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APPEAL OF EIR CERTIFICATION
75 Howard Street Project
Supplemental Appeal Response

DATE:	**November 13, 2015**
TO:	**Angela Calvillo, Clerk of the Board of Supervisors**
FROM:	**Sarah B. Jones, Environmental Review Officer – (415) 575-9034** **Don Lewis, Environmental Planner – (415) 575-9168**
RE:	**File No. 151015, Planning Department Case No. 2011.1122E, Appeal of the Final Environmental Impact Report for the 75 Howard Street Project**
HEARING DATE:	**November 17, 2015**
ATTACHMENTS:	**Exhibit A: Supplemental Appeal Letter from David Osgood, Rincon Point Neighbors Association, Dated November 6, 2015** **Exhibit B: Letter to Board President London Breed and Members of the Board of Supervisors from Gibson, Dunn & Crutcher LLP, Dated November 6, 2015**

PROJECT SPONSOR:	**RDF 75 Howard LP**
APPELLANT:	**David Osgood, Rincon Point Neighbors Association**

INTRODUCTION

This memorandum, and the attached document, comprise a response to the supplemental letter of appeal to the Board of Supervisors ("the Board") regarding the issuance of a Final Environmental Impact Report ("FEIR") under the California Environmental Quality Act ("CEQA") for the 75 Howard Street Project (the "proposed project"). The FEIR was certified by the Planning Commission ("the Commission") on September 3, 2015. The appeal to the Board was filed on October 5, 2015 by David Osgood on behalf of Rincon Point Neighbors Association ("the appellant"), and the Planning Department ("the Department") submitted an Appeal Response to the Board on November 9, 2015. The appellant submitted a supplemental appeal letter to the Board on November 6, 2015, and it is included as Exhibit A of this Supplemental Appeal Response.

The decision before the Board is whether to uphold the Planning Commission's decision to certify the FEIR and deny the appeal, or to overturn the Commission's decision to certify the FEIR, and return the proposed project to the Planning Department for staff to conduct additional environmental review.

APPELLANT ISSUES AND PLANNING DEPARTMENT RESPONSES

Summary of Issues Appellant Raises in the Supplemental Appeal Letter

The original appeal letter that was submitted on October 5, 2015 was two pages long and contained primarily brief statements and assertions regarding alleged deficiencies in the EIR. The Department addressed these largely unsupported claims in nine responses contained in our original Appeal Response dated November 9, 2015. The appellant submitted a seven-page supplemental appeal letter on November 6, 2015 which elaborates on some of the topics that were raised in the original appeal letter by providing more arguments related to traffic, shadow, alternatives, flooding, and hazardous materials. Even with this supplemental appeal letter, the appellant has not provided evidence supporting a claim that the EIR does not satisfy CEQA requirements or that the Planning Commission's findings and conclusions are unsupported by substantial evidence. The Department finds that the appellant's claims still remain conclusory and unsupported by substantial evidence in the record.

Appellant's Claim

1. **The FEIR includes inadequate traffic analysis and fails to consider mitigation measures required under CEQA.**

Planning Department Response

The methodology and results of the traffic analysis presented in the FEIR are correct and consistent with established professional practice, accurately disclose potential transportation impacts, and identify mitigation measures as required by CEQA.

Intersection vehicle turning movement counts for the FEIR were collected in February 2011 at the intersections of The Embarcadero and Mission Street, The Embarcadero and Harrison Street, and Fremont and Folsom streets, and in June 2012 at the intersections of The Embarcadero and Howard Street, The Embarcadero and Folsom Street, Steuart and Mission streets, Steuart and Howard streets, Spear and Howard streets, and Spear and Folsom streets. As indicated in the EIR, pp. 4.E.6-4.E.7, the February 2011 counts were selected for the evaluation of this project because they represented an appropriate baseline for traffic conditions along the waterfront; this baseline had been developed as part of the 34th America's Cup and James R. Herman Cruise Terminal and Northeast Wharf Plaza projects.

