similar or greater than those counted along 13th Street. An air quality analysis was conducted for the Sixth Street project to account for the increased vehicular delay and idling times and the shifting of travel routes that may occur under existing plus project and cumulative conditions. As documented in that 6th Street analysis, the net increase in emissions would be negligible;⁴ that is, the greatest increase in air pollutant emissions would be less than three percent of the amount required to trigger a significant criteria air pollutant impact. Therefore, given the greater amount of estimated vehicular traffic diversion for the Sixth Street project compared to this project and associated minor amount of emissions from that project, it can be concluded that impacts for this project would be less than significant, contrary to the appellant's claims.

CONCLUSION

No substantial evidence supporting a fair argument that a significant environmental effect may occur as a result of the project has been presented that would warrant preparation of further environmental review. The department has found that the project is consistent with the cited exemption. The appellant has not provided any substantial evidence or expert opinion to refute the conclusions of the department.

For the reasons stated above and in the April 10, 2017 CEQA Categorical Exemption Determination, the CEQA Determination complies with the requirements of CEQA and the project is appropriately exempt from environmental review pursuant to the cited exemption. The department therefore recommends that the board uphold the CEQA Categorical Exemption Determination and deny the appeal of this CEQA Determination.

⁴ Orion Environmental Associates, Sixth Street Pedestrian Safety Project, Final Air Quality Technical Report, February 2017. This document is incorporated by reference and available as part of Case No. 2014.1010E.

Attachment D1

**Supplemental Appeal Letter dated June 16, 2017 from
Mary Miles, Coalition for Adequate Review**

FROM:

Mary Miles (SB #230395)
Attorney at Law for
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TO:

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

DATE: June 16, 2017

RE: BOS File No. 170638

**APPELLANT'S BRIEF IN SUPPORT OF APPEAL TO BOARD OF SUPERVISORS OF
CATEGORICAL EXEMPTION, APPROVAL, AND IMPLEMENTATION OF
"EASTBOUND 13TH STREET BICYCLE FACILITY PROJECT"**

INTRODUCTION

This Appeal is of the San Francisco Planning Department's environmental determination on the new bicycle "facility" on eastbound 13th Street between Folsom Street and Bryant Street ("the Project"). Please distribute a copy of this Statement to every Supervisor and place a copy in all applicable Project files.

Initially, Appellant objects to the Board of Supervisors ("Board" or "BOS") procedures requiring comment eleven days in advance of the Board's hearing, which is contrary to the California Environmental Quality Act ("CEQA") (Pub. Res. Code ["PRC"] §§21000 *et seq.*). CEQA allows public comment up to and including the date of the hearing or final disposition of the Board. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal. App. 4th 1184, 1199-1202; 14 Cal.Code Regs. ["Guidelines"] §15202(b); PRC §21177(a).) The right to public comment is curtailed by the Board's improper time constraints, which deprive Appellant and the public of the right to more fully set forth their position and be heard. Further, Appellant is not subject to "exhaustion" requirements in future proceedings where the lead agency does not conduct public proceedings before its environmental determination. (*Ibid.*; see also, *Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster ["Azusa"]* (1997) 52 Cal.App.4th 1165, 1209-1210.)

Since the Project clearly has significant direct, indirect, and cumulative impacts adversely affecting transportation, air quality, GHG, public safety (including emergency vehicle access), parking, energy consumption, and human impacts, it is not exempt under CEQA. (*e.g.*, PRC §§21001; 21083.05, 21084(e); Guidelines §§15064, 15065(a).)

Moreover, the categorical exemptions for "minor alterations" and "existing conditions" invoked by the City do not apply to this Project, because there are no existing bicycle "facilities" on 13th Street. This Project is not a "minor alteration" but instead makes major changes on a heavily traveled street in San Francisco with significant impacts on the environment. Even if in theory a categorical exemption could apply to this Project, the exceptions described in Guidelines section 15300.2(a) would negate such a theory. Both cumulative impacts and the extraordinary traffic conditions specific to this location, and the fact that other bicycle "facilities" are present and/or proposed on 14th, 15th, 16th, and 17th Streets, show that the Project is subject to the "cumulative impacts" and "unusual circumstances" exceptions described in Guidelines section 15300.2(a).

By implementing the Project without providing the public the right of appeal, City violated CEQA's fundamental mandate of allowing the public to participate meaningfully in environmental determinations *before* Project approval and to receive information necessary to do so. (*Laurel Heights Improvement Assn. v. Regents of the University of California* ["*Laurel Heights I*"] (1988) 47 Cal. 3d 376, 394.)

The Project will have significant impacts on transportation, it is not categorically exempt, and its approval and illegal implementation by the Municipal Transportation Agency ("MTA") before the Board's hearing violates CEQA and the City's own Code providing for public review. To remedy the City's illegal implementation actions, the Board of Supervisors should therefore grant this Appeal, direct MTA to remove the Project's physical changes, including pavement markings, bollards, hit posts, obstructions, cement curbs and dividers, traffic lane alterations, and parking lane alterations, and set aside both the Planning Department's April 10, 2017 categorical exemption and the MTA Board's April 18, 2017 resolution approving the Project.

FACTS

City's Planning Department claimed on April 10, 2017 that the Project was categorically exempt from CEQA. (A copy of that determination ("Exemption") is attached hereto as **Exhibit ["Ex. "] A.**) Before that, on February 17, 2017, MTA staff wrote a "Memorandum -- Environmental Clearance for the 13th Street Eastbound Bicycle Facility Project" ("Staff Memo"), attached hereto as **Ex. B.**

On April 10, 2017, MTA's "Sustainable Streets" Division, the Project sponsor, issued a "Summary" ("Staff Report") with a proposed Resolution to the MTA Board of Directors. (**Ex. C**, attached hereto.)

The Project reduces road capacity for vehicles on 13th Street from three eastbound lanes to two lanes from South Van Ness Avenue to Harrison Street and from three eastbound lanes to one lane on 13th Street from Harrison to Bryant Streets, and removes most or all of the parking on 13th Street in the immediate area. (Ex. A, pp. 2-3, 9-13.) The Project's "Phase II" removes two traffic lanes on 13th Street from Harrison to Bryant Streets. (Ex. A, pp. 9-13.)

The April 10, 2017 Exemption document admits that at least 1,900 vehicles per hour will be delayed for *each* lane removed by the Project. Thousands of vehicles per hour now use this important corridor to get to freeway ramps, and to travel downtown, to the ballpark, and to major shopping destinations both in the area and elsewhere. According to MTA's traffic count data, the volume on eastbound 13th Street at Mission Street on October 25, 2006 was 23,085 vehicles daily, with 1,799 in the AM peak and 1,390 in the PM peak. ("SFMTA Traffic Count Data

1993-2013," p. 81, [https:// www.sfmta.com/sites/default/files/adtcounets.accessible5.pdf](https://www.sfmta.com/sites/default/files/adtcounets.accessible5.pdf) [viewed 6/15/17].)

On April 11, 2017, *before the MTA Board hearing on the Project*, MTA's Sustainable Streets Division improperly issued a Work Order to implement it the Project. (Ex. D, attached hereto.)

Relying on the Planning Department's erroneous exemption, the MTA Board of Directors adopted a Resolution No. 170418-050 on April 18, 2017. (Ex. E, attached hereto.) The MTA Board did not discuss the environmental impacts of the Project and ignored public comment opposing the Project. (Guidelines, §15202 (b); see also, Public Comment, Mary Miles to the MTA Board, April 18, 2017, attached to May 18, 2017 Notice of Appeal.)

A number of Immediate Disclosure Requests under the San Francisco Sunshine Ordinance and Public Records Act were submitted to both the Planning Department and the MTA. Those Requests were not promptly answered and/or the agencies failed to respond with the requested records.¹

Without allowing the public the opportunity to appeal its actions to the Board of Supervisors, the MTA immediately implemented the Project on 13th Street in violation of its own Codes and CEQA, which provide for appeal of exemption determinations to this elected body. (See Ex. D attached hereto [E-mail correspondence between MTA staff, work orders, and other records received May 18, 2017 pursuant to Immediate Disclosure Request; see also, PRC §21151(c); SF Admin. Code §§31.16(b)(3) [other departments "shall not carry out...the project " until the "CEQA decision is affirmed by the Board [of Supervisors];" 31.16(b)(5) [the public may submit materials to the Board of Supervisors prior to scheduled hearing on an appeal]; and 31.16(e) ["The date the project shall be considered finally approved shall occur no earlier than either the expiration date of the appeal period if no appeal is filed, or the date the Board affirms the CEQA decision, if the CEQA decision is appealed."].)