The three February 2011 counts were ten months old at the time the Notice of Preparation of an Environmental Impact Report ("NOP") was issued and the transportation analyses were initiated (December 2012), which is consistent with past practices as described in the

Transportation Impact Analysis Guidelines issued by the Planning Department in 2002[1] ("SF Guidelines").[2] Appendix B of the SF Guidelines indicates that counts collected within the previous two years can be used when conducting transportation analyses in areas where traffic patterns are stable or no substantial changes in transportation conditions have occurred in the interim, as is the case at the intersections of intersections of The Embarcadero and Mission Street, The Embarcadero and Harrison Street, and Fremont and Folsom streets..

Notwithstanding the above, LCW Consulting, a transportation consultant included in the Planning Department's pool of qualified firms with expertise in transportation planning analysis, collected new intersection turning movement counts in October 2015 at the request of the project sponsor.[3] Counts were collected at the intersections of The Embarcadero and Mission Street, The Embarcadero and Howard Street, The Embarcadero and Folsom Street, The Embarcadero and Harrison Street, Steuart and Mission streets, Steuart and Howard streets, Spear and Howard streets, and Spear and Folsom streets. LCW Consulting summarized the traffic data collection methodology and results in a technical memorandum dated November 5, 2015. This technical memorandum was reviewed by Adavant Consulting, the firm that conducted the transportation analysis for the proposed project described in the FEIR, and also the Planning Department. The work was found to have been performed in accordance with the SF Guidelines and established professional practice.

Overall intersection traffic volumes collected in 2015 were found to be lower than the 2011/2012 counts presented in the FEIR, with the exception of the intersection of Steuart and Mission streets where the overall traffic volumes in 2015 are about 7 percent greater (about 55 vehicles). In general, variation of up to 10 percent can typically be expected on a daily basis. Therefore, the increase at this location falls within the expected margin of daily variance. The intersection of Steuart and Mission streets was identified in the FEIR as operating at LOS B for existing and existing plus project conditions, and at LOS C for future 2035 cumulative conditions; thus a 7 percent increase in traffic volumes at this intersection would not change the impact analysis conclusions presented in the FEIR.

At the remaining seven intersections, the study found a reduction of traffic volume of between 15.5 and 26.8 percent. The greatest traffic volume reduction occurred on northbound and southbound The Embarcadero, with lesser volume differences at the intersections along Spear and Steuart streets. The lower volumes in 2015 as compared to the 2011/2012 counts (i.e., decreases of more than 10 percent) could be attributed to a combination of factors, including:

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1 San Francisco Planning Department, *Transportation Impact Analysis Guidelines for Environmental Review* 2002. Available online at http://www.sf-planning.org/Modules/ShowDocument.aspx?documentid=6753. Accessed November 10, 2015.

2 Pursuant to CEQA, the publication date of the NOP establishes the baseline existing conditions for an EIR.

3 Exhibit B from letter to Board President London Breed and Members of the Board of Supervisors from Gibson, Dunn & Crutcher LLP, dated November 6, 2015.

- Reconfiguration of the I-80 westbound off-ramp at Fremont Street, which eliminated direct access onto Folsom Street eastbound.
- Nearby ongoing construction projects in the vicinity of Folsom, Beale, and Fremont streets that affect the availability of travel lanes.
- The closure of Spear Street southbound between Market and Mission streets by the Department of Public Works at the time the counts were conducted.
- Congestion at the I-280 ramps at King Street, which may have reduced the attractiveness of The Embarcadero as a route into or out of the downtown area.
- Completion of development projects along Eighth, Ninth and Tenth streets, which reduced congestion along these north/south streets.
- Implementation of Safer Market Street turn restrictions in August 2015.

It should be noted that Spear Street southbound travel lanes between Market and Mission streets have been temporarily closed for several months for utility work. Once construction on Spear Street is completed, traffic on Spear Street between Market and Mission streets is not anticipated to increase substantially as traffic at this segment is relatively low due to eastbound turn restrictions on Market Street, which were implemented as part of the Safer Market Street program. As a result, it can be concluded that the traffic analysis presented in the FEIR represents a more conservative analysis of potential project impacts (in other words, the FEIR overstates the traffic impacts of the project). The appellant does not provide any substantial evidence to support the assertion that the age of the traffic counts renders the EIR traffic analysis legally inadequate.