ARGUMENT

I. FAILURE TO ACCURATELY IDENTIFY AND MITIGATE THE PROJECT'S SIGNIFICANT IMPACTS VIOLATES CEQA

The proposed Project, part of City's "Vision Zero" Project, removes one or two heavily used travel lanes (depending on segments) and at least 35 parking spaces on eastbound 13th Street, reducing traffic capacity on this major traffic corridor **from three existing lanes to one lane in the eastbound direction**. (Ex. A, pp. 2-3, 5, 9-13.) Although City's MTA staff falsely claimed that the Project would remove only one traffic lane, City's diagrams show that it actually removes two eastbound lanes between Harrison Street and Bryant Street in "Phase II" of its implementation, reducing street capacity to one through lane where there formerly were three. (*Id.*)

¹ On May 1, 2017 an Immediate Disclosure Request was submitted to MTA for the checklist referred to in MTA's February 17, 2017 Staff Memorandum on 13th Street. (IDR No. 17-267.) The alleged PRC §21099 "checklist" claimed by MTA staff to support the exemption was never produced by MTA. On May 4, 2017, an Immediate Disclosure Request was submitted to MTA for all records on implementation of the Project, with no timely response. (IDR No. 17-273.) Two weeks later, a disc arrived in the mail from MTA that included records attached in Exhibit D, herein.

The Planning Department's Exemption document admits that proposed capacity reduction will bottleneck and back up the already heavy traffic on eastbound 13th Street, adversely causing congestion and unsafe conditions at major intersections in the immediate Project area, including 13th Street at South Van Ness Avenue, Folsom Street, Bryant Street, Harrison Street, and 11th/13th/Bryant/ Division Streets. (Ex. A, p. 5.) The Exemption document also admits that reducing roadway capacity "may result in increased delay at some locations, and therefore increased emissions of criteria pollutants or ozone precursors in those locations." (Exh. A, p. 7-8.) Where City's own documents admit a Project's potential significant impacts, the Project cannot be categorically exempt. (*Azusa, supra*, 52 Cal.App.4th at p. 1199.)

The Project will also clearly cause cumulative impacts on transportation, parking, air quality, GHG, energy consumption, public safety (including emergency vehicle access), and human impacts in the surrounding area.

A. The City Failed To Accurately State Existing Conditions And Describe The Project

1. The Conclusion of No Impacts Is False And Unsupported Since Vehicles Are Omitted From The Impacts Analysis

The Exemption document does not analyze impacts on vehicles. Rather it only discusses "Transit Impacts" (p. 5), "Pedestrian Impacts" (p. 6), "Bicycle Impacts" (p.6), "Emergency Vehicle Access Impacts" (p. 7), and "Loading" (p. 7.) While completely omitting any coherent analysis of traffic impacts on vehicles, the Exemption document admits that traffic capacity on eastbound 13th Street will be reduced from the existing roadway capacity of 5,700 vehicles per hour to 1,900 vehicles per hour. (Ex. A, p. 5.)²

The Exemption document fails to establish the cumulative area affected by the Project, and fails to state that MTA's Sustainable Streets Division has already planned and/or provided bicycle lanes on 14th, 15th, 16th, and 17th Streets under City's 2009 Bicycle Plan Project, and a dedicated 12-foot-wide bicycle lane with buffer on westbound 13th Street, removing hundreds of parking spaces and traffic lane capacity in nearby corridors.

The failure to accurately state existing conditions results in an inaccurate baseline for analyzing impacts, in violation of CEQA. (*e.g., Poet, LLC. v. State Air Resources Bd. ["Poet II"]* (2017) 10 Cal.App.5th 764,797 [agency's failure to justify use of correct baseline is an abuse of discretion and invalidates the impacts analysis].) The required baseline for analyzing impacts must establish, with substantial evidence, the existing conditions applying to the impact to be analyzed. The baseline of existing conditions is then compared with an accurate Project

² The Exemption document refers to alleged "Traffic Volumes (PM Peak)" for three intersections at the "PM Peak" in "2015," but it contains no supporting evidence, including the dates the counts were taken, the time of day, or who took them. (Ex. A, p.5.) Those alleged counts are substantially different from MTA's 2006 counts for eastbound 13th Street at Mission, which on October 25, 2006 were 23,085 vehicles, with 1,799 in the AM peak and 1,390 in the PM peak. ("SFMTA Traffic Count Data 1993-2013," p. 81, www.sfmta.com/sites/default/files/adtccounts.accessible5.pdf [viewed 6/15/17].) The Staff Report instead states that there are 1,012 eastbound vehicles in the AM peak and only 790 "in the evening." (Ex. C, p.3.) The Exemption document implausibly predicts that traffic volume will grow by only 152 vehicles by 2040. (Ex. A, p.5.)

description to determine whether the Project will have significant impacts. That analysis did not take place here, because the baseline description and the Project description are inaccurate, incomplete, and unsupported by substantial evidence. (*Id.*)

In addition to the drastic capacity reduction, which it terms a "road diet," the Project also forces turns from existing through lanes and installs "painted bicycle boxes" at the intersections of Folsom Street/13th Street, and Bryant Street/13th Street to construct a "new bicycle facility on eastbound 13th Street." (Ex. A, p. 1.) The Project also proposes prohibiting right turns at red traffic signals at northbound Harrison Street approaching 13th Street and a special "two-stage" left turn box to enable bicyclists to turn left from the right lane to "make an intersection more inviting for...bicycles." (Ex. C, p. 5.) The Project also introduces time limits for whatever parking remains on 13th Street. (*Id.*) All of those plans will further obstruct and delay traffic with significant adverse impacts on transportation, air quality, GHG, energy consumption, and public safety, including emergency vehicle access.

The obvious direct impacts from delaying thousands of vehicles, which City admits in its Exemption document show that any claim of no direct and cumulative significant impacts is false. (Exh. A, p. 6-7.)

2. City's "Vision Zero" Claims Are Irrelevant, Inaccurate, And Unsupported

The exaggerated "vision zero" collision data is irrelevant to the impacts analysis required by CEQA, and cannot justify the Project's claimed exemption. (*California Building Industry Assn. v. Bay Area Air Quality Management Dist. ["CBIA"]* (2016) 2 Cal.App.5th 1067, 1073; *Parker Shattuck Neighbors v. Berkeley City Council ["Parker Shattuck"]* (2013) 222 Cal.App.4th 768, 783 [identifying impacts of the existing environment on users of the project is inconsistent with CEQA, since the issue is not about safety risks to the project from existing conditions but about impacts of the project on the environment].)

City's "vision zero" data are irrelevant to the description of existing conditions required by CEQA. The required analysis is not about the impacts of the environment on the Project, but of the Project on the environment. (*CBIA, supra*, 2 Cal.App.5th at p. 1073 ["[T]he Supreme Court held CEQA 'does not generally require an agency to consider the effects of existing environmental conditions on a proposed project's future users or residents,'" citing *California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th 369, 392]; *Parker Shattuck, supra*, 222 Cal.App.4th at p. 783.)

No evidence supports MTA's spurious claim that this is a "high injury corridor for bicycling" or justifies the significant adverse impacts that the Project will cause on traffic, air quality, noise, and safety. The "high injury corridor for bicycling" fiction is irrelevant to establishing existing baseline conditions for analyzing the impacts caused by the Project. MTA's claims that there have been "a total of 57 traffic collisions along 13th Street between Folsom Street and Bryant Street" from May 31, 2012 through May 31, 2016 are unsubstantiated, with no documentation showing the circumstances of such alleged "collisions," or that this is a "high injury corridor for bicycling." (Ex. C, page 1]; Ex. B, p. 2.) Indeed, the fictitious "high injury corridors" created by City's "Vision Zero" Project include MTA's extensive wish list to create adverse traffic conditions for vehicles throughout San Francisco and extend the already-expansive Bicycle Plan agenda that benefits less than 4 percent of travelers and adversely affects the other 96%-plus.

According to the little information provided by MTA in response to a records request, the alleged "traffic collisions" on 13th Street include collisions involving all travel modes in a general area, not just those involving bicycles, with only seven collisions on 13th Street involving bicycles. That data is not statistically significant, does not support drastic changes to 13th Street, and in any event is irrelevant to analyzing the Project's impacts. (*CBIA, supra*, 2 Cal.App.5th at p. 1073; *Parker Shattuck, supra*, 222 Cal.App.4th at p.783.) The Project nevertheless proposes changes that result in significant adverse impacts on *all* other users of the 13th Street roadway by eliminating traffic lanes, parking, and turning lanes to create a lane for exclusive use of bicyclists.

The MTA's Staff Report also contradicts the Exemption document and misstates existing conditions and the Project description, including falsely stating that the Project would only remove one eastbound traffic lane, when in fact it proposes removing two traffic lanes on eastbound 13th Street. (Ex. C, p. 3.)

The MTA's Staff Report claims that "146 people were counted bicycling in the morning and 50 people in the evening peak hour periods along eastbound 13th Street." (Ex. C, p. 3].) That means that bicyclists are *less than three percent* of travelers in the immediate Project area. Further, the Exemption states that "The proposed project would not generate new bicycle trips ..." (Exh. A, page 6.) The insular special interests evident from these figures do not justify the extensive significant impacts on transportation, air quality, parking, energy consumption, public safety, and human impacts caused by the proposed Project on the other 97 percent of the traveling public. (See, *e.g.*, *Parker Shattuck, supra*, 222 Cal.App.4th at p. 783.)

Both the Exemption and the MTA's Staff Report ignore that City's 2009 Bicycle Plan Project also planned and/or implemented, bicycle lanes on 14th, 15th, 16th, and 17th Streets, removing hundreds of parking spaces and traffic lane capacity in nearby corridors, along with the dedicated 12-foot-wide bicycle lane with buffer on westbound 13th Street.

The failure to set forth accurate existing conditions and an accurate Project description violate CEQA, since the public and decisionmakers are deprived of the information necessary to determine the Project's significant impacts. (*Poet II, supra*, 10 Cal. App. 5th at p. 797; *County of Amador, supra*, 76 Cal.App.4th at p. 955.) Conveying false, contradictory, incomplete, and misleading information to the public and decisionmakers is a prejudicial abuse of discretion under CEQA.

B. The Project May Have Significant Impacts On The Environment

The Project will clearly have significant impacts on the environment, and therefore is not categorically exempt. (See, *e.g.*, Guidelines §§15064, 15065(a)(3).) Before declaring the Project exempt, City was required to do a preliminary analysis exploring the possibility of the Project's significant impacts on the environment. (Guidelines §15060(c), 15061.) A significant impact is "a substantial, or potentially substantial adverse change in the environment." (PRC §21068; §21060.5 [defining "the environment" as "the physical conditions which exist within the area which will be affected by a proposed project..."].) There is no evidence that a preliminary analysis ever took place or any evidence provided that supports the exemption determination.

In fact, City's own documents show that the Project *will* have significant impacts on transportation, and will obstruct and slow traffic and create unsafe conditions for pedestrians and have impacts on air quality. (Ex. A, p. 6-7.) The Project will also have direct and cumulative

impacts on GHG, energy consumption, and public safety (including emergency vehicle access). Major businesses in the immediate and cumulative area will also be affected by removing street parking and creating barriers to parking provided by those businesses, including large stores like Rainbow Grocery (one of the largest natural foods stores in San Francisco), Office Max, and Best Buy. The Exemption shows that the Project will also block and inhibit access to the parking provided by those businesses, and remove street parking that is often fully occupied.

The Project's significant direct, indirect, and cumulative impacts on transportation throughout the area, as well as impacts on air quality, GHG, energy consumption, public safety (including emergency vehicle access), noise, and human impacts must be identified, analyzed, and mitigated under CEQA. This Project is not exempt from these requirements.

C. There Is No Analysis Of Cumulative Impacts

The cumulative impacts analysis also must precede City's exemption determination as part of the preliminary review. (PRC §21065; Guidelines §§15065(a)(3).) There is no adequate analysis of cumulative impacts in the Exemption document. That document claims, with no supporting evidence, that MTA staff found "projected growth in vehicle traffic volumes" between now and 2040 to be "approximately 15 percent" or "152" vehicles. (Ex. A, p. 5.) The failure to support those implausible "growth" numbers with substantial evidence based on actual known growth data in San Francisco renders them invalid on their face.

A cumulative impacts analysis must set forth existing conditions and compare those conditions with anticipated future conditions. The cumulative impacts analysis must also show *other* current and anticipated future projects in the cumulative area that will *also* affect traffic, public safety, air quality, etc., and then must compare present conditions with conditions assuming those other projects. No such analysis is evident here. (Guidelines §15065(a)(3).) This Project has "possible environmental effects" that are "cumulatively considerable," meaning "that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects." (Guidelines §15065(a)(3).)

City's failure to analyze cumulative impacts does not excuse its improper conclusion of *no* impacts. (*Azusa, supra*, 52 Cal.App.4th at p. 1198; *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.) City's failure to analyze the Project's impacts, including its cumulative impacts, violates CEQA's informational requirements and results in improper piecemealed implementation of such projects, also prohibited by CEQA.

The City's past, present, and planned future projects on City's roadways to impede and obstruct vehicle transportation, remove parking, including the Bicycle Plan, "Sustainable Streets," "Vision Zero," and other projects, when combined with this Project, clearly have significant cumulative impacts on transportation, air quality, parking, and public safety that cannot be considered in a vacuum.

II. THE PROJECT IS NOT CATEGORICALLY EXEMPT FROM CEQA

A. City Fails To Show With Substantial Evidence That The Project Fits Within A Categorical Exemption

The agency bears the burden of showing with substantial evidence that a proposed project fits within a categorical exemption. (*Azusa, supra*, 52 Cal.App.4th at p.1192; *Save Our Big Trees v.*

City of Santa Clara (2015) 241 Cal.App.4th 694, 705.) Exemptions are construed narrowly and may not be expanded beyond their terms or CEQA's statutory purpose. (*County of Amador v. El Dorado County Water Agency* ["*County of Amador*"] (1999) 76 Cal.App.4th 931, 966; *Azusa, supra*, 52 Cal.App.4th at p. 1192.) That strict construction allows CEQA to be interpreted in a manner affording the fullest possible environmental protection within the reasonable scope of statutory language. (*Ibid.*) Strict construction "also comports with the statutory directive that exemptions may be provided only for projects which have been determined not to have a significant environmental effect." (*County of Amador, supra*, 76 Cal.App.4th at p. 966.)

City has failed to meet its burden to provide substantial evidence that the exemptions invoked, *i.e.*, Guidelines §§15301 and 15304, apply to this Project.

1. The Section 15301(c) Categorical Exemption Does Not Apply To The Project

Guidelines §15301(c) does not apply because the Project does not propose "minor alterations" of "[e]xisting highways and streets, sidewalks gutters, bicycle and pedestrian trails."

Both the MTA's Staff Report and the Exemption document admit that there are *no* existing bicycle lanes on eastbound 13th Street. (Ex. C, p. 3]; Ex. A, p. 4.) The Guidelines § 15301(c) exemption therefore is inapplicable on its face. (*Save Our Carmel River v. Monterey Peninsula Water Mgmt. Dist.* ["*Save Our Carmel River*"] (2006) 141 Cal.App.4th 677, 697.)

Guidelines §15301 explicitly states that in determining the types of "existing facilities" subject to such an exemption, "The key consideration is whether the project involves negligible or no expansion of an existing use." Far from being negligible or no expansion, the Project proposes *usurping two-thirds of the existing roadway capacity and parking to implement a currently non-existent use of that corridor.*

The Project's proposed change of *use* of 13th Street from a heavily traveled major thoroughfare for 5,700 vehicles per hour to a "bikeway" for 146 bicyclists makes it ineligible for an "existing facilities" exemption. (*County of Amador, supra*, 76 Cal.App.4th at p.967 [existing facilities exemption did not apply to project that changed use of an existing hydroelectric facility from non-consumptive to consumptive use]; *Save Our Carmel River, supra*, 141 Cal.App.4th at p. 698 [rejecting Class 2 exemption where city failed to show that a proposed "replacement structure...will have substantially the same purpose and capacity as the replaced structure"].)