The appellant further suggests that the study area for the traffic analysis is too narrow in scope since it does not include the Ferry Building or AT&T Park. The SF Guidelines suggests that a project study area should encompass a radius between two blocks and 0.25 miles, but that a larger area may be determined depending on the type of project. The project study area (see DEIR p. 4.E.2) includes all four intersections along The Embarcadero within a 0.25-mile radius of the project site, all five intersections adjacent to the project site, and a freeway ramp within a 0.30-mile radius.

As no significant transportation impacts were identified under Existing-plus-Project conditions within the study area, it is not expected that any project-related impacts would occur outside of the study area. Analysis of more distant intersections would not provide any new information about project-related impacts.

Furthermore, the intersections on The Embarcadero would capture any changes in traffic due to nearby activities such activities from the Ferry Building or at AT&T Park. Traffic counts at all study intersections were collected on a Tuesday or a Thursday, on days when the midday Ferry Building Farmers Market took place. Thus, the selected study intersections comply with the SF Guidelines and provide an accurate representation of traffic conditions within the study area.

In sum, the methodology and results of the traffic analysis presented in the FEIR are correct and consistent with established professional practice, accurately disclose potential transportation impacts, and identify mitigation measures as required by CEQA.

Appellant's Claim

2. **The FEIR is inadequate because the project's shadow impacts have not been fully addressed.**

Planning Department Response

The FEIR correctly analyzes and discloses the proposed project's shadow impacts and concludes that there is no feasible mitigation measure that would reduce the shadow impacts to a less-than-significant level.

The appellant previously claimed that the EIR's shadow analysis was inadequate in their original appeal letter, and the Department's Appeal Response addressed the adequacy of the EIR's shadow analysis on pp. 6-7.

The appellant cites the technical memorandum, dated August 19, 2015, that summarizes the results of a July 2015 shadow study for the preferred project design, which is also the approved project and the revised Code Compliant Alternative. (The August 19, 2015 shadow memorandum is attached to the supplemental appeal letter included as Exhibit A to this Supplemental Appeal Response.) The appellant asserts that the FEIR analysis of cumulative shadow is flawed because it does not include this updated shadow analysis that accounts for projects that are now under construction or have been built since the baseline for existing conditions was set for the EIR.

The FEIR concludes that the 348-foot-tall proposed project (the original preferred project) would cause a significant shadow impact on Rincon Park, due to the location and timing of net new project shadow, which would fall on sunlit areas of the park where many park users prefer to sit in the afternoon. For these reasons, the FEIR finds that net new shadow on Rincon Park under the proposed project would be substantial and would adversely affect the enjoyment and use of the park (DEIR p. 4.H.24).

As previously explained on p. 6 of our November 9, 2015 Appeal Response[4], the FEIR concludes (DEIR p. 4.H.24 and RTC p. 4.I.8) that no feasible mitigation for the proposed project's shadow impact is available because any theoretical mitigation would fundamentally alter the basic design and programming parameters of the proposed project. This decision of no feasible mitigation is consistent with other determinations made by the Planning Department on other projects for which mitigation of significant shadow impacts would require substantial reductions in the proposed building envelope. The FEIR notes (DEIR p. 4.H.24 and RTC p. 4.I.8) that any development that is approximately 100 feet or taller on the project site would also

[4] Planning Department's Appeal Response, pp. 10-13, dated November 6, 2015. A copy of this response is available as part of Board File No. 151015 and is available online at https://sfgov.legistar.com/LegislationDetail.aspx?ID=2479849&GUID=18B5019B-1C47-41FC-A3B4-7BF3FE8DE55F&Options=ID|Text|&Search=151015.

create afternoon shadow on Rincon Park. Further, construction of a building on the site equal to or lower than the height of the existing 91-foot-tall parking garage would result in a substantially reduced development program that would not meet the project sponsor's objectives nor provide sufficient economic viability to warrant construction of such a building. Thus, the FEIR concludes (DEIR p. 4.H.24 and RTC p. 4.I.8) that there is no feasible mitigation to reduce this impact to a less-than-significant level and therefore the proposed project's impact on Rincon Park would be significant and unavoidable.