In addition to reducing the street capacity on 13th by two-thirds and removing nearly all parking, the Project excludes the vast majority of users of 13th Street by creating new facilities that are inaccessible to anyone not using a bicycle. The Project thus changes the street's use from a *public* roadway for *all* users to one that exclusively serves a special interest consisting of less than 3 percent of street users. Such a change of use does not fall within the "existing facilities" categorical exemption. (*County of Amador, supra*, 76 Cal.App.4th at p. 967.)

Further, the Project does not propose "minor alterations," but proposes major changes affecting and significantly impacting transportation, air quality, parking, noise, and public safety, both in the immediate and cumulative areas by reducing street capacity. (*e.g., Azusa, supra*, 52 Cal.App.4th at p. 1194 [project proposing to dump tons of additional waste into an existing landfill was not a "minor alteration" to an "existing facility"].)

The rationale for the "'existing facilities' exemption is that the environmental effects of the operation of such facilities must already have been considered." (*Azusa, supra*, 52 Cal.App.4th at

p. 1195-1196.) Here, as in *Azusa*, the lack of prior consideration of the Project's impacts should defeat any determination that the "existing facilities" categorical exemption applies.

The Project therefore does not fit within the Guidelines section 15301(c) exemption.

2. The Section 15304(h) Exemption Does Not Apply To The Project

The Guidelines section 15304(h) exemption also invoked (Ex. A, p. 3) also does not apply to the proposed Project, because bicycle lanes do not currently exist on 13th Street, and because the Project does not propose minor "alterations in the *conditions* of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees except for forestry and agricultural purposes." (Guidelines §15304.) The Project instead proposes major alterations to a heavily traveled urban corridor causing significant impacts and a complete change of use of 13th Street.

City claims that "Class 4(h)" exempts the "creation of bicycle lanes on existing rights-of-way." However, the existing right of way on 13th Street consists of three eastbound traffic lanes and street parking. The Project's proposed *change of use* of 13th Street does not fit this exemption. As with the Class 1 exemption, the Class 4 Exemption under Guidelines §15304 does not allow a change of *use*, but only *minor* alterations in the *conditions* of land, water and/or vegetation.

"The exemption in 14 Cal. Code Regs. §15304 relates to minor changes in the condition of land, water, or vegetation...[A]uthorizing a change in the permanent use of land rather than a minor alteration in the condition of the land, does not fit within this exemption." (Kostka and Zischke, Practice Under the California Environmental Quality Act (2d ed., 2017 CEB On-Law, §5.82; e.g., *Myers v. Board of Supervisors* (1976) 58 Cal.App.3d 413.) The changes here are not minor but instead eliminate traffic lanes and drastically reduce street capacity, eliminate parking, and create a change in the permanent use of the street rather than a minor alteration in the "condition" of the street. (*Id.*; *California Farm Bureau Fed'n. v. California Wildlife Conserv. Bd.* (2006) 143 Cal.App.4th 173, 192 [Project to "improve habitat" where there was no existing habitat was not within section 15304 exemption, and was not a "minor" alteration.]) City fails to meet its burden to establish that the Project proposes only *minor* alterations in the *conditions* of land, water, and/or vegetation. (Guidelines §15304.)

Further, City's own Exemption document admits that reducing roadway capacity "may result in increased delay at some locations, and therefore increased emissions of criteria pollutants or ozone precursors in those locations." (Ex. A, p. 7-8.) Where City's own documents admit a Project's potential significant impacts, the Project cannot be categorically exempt. (*Azusa, supra*, 52 Cal.App.4th at p. 1199.)

Under City's own standards and documents this Project is not categorically exempt.

B. City's PRC Section 21099 "Checklist" Does Not Support Its Claimed Exemption

City's claim that a "checklist" that it improperly developed to implement PRC §21099 justifies the Project is invalid on its face, since the State has not yet certified amended guidelines under that provision. (Ex. B, p.3.) City may not adopt its own speculative "checklist" or requirements in anticipation of a Guidelines change that has not yet been certified by the State.

"Amendments to the guidelines apply prospectively only." (Guidelines §15007(b).) Public agencies may only implement guidelines amendments *after* the effective date of the amended guidelines. (Guidelines §15007; see also, *East Sacramento Partnership for a Livable City v. City of Sacramento* (2016) 5 Cal.App.5th 281, 299-300, fn. 6 [LOS standards remain in effect].)

Moreover, such "checklists" do not support or provide a foundation for City's environmental determination. (*Parker Shattuck, supra*, 222 Cal.App.4th at p.784.) In fact, there is no evidence that City used any checklist in a preliminary review of this Project.

III. EXCEPTIONS UNDER GUIDELINES §15300.2 ALSO APPLY TO THIS PROJECT

The Exemption's unsupported conclusory statement, "None of the established exceptions applies to the proposed project" under Guidelines §15300.2 is also false, as are the claims that the Project will have no cumulative impacts, and that no "unusual circumstances" are presented by the Project. (Ex. A, p.4.) City fails to meet its burden to show that the exceptions do not apply.

A. The Project Will Have Cumulative Impacts As Defined By Guidelines §15300.2(a)(3)

City fails to address whether "successive projects of the same type in the same place, over time" is an exception under Guidelines §15300.2(a)(3). Here, the Project is one of many City bicycle projects in the same area, over time. City's 2009 EIR on its Bicycle Plan Project proposed and City has developed or plans to develop bicycle "improvements" on 14th, 15th, 16th, and 17th Streets, as well as on Market, Folsom, Bryant, Howard, Harrison, and Division Streets. City has also proposed and developed similar successive projects of the same type on nearby 7th, 8th, Folsom, Bryant, Howard, Harrison, Market, Brannan, and Division Streets. City's implementation of those other "successive projects...over time" creates an exception to any claimed exemption from CEQA. Those successive projects over time also eliminate traffic lanes, parking and turning, with cumulative impacts on transportation, air quality, GHG, energy consumption, noise, and public safety (including emergency vehicle access). Those cumulative impacts trigger the Guidelines section 15300.2(a)(3) exception and invalidate City's unsupported claim that the Project is exempt.

Furthermore, the Project signals City's improper return to a strategy of piecemealed environmental review that has already been disapproved by the courts and led directly to a permanent Injunction against City's Bicycle Plan Project.

B. Large Traffic Volumes And Proposed Drastic Reduction of Street Capacity Also Are Unusual Circumstances

Further, in this instance, the very large traffic volumes and proposed drastic reduction in street capacity constitute unusual circumstances under Guidelines §15300.2(c). (*Azusa, supra*, 52 Cal. App. 4th at p.1198.) As in *Azusa*, City's admission that this Project *will* have a significant impact by degrading Level of Service creates an exception to a categorical exemption.

C. The Project's Location Also Presents Unusual Circumstances

The Project area is a major urban traffic corridor beneath a freeway that, without the Project, moves 5,700 vehicles per hour and has *no existing bicycle lanes*. That is not the usual setting for categorical exemptions under Guidelines §15301, which typically involve *minor* alterations to *existing* facilities, or Guidelines §15304(h), which typically involve *minor* alterations to either maintenance or improvement of *existing* bicycle lanes. The location is also unusual due to the proximity of a major shopping area with large stores, such as Best Buy, Costco, Office Max, and Rainbow Grocery, which generate significant traffic and the need for customer parking.

IV. FAILURE TO PROVIDE PUBLIC NOTICE AND INFORMATION ON THE PROJECT VIOLATES CEQA'S REQUIREMENT OF INFORMED PUBLIC PARTICIPATION IN THE DECISIONMAKING PROCESS

The April 10, 2017 Exemption did not exist at the time of the claimed public hearing conducted by MTA's Sustainable Streets Division. Nor was the Exemption document readily available before the MTA Board's April 18, 2017 hearing, and even today finding it is difficult, requiring complicated linking to documents not readily available to the general public or easily found on the internet. Other documents, such as MTA's Staff Memo, were never publicly available and required Public Records Act requests to get. Even members of the public who requested public notice, including this Commenter, received no notice of this Project after submitting many requests to MTA for notices of proceedings on all bicycle projects in San Francisco.

Documents on the CEQA review of the Project should have been publicly noticed at least 72 hours in advance and placed on the March 17 and April 18, 2017 public hearing agendas in a readily-accessible link so that the public could know what was being proposed. They were not. (Guidelines §15202(b).)

The Project sponsor, MTA's Sustainable Streets Division claims that its "staff performed door-to-door outreach" to four businesses along eastbound 13th Street from January to March 2017. (Ex. C, p. 6.) That alleged "outreach" ignores that this Project is of citywide and regional importance, affecting traffic to and through the area by thousands of daily travelers, access to freeways, and travel to downtown, the train station, and the ballpark, as well as nearby major shopping destinations.

V. IMPLEMENTING THE PROJECT VIOLATES THE PUBLIC'S RIGHT TO INFORMATION AND THE OPPORTUNITY TO PARTICIPATE IN INFORMED DECISIONMAKING AND MUST BE REVERSED

Implementing the Project by City's MTA without allowing the public's right to appeal to an elected decisionmaking body violates CEQA's most basic mandate to give the public a meaningful voice in the decisionmaking process. (PRC §§21000, 21003.1, 21151(c); Guidelines §§15061(e), 15201, 15202(b); *e.g., Laurel Heights I, supra*, 47 Cal. 3d at p.394.) This Board should send a firm message that MTA's illegal implementation of such projects in violation of CEQA and against the public interest will not be tolerated.

CONCLUSION

The proposed 13th Street Project may have significant impacts on the environment, and it is not exempt from CEQA. This Board should grant this Appeal, set aside the Planning Department's April 10, 2017 Categorical Exemption and the MTA Board's April 18, 2017 Project approval, and order the MTA to immediately remove all physical changes and restore 13th Street and the surrounding area to the way they were before MTA's illegal implementation of the Project, pending further environmental review in compliance with CEQA.

DATED: June 16, 2017



Mary Miles

LIST OF EXHIBITS

- A** 4/10/17 Planning Department: Certificate of Exemption from Environmental Review, Case No. 2017-001180ENV, April 10, 2017
- B** 2/17/17 MTA: Memorandum from Jennifer Wong to Jeanie Poling in "Application for Environmental Review"
- C** 4/10/17 MTA: Staff Summary
- D** 4/11/17 MTA: Sustainable Streets Work Order and other documents on implementation of the Project
- E** 4/18/17 MTA Board of Directors: Resolutions No. 170418-050

Attachment D2

**Supplemental Appeal Letter dated June 23, 2017 from
Mary Miles, Coalition for Adequate Review**

FROM:
Mary Miles (SB #230395)
Attorney at Law
for Coalition for Adequate Review
364 Page St., #36
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(415) 863-2310

RECEIVED AFTER THE ELEVEN-DAY
DEADLINE, BY NOON, PURSUANT TO ADMIN.
CODE, SECTION 31.16(b)(5)
(Note: Pursuant to California Government Code, Section
65009(b)(2), information received at, or prior to, the public
hearing will be included as part of the official file.)

TO:
Angela Calvillo, Clerk, and
San Francisco Board of Supervisors
Room 244, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

DATE: June 23, 2017

RE: BOS File No. 170638

**APPELLANT'S REBUTTAL BRIEF IN SUPPORT OF APPEAL TO BOARD OF
SUPERVISORS OF CATEGORICAL EXEMPTION, APPROVAL, AND
IMPLEMENTATION OF "EASTBOUND 13TH STREET BICYCLE FACILITY
PROJECT"**

INTRODUCTION

Appellant hereby submits this Rebuttal to the June 19, 2017 San Francisco ("City") "Planning Department Response to the Appeal of Categorical Exemption for the SFMTA - 13th Street Eastbound Bicycle Facility Project" ("Planning's Response"). Please distribute a copy of this Rebuttal to every Supervisor and place a copy in all applicable Project files.

Planning's Response evades the impacts of the Project by misstating the facts, the law under CEQA, and Appellant's argument, and fails to carry its burden show that the Project is categorically exempt from the requirements of CEQA.

Planning's Response also evades the fact that MTA illegally implemented the Project, in plain violation of CEQA, before the public had an opportunity to appeal its determination and MTA's approval to this Board. (Pub. Res. Code [PRC"] §21151(c); San Francisco Administrative Code §§31.16(b)(3) [other departments "shall not carry out...the project" until the "CEQA decision is affirmed by the Board [of Supervisors];" 31.16(b)(5) [the public may submit materials to the Board of Supervisors prior to scheduled hearing on an appeal]; and 31.16(e) ["The date the project shall be considered finally approved shall occur no earlier than either the expiration date of the appeal period if no appeal is filed, or the date the Board affirms the CEQA decision, if the CEQA decision is appealed."].)

REBUTTAL ARGUMENT

**I. CITY'S FALSE STATEMENTS DO NOT SUPPORT ITS CLAIM THAT THE
PROJECT IS CATEGORICALLY EXEMPT UNDER CEQA**

Planning's Response relies on factual misstatements and misrepresentations of Appellant's positions, including the following examples.

A. Planning persists With Its Falsehood That The Project Removes Only One Eastbound Traffic Lane, When In Fact City's Own Documents Show That The Project Removes Two Of Three Eastbound Lanes On 13th Street

Contrary to the falsehoods in Planning's Response (*e.g.*, pp. 2, 6, 7), the Project clearly will remove *two* traffic lanes, not one, by eliminating two through lanes on 13th Street from Harrison to Bryant Street, and installing two forced left turn lanes at the 13th / Bryant Street intersection. (Appellant's Brief in Support of Appeal, June 16, 2017 ["Appellant's Brief"], Ex. A [Exemption], p. 3 and "Figure 3 at p.10".) Forced left turn lanes are not through traffic lanes.

It is well-established and common sense that where traffic lanes are eliminated, the resulting queuing of traffic will cause delays at other intersections. Thus, City's "road diet" that removes two traffic lanes on eastbound 13th Street will cause traffic backups, congestion, and queuing throughout and beyond the Project area, including intersections at 13th and South Van Ness Avenue and other major intersections where thousands of vehicles seek freeway access, major shopping areas, downtown, the ballpark, and elsewhere.

Planning's Response (p. 6) disingenuously admits that "between Harrison and Bryant streets, or for approximately one-third of the area covered by the project, the project *would* remove *two eastbound travel lanes*." (Planning's Response, p. 7, emphasis added.) But Planning then contradicts that plain fact, falsely claiming that a forced left-turn lane would equal a through traffic lane. Planning's Response completely ignores the impacts of removing nearly all of the parking on 13th Street, which will also cause traffic circling and diversion to find parking.

Elsewhere, City simply lies, claiming that the Project reduces traffic capacity on 13th Street by only "one travel lane." (Planning's Response, pp. 2, 6, 7.) City claims that Appellant "misunderstands the project" (Planning's Response, p. 6.) However, *City's own description and diagrams of the Project clearly show that it removes two traffic lanes, not "one."* (Appellant's Brief, Ex. A [Exemption], p. 3 and Figure 3 at p. 10.) Bottlenecking traffic on this heavily traveled corridor will obviously cause direct, indirect, and cumulative impacts throughout the Project area.

B. Planning's Existing Conditions Data, Including Traffic Volumes, Are Unsupported And Conflict With MTA's Traffic Data, Or Are Entirely Absent

Planning's Response notes that the traffic volumes allegedly measured in 2015 at just three intersections were instead counted in 2016, but were misstated in its exemption document due to a clerical error. (Planning's Response, p.6, fn.1.)

City now advances its unsupported claims on traffic volumes that vary significantly from MTA's previous traffic volume counts, and it again fails to provide the dates, times, sites, and who conducted the traffic counts, or to describe the methodology used.¹

¹ Two Immediate Disclosure Requests, on April 26 and June 20, 2017, were made for Planning's supporting data including its alleged traffic counts. Both were effectively denied, with Planning failing to provide the alleged counts. (Ex. F, attached hereto.)