Substantial reductions in the proposed building height to reduce the significant shadow impact identified for the proposed project were appropriately considered in the FEIR as alternatives to the proposed project, rather than as mitigation measures. After publication of the DEIR, the project sponsor selected the Code Compliant Alternative, with revisions, as the preferred project. The revised Code Compliant Alternative, as described in the FEIR (RTC pp. 2.24-2.28), is a 220-foot-tall tower (a reduction of 128 feet from the height of the proposed project analyzed in the EIR). The FEIR concludes that the revised Code Compliant Alternative would create about 35.4 percent less annual net new shadow than that of the proposed project. However, like the proposed project, the Code Compliant Alternative would still result in a significant and unavoidable impact on Rincon Park, due to the large numbers of people who sit in sunlit areas of the park in the afternoon.

The August 19, 2015 technical memo summarizes the results of a July 2015 shadow study that was undertaken independent of the FEIR analysis of shadow at the request of the project sponsor. This shadow analysis of the revised Code Compliant Alternative found reductions of net new shadow on Rincon Park. The August 19, 2015 memo disclosed that the reduction was due to refinements in modeling technology since publication of the DEIR that allow for modeling transparent building elements, and an updated baseline for existing conditions to account for projects that have been built or are under construction since the baseline conditions were established.[5] The August 19, 2015 memo found that net new shadow of the preferred project (the revised Code Compliant Alternative) would be less than that of the original Code Compliant Alternative under the refined analysis of shadow in the July 2015 shadow study, Therefore, the memo concluded that "The results presented in the July 2015 shadow study show similar conditions in Rincon Park for the preferred project, and would not alter any conclusions presented in the EIR."

CEQA Guidelines Section 15088.5 requires that a lead agency must recirculate an EIR when "significant new information" is added to the EIR. Significant new information includes a disclosure that "a new significant environmental impact would result from the project or a new mitigation measure proposed to be implemented (CEQA Guidelines Section 15088.5(a)(1))," or "a substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted to reduce the impact to a level of insignificance (CEQA

[5] Pursuant to CEQA, the Notice of Preparation for the 75 Howard Street project was published on December 12, 2012, which established the baseline existing conditions for the EIR.

Guidelines Section 15088.5(a)(2))." CEQA Guidelines Section 15088(b) states that "Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR."

The appellant asserts that the EIR analysis is flawed because the baseline used in the DEIR has changed since the baseline conditions for the EIR were established. The addition of projects that are under construction, or newly constructed, to the baseline existing conditions (including 101 First Street, 181 Freemont Street, 299 Fremont Street, 399 Fremont Street, 201 Folsom Street, 222 Second Street, 535 Mission Street, and 325 Fremont Street) has the effect of *reducing* the relative severity of net new shadow, rather than increasing the severity of impacts under the preferred project. Moreover, these projects were all considered in the cumulative shadow analysis.

The supplemental information presented in the August 19, 2015 memo does not constitute "significant new information" under CEQA Guidelines Section 15088.5. Rather, it presents the results of a refined analysis that indicates a *decrease* in severity of the preferred project's relative contribution to shadow impacts on Rincon Park under the revised Code Compliant Alternative, based on a more accurate modeling and updated information about projects that are under construction or completed since the baseline conditions were set for the EIR.

The EIR correctly analyzes and discloses the proposed project's shadow impacts, and there is no feasible mitigation measure that would reduce the shadow impacts to a less-than-significant level. The appellant's claim does not provide any substantial evidence to the contrary, and no further analysis is required.