In short, Planning's Response provides *no* substantial evidence to support its claim on traffic volumes at three intersections that it allegedly measured. Further, the Project area includes the major intersection of 13th Street and South Van Ness Avenue, which is omitted from Planning's alleged traffic volume counts.

C. Contrary To Planning's Response, Its Exemption Document Admits That The Project May Have Significant Impacts

Planning's Exemption document plainly states that the Project will have significant impacts, since that document admits that reducing roadway capacity "may result in increased delay at some locations, and therefore increased emissions of criteria pollutants or ozone precursors in those locations." (Appellant's Brief, Ex. A, p. 7-8.) As already stated, where City's own documents admit a project's potential significant impacts, the Project cannot be categorically exempt. (*Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* ["*Azusa*"] (1997) 52 Cal.App.4th 1165, 1199.)

D. City Failed To Provide Notice Or Information On Its Environmental Determination

Contrary to Planning's Response (pp.4-5), City's March 17, 2017 alleged public hearing before MTA's Sustainable Streets Division included no information or discussion of its exemption determination. In fact, Planning's exemption determination was not made until April 10, 2017, and was not publicly available online at that time.

MTA then illegally issued a work order to implement the Project on April 11, 2017, before its scheduled approval hearing on April 18, 2017. (Appellant's Brief, Ex. D.) MTA posted an agenda for the April 18, 2017 hearing, but its staff report did not include the Planning Department's exemption or any documents supporting it. Neither the exemption document nor MTA's staff memo to Planning were available on Planning's website before the April 18, 2017 hearing and had to be obtained through an Immediate Disclosure Request under City's Sunshine Ordinance. Requested records supporting the exemption determination were not produced after two Immediate Disclosure Requests. (See fn. 1.) The public was therefore denied the opportunity for informed participation in MTA's approval process, violating CEQA's basic requirement.

The MTA Board ignored Appellant's comment letter submitted before the April 18, 2017 hearing, and it also failed to include environmental review of the Project as one of the subjects of its hearing as required by CEQA Guidelines section 15202(b).

II. CITY ADMITS THAT THE PROJECT WILL HAVE SIGNIFICANT DIRECT IMPACTS, AND IT WILL ALSO HAVE INDIRECT AND CUMULATIVE IMPACTS

A. City's Admission That The Project Will Have Significant Impacts Preclude And Negate Its Categorical Exemption

City admits that the congestion caused by the Project will have significant impacts on air quality. (Appellant's Brief, Ex. A, p. 7-8.) City may not determine the Project exempt with that admission. (*Azusa, supra*, 52 Cal.App.4th at p.1199.)

B. City May Not Lawfully Remove Traffic Impacts From Its Impacts Analyses Under CEQA; Planning Commission Resolution 19579 Is Preempted, Illegal, and Void on its Face

Planning's Response declares that "the department does not use automobile delay as a consideration in assessing impacts on the environment pursuant to CEQA," and that such

analysis is "outdated and incorrect." (Planning's Response, p.8.) Planning claims that City's Planning Commission adopted Resolution 19579 to "not use automobile delay as a consideration" in assessing such impacts. (*Id.* at p.7.)

City's claim and Planning Commission Resolution 19579 are invalid on their face, since they are contrary to CEQA's requirement to analyze and mitigate all impacts on the environment, including those on traffic, congestion, and parking. Resolution 19579 is preempted and conflicts with PRC §21099, which provides that the state Office of Planning and Research ("OPR") is "to prepare proposed revisions" to existing CEQA Guidelines and submit them to the state for certification and adoption. (PRC §21099.) **In fact, OPR has *not* certified or adopted revised CEQA Guidelines.** Moreover, even if certified and adopted, such Guidelines would only apply prospectively, meaning *after* such revisions were certified and adopted. (Guidelines §15007; PRC §21099(b)(2).)

Even if such Guidelines revisions are certified and adopted by OPR, that would not remove City's burden to comply with CEQA's requirement to analyze and mitigate transportation impacts. PRC section 21099(b) states that upon certification and adoption of Guidelines revisions, "automobile delay, as described *solely* by level of service or similar measures of vehicular capacity or traffic congestion shall not be considered a significant impact on the environment." (PRC §21099(b) [emphasis added].) Thus, PRC §21099 explicitly *does* require that automobile delay must be considered as an impact but not as *solely* measured by level of service. Rather, the state may create additional and other criteria for *measuring* automobile delay as a significant transportation impact. (PRC §21099(b)(2).)

Nothing in PRC section 21099, or elsewhere in CEQA, authorizes either the state or the City and County of San Francisco to claim that automobile delay is not a significant impact. In fact, PRC section 21099 makes clear that, "The methodology established by these guidelines shall not create a presumption that a project will not result in significant impacts related to air quality, noise, safety, *or any other impact* associated with transportation." (PRC §21099(b)(3) [emphasis added].) PRC section 21099 explicitly states that it "does not relieve a public agency of the requirement to analyze a project's potentially significant transportation impacts related to air quality, noise, safety, *or any other impact* associated with transportation." (*Id.*)

City's mistaken claim that it need not analyze automobile delay as a transportation impact violates CEQA, and Resolution 19579, claimed as authority for doing so, is preempted, void, and in conflict with state law.

C. City's Defective Baseline Corrupts The Impacts Determination

Planning's Response provides no substantiation for its claimed measurement of traffic volumes at three intersections affected by the Project. Further, those intersections fail to include the major intersection of 13th Street and South Van Ness Avenue. As noted, Planning's Response has provided no substantiation for its alleged traffic counts. The baseline existing conditions for determining impacts must be supported by substantial evidence, including accurate data, not City's unsupported claims. (Planning Response, p. 6, fn. 1.) Impacts cannot be accurately assessed without knowing when traffic counts were made, particularly since eastbound corridors like 13th Street experience heavy AM peak hour commuter traffic headed to downtown and the freeway.

Planning's Response (p. 6) falsely claims that in conducting the alleged counts, it complied with City's Transportation Impact Analysis Guidelines ("TIAG"). The TIAG clearly requires substantiated traffic volume measurements and analysis of traffic delay and congestion, which Planning's Response omits and calls "outdated and incorrect." (Planning's Response, p.7.) Planning does not address the marked disparity between its alleged traffic counts in 2015 or 2016, since MTA's previous counts show much heavier traffic on 13th and Mission Streets.

Planning's Response repeats the falsehood that the Project removes only one of three eastbound traffic lanes on 13th Street. (Planning's Response, p. 6.)² That falsehood should negate any approval of Planning's claimed exemption. The Project would *clearly* remove *two* through traffic lanes on 13th Street, not one. (Appellant's Brief, Ex. A, p. 3, and Figure 3 at p. 10.)

Even if Planning's unsubstantiated and contradictory claims were supported, 1,012 "passenger vehicles" would have to merge into one lane during peak hours with this Project. City fails to include trucks, shuttle and other buses, and motorcycles, which would also have to merge into the one remaining lane on 13th Street.

Planning claims that the one remaining through lane (which is shared with a right turn lane) on 13th Street between Harrison and Bryant Streets has a capacity of 1,900 "passenger cars per hour." (Planning's Response, p.7.) However, Planning's dubious claim fails to analyze or acknowledge the backup and queuing that would occur at *other* intersections besides the three where it claims it counted "passenger vehicles" but got the year wrong. (Planning's Response, pp. 6-7; Appellant's Brief, Ex. A, pp. 2-3, 5, and Figures.)³ Planning's alleged traffic count omits the largest intersection in the Project area: 13th and South Van Ness Avenue. The lack of accurate and complete baseline data invalidates City's conclusion of no impacts. (*e.g., Poet, LLC. v. State Air Resources Bd.* (2017) 10 Cal.App.5th 764,797 [agency's failure to justify use of correct baseline is an abuse of discretion and invalidates the impacts analysis].)

D. City Violates CEQA By Continuing To Omit Cumulative Impacts Analysis

Planning's speculation that traffic will increase by only 150 cars in 2040 is unsupported and absurd on its face. Common sense and the City's population and vehicle growth, including "ride-sharing," lead to a contrary conclusion.

City's formulaic computer exercise to reach that 150-car growth in 2040 figure was based on applying an unsubstantiated "projected growth in vehicle traffic volumes" of 15% to Planning's alleged traffic counts to conclude that "the project would not result in a substantial reduction in available roadway capacity along eastbound 13th Street such that it would lead to a substantial

² Planning's Response admits that "between Harrison and Bryant streets, or for approximately one-third of the area covered by the project, the project would remove two eastbound travel lanes," but disingenuously claims that "two travel lanes would still exist, one of which would be a dedicated left turn lane," and that "Phase II of the project would add a second left turn lane, which would create a total of three eastbound travel lanes on 13th Street, the same as existing conditions." (Planning's Response, p. 6.) In fact, as plainly evident from City's own documents, the Project will remove two through traffic lanes on 13th Street between Harrison and Bryant Streets, leaving only *one through traffic lane*. (Appellant's Brief, Ex. A [Exemption], p. 3, and Figure 3 at p. 10.)

³ City claims that "SFMTA provided the department with traffic counts collected for three intersections within the project limits: 13th and Folsom streets, 13th and Harrison streets, and 11th, 13th, Bryant, and Division streets...during the p.m. peak hour." (Planning Response, p.6.) However, City's Project also includes the major intersection of 13th Street and South Van Ness Avenue. (Appellant's Brief, Ex. A.)

vehicular diversion to other nearby streets in the vicinity, which in turn could substantially affect cumulative *transit* travel time." (Planning's Response, p. 8 [emphasis added].) However, transit travel time is irrelevant to Planning's conclusion, since there is no transit service on 13th Street at the three intersections where City reached the dubious 150-more-cars-in-2040 figure. Nor is there any support for Planning's claim that the Project will *not* result in diverting traffic to nearby streets.

MTA's Sustainable Streets Division announced recently that it intends to remove *still more parking* on 13th Street in the eastbound frontage lane between South Van Ness Avenue and Folsom Street, which provides access and parking for several businesses, to install a "Bikeshare station." (Ex. G, attached hereto.) That action would add to the Project's significant reduction of parking in this commercial area, which would have cumulative impacts on traffic, air quality, and parking under CEQA's general definitions as well as the definition in Guidelines §15300.2(b).

The complete absence of substantial evidence or accurate data and analysis in Planning's exemption document, and City's omission of similar past, pending, and future projects in the area invalidates its conclusion of no cumulative impacts on traffic, air quality, GHG, or energy consumption.

City has failed to support a preliminary analysis of the cumulative impacts of the Project on traffic, air quality, GHG, energy consumption, parking, and public safety that had to precede its claim of exemption.

E. City's "Vision Zero" Fiction Is Unsupported And Irrelevant To The CEQA Determination Of Impacts

City claims that its "Vision Zero High Injury Network is based upon empirical data and robust scientific methodology." (Planning's Response, p. 9.) Such data has not been provided with City's Response, and City's position is therefore unsupported. Further, the data provided to this Commenter shows only seven, not 57 as claimed, bicycle collisions on 13th Street from May 31, 2012 to May 31, 2016, of which several were caused by the bicyclists themselves. That data is scientifically insignificant. The exaggeration is certainly "robust," but there is no substantial evidence for City's claims of the "urgency of safety improvements." (Planning's Response, p. 2.)

Further, for the reasons already stated, the "Vision Zero" claims are irrelevant to the required impacts analysis as a matter of law. (Appellant's Brief, pp. 5-6.)

F. City's Claims That the Project Would Not Result In Air Quality, GHG, Energy Consumption, Public Safety (Including Emergency Vehicle Access), And Other Impacts Are False.

City mistakenly implies that the preliminary review for significant impacts required by CEQA *before* an agency declares a project exempt must be supported by substantial evidence presented by the public. (Planning's Response, p. 9.) In fact, the burden is on City, not the public, to support its preliminary review. (*Save Our Big Trees v. City of Santa Cruz* ["*Save Our Big Trees*"] (2015) 241 Cal.App.4th 694, 705.) Indeed, as City admits, the public did not have the opportunity to participate in the preliminary review. (Planning's Response, p. 5.)

Planning admits that "[t]he exemption certificate did not assess greenhouse gas emissions, energy consumption, or noise impacts," in addition to *not* assessing traffic or parking impacts. (Planning's Response, p. 9.) Instead, Planning states, again with *no* supporting evidence, that it

need not evaluate those issues because its staff believed that "such an assessment was unnecessary because ... it was determined that the project would not result in substantial diversion of vehicular travel in the project area and the project's construction activities were minor." (Planning's Response, p. 10.) Contrary to that mistaken claim, City was required to conduct that assessment in a preliminary review to determine whether a categorical exemption applied to the Project. (Guidelines, §§15060, 15061.)

Indeed, City's own exemption document admits that reducing roadway capacity "may result in increased delay at some locations, and therefore increased emissions of criteria pollutants or ozone precursors in those locations." (Appellant's Brief, Ex. A, p. 7-8.) Where City's own documents admit a Project's potential significant impacts, the Project cannot be categorically exempt. (*Azusa, supra*, 52 Cal.App.4th at p. 1199.)

III. THE PROJECT IS NOT CATEGORICALLY EXEMPT FROM CEQA

For the reasons already stated in Appellant's Brief, this Project is not categorically exempt. (Appellant's Brief, pp. 7-10.)

City misstates the law on both of its invoked categorical exemptions. **As admitted by the exemption document, there are no "existing" bicycle lanes on 13th Street.** (Appellant's Brief, Ex. A, p. 4.) For that reason, neither the Guidelines section 15301(c) nor 15304(h) exemptions apply to this Project.

City also fails to support its claimed categorical exemption with substantial evidence in the record of the exemption determination. An agency's claim of categorical exemption will not be upheld without substantial evidence in the agency's record supporting that determination. , (e.g., *Save Our Big Trees, supra*, 241 Cal.App.4th at p. 705.) The burden is on the agency, not Appellant, to support its exemption. (*Id.*) Indeed, as City admits, the public does not participate in that determination. (Planning's Response, p. 4.)

Planning's Response (p.10) claims: "City streets have typically been used for a variety of purposes," and that this claim is supported by City's "Transit First" policy. However, City has failed to show that the Project fits within the Guidelines §15301 "existing facilities" exemption.

Further, as already noted, the Project clearly changes the *use* of 13th Street by removing traffic lanes for all modes of transportation, removing parking, and installing separated bicycle lanes that are *not usable for any mode of transportation except bicycling*. That change of use removes this Project from the scope of the "existing facilities" exemption, as previously shown. (Appellant's Brief, p. 8-9.)

Planning's Response also misstates the scope of the Guidelines section 15304 exemption, which applies only to minor alterations "in the *condition* of land, water, and/or vegetation..." (Guidelines §15304 [emphasis added].) The example at Section 15304(h) includes "[t]he creation of bicycle lanes on existing rights-of-way." However, that example does not apply here, because there are no *existing* bicycle lanes or any existing exclusive bicycle right-of-way on eastbound 13th Street, and the proposed Project does not create a bicycle lane in any "existing" right-of-way. Rather, the project creates a bicycle facility for exclusive use of bicyclists by removing existing street parking and traffic lanes. (e.g., *California Farm Bureau Fed'n. v. California Wildlife Conserv. Bd.* (2006) 143 Cal.App.4th 173, 192 [Project to "improve habitat" where there was no existing habitat was not within section 15304 exemption, and was not a "minor" alteration]; (*Save Our Carmel River v. Monterey Peninsula Water Mgmt. Dist.* (2006)

141 Cal.App.4th 677, 698 [rejecting Class 2 exemption where city failed to show that a proposed "replacement structure...will have substantially the same purpose and capacity as the replaced structure"].)

The Project is not a "*minor* alteration" but is a major alteration affecting at least 1,012 vehicles per hour at just one intersection, with significant impacts on traffic, air quality, GHG, energy consumption, parking, and public safety, including emergency vehicle access.

On top of the Project's removal of nearly all street parking on 13th Street, MTA's Sustainable Streets Division plans to remove *still more parking* on 13th Street in the eastbound frontage lane serving several businesses on 13th Street near Folsom Street to install a private "Bikeshare station." (Ex. G.) Those spaces and that frontage area are used to access businesses there. MTA's proposed expansion of use by bicycles invalidates the categorical exemption. The successive reduction of parking will also have significant cumulative impacts on parking, traffic, and air quality, triggering the section 15300.2 cumulative impacts exception to any categorical exemption.