Appellant's Claim

3. **The FEIR's analysis of feasibility of alternatives is flawed, and the project sponsor should provide a detailed financial analysis for both the proposed project and a 100-foot-tall alternative.**

Planning Department Response

The FEIR adequately considers and analyzes a reasonable range of alternatives, and the project sponsor has provided a sufficient economic explanation as to why a 100-foot-tall alternative would not be feasible.

The appellant previously claimed that a 100-foot-tall alternative should have been analyzed under the EIR in their original appeal letter, and the Department's Appeal Response adequately addressed this claim on pp. 12-13. In summary, the number and range of alternatives analyzed in the EIR is adequate and complies with the CEQA Guidelines. The CEQA Guidelines do not require a minimum or maximum number of alternatives that must be analyzed. Rather, they recognize that the range of conceivable alternatives to a proposed project, and variations on those alternatives, is potentially vast. CEQA Guidelines Section 15126.6(a) requires only that an EIR consider a reasonable range of alternatives that will foster informed decision-making, and

limits the range of alternatives to the "rule of reason." This is explained in EIR Chapter 6, Alternatives, on p. 6.1 and on RTC pp. 4.N.8 to 4.N.9.

Further, the purpose of presenting a range of alternatives to a proposed project is to focus on alternatives that are capable of reducing or eliminating any of the significant effects of the proposed project identified in the EIR, and to foster informed decision-making and public participation by disclosing the comparative environmental consequences of alternatives vis-à-vis the proposed project. The 75 Howard Project FEIR did not consider every possible height variation between the proposed and existing building, and it did not need to. There are an unlimited number of possible heights that could be considered as an alternative. The EIR discusses two alternatives that are both substantially lower than the original proposed project, in addition to the No Project Alternative. The EIR thus presents a sufficient range of alternatives that lessen the potential impacts of the proposed project.

The FEIR does not present an alternative that would not result in any net new shadow on Rincon Park because virtually any new building constructed on the site as tall as or slightly taller than the existing 8-level (91-foot-tall) parking garage would cast net new shadow on Rincon Park. As stated on EIR p.4.H.32, any development of approximately 100 feet or taller on the project site would shadow Rincon Park. Further, construction of a building on the site equal to or lower than the height of the existing parking garage or the Code Compliant Alternative would not be considered a reasonable alternative, as a substantially reduced development program would not meet most of the project sponsor's objectives nor would there be sufficient economic viability to warrant construction of such a building.

In a letter from Paramount Group Inc., submitted to the San Francisco Board of Supervisors as part of the project sponsor's supplemental brief,[6] the project sponsor states that a 100-foot alternative was not considered because construction of such a building would be burdened with the additional costs of the more expensive high-rise building type (above 85 feet) without optimizing its return for the substantially higher construction costs. In addition, given that the economic model for the proposed project must also justify the project sponsor's loss of income from the existing garage and the assumption of the risks of construction, the project sponsor does not believe replacing a 91-foot building with a 100-foot building is consistent with its objectives of making it economically feasible to demolish and replace the garage and produce a reasonable investment for the project sponsor and attract investment capital and construction financing. Further support for the project sponsor's statement is provided, in a letter from the project sponsor's architect, Skidmore Owens and Merrill.[7] The letter indicates that construction of a 100-foot-tall building triggers specific Planning Code and Building Code requirements that, in combination with the fixed cost of demolishing an existing structure and the fixed opportunity cost of losing the existing parking, make a project of 100 feet (only two stories

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[6] Exhibit A from letter to Board President London Breed and Members of the Board of Supervisors from Gibson, Dunn & Crutcher LLP, dated November 6, 2015. This letter is attached.

[7] Ibid.

higher than the existing structure) inefficient, both architecturally and economically. As stated above, an EIR does not need to consider every conceivable alternative to a project but rather it must consider a reasonable range of potentially feasible alternatives. CEQA provides the ability to reject alternatives from further consideration, including for reasons of feasibility (CEQA Guidelines, § 15126.6(a)).

As stated in Response AL-6 in the RTC document (pp. 4.N.29-4.N.31), the findings by the decision-maker present the reasons why an alternative may be found to be infeasible; those reasons do not need to be presented in the EIR (RTC p. 4.N.30). In addition, the project sponsor has presented reasons why a 100-foot-tall development on the project site would not be feasible in its November 6, 2015 letter to the Board of Supervisors.

In conclusion, the FEIR adequately considers and analyzes a reasonable range of alternatives. The project sponsor has provided a sufficient economic explanation as to why a 100-foot-tall alternative would not be feasible.

Appellant's Claim

4. **The FEIR fails to consider public health and safety concerns related to tsunami and sea level rise impacts.**

Planning Department Response

The FEIR accurately discloses the best available science-based projects for tsunami and sea level rise and correctly finds the project's impact to be less than significant.

The appellant raised a similar issue in his October 5, 2015 appeal letter, and the Department's Appeal Response addresses the issue in Response 8 on pp. 10-12. The Final EIR comprehensively discusses and analyzes flooding risks regarding the proposed project, including EIR pp. 4.K.2-4.K.26, RTC pp. 4.L.4-4.L.29. The proposed project was addressed in a manner that is consistent with other projects reviewed in the same flood zone, and the appellant does not provide any evidence of why this would not be adequate in this situation.

The RTC document discusses factors contributing to coastal flooding, including storm surge, tides, sea level rise (pp. 4.L.13-4.L.14), and tsunamis (RTC pp. 4.L.5, 4.L.23; also EIR pp. 4.K.23-4.K.24). The RTC document presents flood elevation and sea level rise estimates and their implications regarding the proposed project (pp. 4.L.14-4.L.19). RTC pp. 4.L.21-4.L.23 explain the City's approach to analyzing these flooding risks.

Contrary to what the appellant claims, the FEIR's analysis is supportable. As stated in the Planning Department's Appeal Response, pp. 10-13, the FEIR's analysis adequately considers whether people or structures on the project site could be exposed to a significant risk of loss, injury or death involving flooding resulting from sea level rise in combination with storm surge and extreme tides. "The impact is less than significant if the project would not be inundated during a 100-year coastal flood within the life of the project, or if the project would conform to flood resistant building standards and be capable of adapting to future flood hazard

conditions." The project site is not within the 100-year flood area ("V zone") on the Federal Emergency Management Agency's preliminary Flood Insurance Rate Maps, nor within any special hazard flood area on the City's 2008 interim floodplain map, and the Final EIR concludes that the risk of inundation by seiche, tsunami, or mudflow is less than significant. San Francisco's *Emergency Response Plan* identifies a maximum, worse case, 100-year tsunami run-up at the project site of about 8 feet. This run-up would flood the first floor of the proposed building (which would be non-residential) and the underground parking levels (RTC p. 4.L.23, EIR p. 4.K.23).

Contrary to the appellant's claim, the FEIR acknowledges the public health and safety implications that could ensue if such a tsunami or sea level rise (or by a combination of factors leading to flooding) were to occur. As explained on RTC p. 4.L.4, even if a tsunami caused flooding at the first floor of the building and the underground parking levels, this would not necessarily mean that those parts of the building would be destroyed. On the contrary, the building would survive, and after cleanup, would be useable and would not be considered a public health risk. The proposed building would be sturdy, with steel piles driven deep into the ground, reinforced concrete underground parking levels, reinforced concrete first floor, and steel building frame. Therefore, the building would be adequately anchored to prevent floatation, collapse, or lateral movement. Flooding may result in the need to replace sheetrock, paint, and perhaps wiring. Furniture on the first floor may need to be replaced. After repair, the building would be functional. As discussed on RTC pp. 4.L.5, 4.L.23, and 4.L.27, the tsunami warning system and Emergency Plan (Improvement Measure I-HY-A) would assist project residents in evacuating prior to a flooding event. The proposed building would be designed to be capable of withstanding direct and prolonged contact with temporary salt water flooding, without sustaining damage that requires more than cosmetic repair.