IV. IMPLEMENTING THE PROJECT WITHOUT ADEQUATE PUBLIC REVIEW IS ITSELF AN ABUSE OF DISCRETION

CEQA's most fundamental mandate to allow the public meaningful voice and informed participation in environmental review has been violated by MTA's illegal implementation of the Project without allowing the public the opportunity to appeal its action to this Board. This Board should not condone or encourage such illegal action and instead should require MTA to remove its changes to 13th Street, both to comply with the law and to prevent its further violation by MTA.

CONCLUSION

The proposed 13th Street Project may have significant impacts on the environment, and it is not exempt from CEQA. This Board should grant this Appeal, set aside the Planning Department's April 10, 2017 Categorical Exemption and the MTA Board's April 18, 2017 Project approval, and order the MTA to immediately remove all physical changes and restore 13th Street and the surrounding area to the way they were before MTA's illegal implementation of the Project, pending environmental review in compliance with CEQA.

DATED: June 23, 2017



Mary Miles

EXHIBIT F

Mary Miles

From: CPC-RecordRequest <CPC-RecordRequest@sfgov.org>
Sent: Wednesday, June 21, 2017 1:47 PM
To: Mary Miles
Cc: Rahaim, John (CPC); Ionin, Jonas (CPC); Gibson, Lisa (CPC); CPC-RecordRequest
Subject: RE: IMMEDIATE DISCLOSURE REQUEST

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Ms. Miles,

We received your request. Although you submitted the request as an Immediate Disclosure Request, we will be adhering to the time deadlines governing standard requests (up to 10 days) as the request is extensive, requiring coordination of several staff members and various types of records, and is not simple, routine or otherwise readily answerable [Admin Code 67.25(a)].

We will contact you as soon as records are ready for review.

Record Requests

Main: 415-558-3678 | Fax: 415-558-6409

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

[Hours of Operation](#) | [Property Information Map](#) | [Record Requests](#)

From: Mary Miles [<mailto:page364@earthlink.net>]
Sent: Tuesday, June 20, 2017 8:34 AM
To: Rahaim, John (CPC); Ionin, Jonas (CPC); Gibson, Lisa (CPC)
Subject: IMMEDIATE DISCLOSURE REQUEST

FROM:
Mary Miles (SB #230395)
Attorney at Law
364 Page St., #36
San Francisco, CA 94102
(415) 863-2310

TO:
John Rahaim, Director
Jonas Ionin, Custodian of Records
San Francisco Planning Department
1650 Mission St., 4th Floor
San Francisco, CA 94103

DATE: June 20, 2017

RE: 13th Street Eastbound Bicycle Facility Project

IMMEDIATE DISCLOSURE REQUEST PURSUANT TO THE SAN FRANCISCO SUNSHINE ORDINANCE AND THE CALIFORNIA PUBLIC RECORDS ACT

Pursuant to the San Francisco Sunshine Ordinance (SF Admin. Code secs. 67.21 *et seq.*) and the Public Records Act (Gov. Code secs. 6250 *et seq.*), this is an IMMEDIATE DISCLOSURE REQUEST for the following records:

1. All records supporting the April 10, 2017 “Certificate of Determination Exemption from Environmental Review” on the “SFMTA – 13th Street Eastbound Bicycle Facility Project (Case No. 2017-001180ENV) as previously requested on April 26, 2017 and not produced, including **all** records referred to in the June 19, 2017 “Planning Department Response to the Appeal of Categorical Exemption for the SFMTA – 13th Street Eastbound Bicycle Facility Project.”
2. All traffic counts on 13th Street since 1999, including the exact date, time, and the names and titles of all staff or other persons conducting the counts;
3. The methodology used for each of the traffic counts on 13th Street in Item 2 above. For example, were those counts done by cordon counts? Or were those counts done by direct observation at specific intersections? Or were those “counts” done by computer extrapolation? If by computer extrapolation, please provide records explaining *step by step*, how the counts were conducted;
4. All bicycle counts on 13th Street since 1999, including the dates, times, and the names and titles of all staff or other persons conducting the counts;
5. The methodology used for the bicycle counts.
6. All pedestrian counts on 13th Street since 1999, including the dates, times, and names and titles of all staff or other persons conducting the counts. If no such records exist, please so state in your response, referring to this Item number in this Request.

If the above records are available electronically, please immediately provide them on a disc. In your response, please refer to the above Item numbers in this Request. If your response does not refer to the above Item numbers in this Request, I will deem this Request denied. Please advise me in advance if the cost of copies of these records will exceed \$10. If any of the above records cannot be immediately provided, please state what records will and will not be immediately provided, referring to the above Item numbers, provide the **exact date** when you will provide any records not immediately provided, and do not delay providing the records that are immediately available, referring in all responses to the Item numbers above. If all of the requested materials cannot be immediately provided, I request that *you* arrange for a continuance of the Board of Supervisors hearing on the appeal of the above-described Project, presently scheduled for June 27, 2017, until *after* your agency has provided *all* records supporting the appealed determination of your agency, including those requested here. If I have not received a response to this Request by 5:00 p.m. on June 22, 2017, I shall deem this Request denied. Thank you for your attention to this IMMEDIATE DISCLOSURE REQUEST.

Sincerely,
Mary Miles

cc: Lisa Gibson, Environmental Review Officer

EXHIBIT G



PUBLIC HEARING

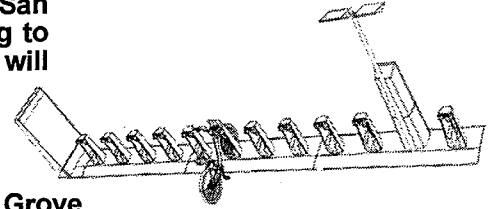


SFMTA
Municipal
Transportation
Agency

FOR PROPOSED BIKE SHARE STATION

Pursuant to SFMTA Order No. 5785 issued on June 16th, 2017, the San Francisco Municipal Transportation Agency will hold a public hearing to solicit public input on the following proposed changes. The hearing will be held as follows:

Date/Time: Friday, June 30, 2017 at 10:00 AM
Location: Room 416 (Hearing Room 4), City Hall, San Francisco
(located on Van Ness Avenue between McAllister and Grove Streets)



13th Street at Folsom Street – Bike Share Station

ESTABLISH – NO PARKING EXCEPT BICYCLES

ESTABLISH – BIKE SHARE STATION

13th Street Service Road, north and south sides, from 13 feet to 86.5 feet west of Folsom Street (70-foot by 25-foot bike share station in approximately eight parking spaces, and 3-foot additional red zone buffer)*

Iowa Street at 22nd Street – Bike Share Station

ESTABLISH – NO PARKING EXCEPT BICYCLES

ESTABLISH – BIKE SHARE STATION

Iowa Street, east side, from 22 feet to 104 feet south of 22nd Street (82-foot bike share station in approximately seven unmetered angled parking spaces)*

Items denoted with an asterisk () can be approved by the City Traffic Engineer after the public hearing. Otherwise, the SFMTA Board will make the final approval at a later date based on the outcome at the public hearing.*

A copy of this hearing notice can be obtained at <http://www.sfmta.com/about-sfmta/organization/committees/engineering-public-hearings>. Opinions on these proposed changes may be filed in writing prior to the hearing with **SFMTA Transportation Engineering, 1 South Van Ness Avenue, 7th Floor, San Francisco, CA 94103-5417**. Written opinions may also be transmitted by fax to **(415) 701-4737** or by email to sustainable.streets@sfmta.com with subject line "Public Hearing." Submitted opinions will become part of the official public record and will be brought to the attention of the person(s) conducting the hearing. Information on the proposed changes may be obtained from SFMTA Transportation Engineering at the above-referenced addresses or by telephone at **(415) 646-2352**.

For additional information about San Francisco's bicycle sharing program, please visit <http://www.bayareabikeshare.com>

311: Free language assistance provided with 48 hours' notice./ Hay disponibilidad de ayuda gratuita con el idioma con un aviso con 48 horas de anticipación./ 可提供免費語言協助，但需提前48小時通知。