The same analysis applies to flooding of the first floor and parking levels caused by any other combination of flooding risk factors, including sea level rise. As discussed on RTC p. 4.L.15 and shown in figures on RTC pp. 4.L.16 and 4.L.17, the project site would not be inundated with either 12 inches of sea level rise (forecasted for 2050), or 36 inches of sea level rise (forecasted for 2100). However, when the effects of a 100-year storm surge are combined with water level rises of 12 inches, the San Francisco Public Utilities Commission (SFPUC) inundation maps indicate that the project site would be partially inundated by 0 to 2 feet, and flooding would be limited to the eastern portion of the proposed building site (RTC Figure 4.K.1). The project site would be flooded to depths of between 0 and 4 feet when adding the 100-year storm surge to the projected 36-inch sea level rise in the year 2100 (RTC Figure 4.K.2). The inundation depth of 4 feet would flood the first floor and underground parking, and the analysis of damage described above in relation to tsunami risk applies to that scenario. Pages 4.L.24-4.L.29 of the RTC document thoroughly examine the sea level rise risks and provide substantial evidence as to why people or structures on the project site would not be exposed to significant risk of loss, injury, or death involving flooding as a result of sea level rise in combination with storm surface and extreme tide.

In sum, under either tsunami or sea level rise conditions, the damage to the proposed project would be limited to cosmetic damage and would not be catastrophic, as claimed by the appellant. The FEIR accurately concludes that the proposed project would result in less-than-significant impact due to exposure of people or structures to increased risk of flooding due to tsunami or sea level rise. The appellant does not provide substantial evidence to the contrary.

Appellant's Claim

5. **The FEIR fails to include an analysis of project impacts related to hazardous materials.**

Planning Department Response

The FEIR fully discloses and discusses the impacts associated with hazardous materials at the project site and identifies the steps needed to reduce potential impacts to a less-than-significant level.

The FEIR comprehensively discusses and analyzes hazards issues regarding the proposed project, including pp. 4.T.1-4.T.9 of the RTC and pp. 134-142 in Appendix A to the EIR (the Initial Study).

To recap, the soil under the open space site of the proposed project site would likely contain fill materials from the 1906 earthquake, as pointed out in the Initial Study (p. 135, note 145, citing the Transit Center District Plan EIR p. 626). With the 2013 expansion of applicability of Article 22A (the Maher Ordinance[8]), the entire project site falls within the scope of the Maher Ordinance. Compliance with Article 22A obviates the need for a separate mitigation measure and other analysis, because compliance is protective of human health and the environment, as discussed below.

When adopting amendments to the Maher Ordinance in 2013, the Board of Supervisors made findings (section 22A.1) that included the following language:

> 1. Health Code Article 22A and Building Code Section 106A.3.2.4 work in concert to provide an important City process for identifying, investigating, analyzing and, when deemed necessary, remediating or mitigating hazardous substances in soils within specified areas of the City and County of San Francisco ("City").
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> 2. These codes provide a specific, well-explained and equitable City process for investigating, analyzing and, when deemed necessary, remediating or mitigating hazardous substances in soils, under the oversight and supervision of the

[8] San Francisco Municipal Code, section 22A (2013). (Amended by Ord. 155-13, File No. 130369, App. 7/25/2013, Eff. 8/24/2013). Available online at: http://library.amlegal.com/nxt/gateway.dll/California/health/article22aanalyzingsoilsforhazardouswast?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca. Accessed November 8, 2015.

> Department of Public Health ("Department"), the City agency with expertise in these matters.
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> 3. The Department has overseen the Article 22A process for many years and it is the experience of the Department, given the nature of contamination that has been found on City sites, that these sites can be remediated or mitigated through methods such as removal, treatment, installation of vapor barriers, or covers, or by placing restrictions on uses or activities on the site to protect the environment or public health.

As noted in Finding 3 above, the City has many years of experience in implementing Article 22A to successfully remediate or mitigate contaminated sites. As explained in the FEIR, Article 22A contains a series of steps that comprehensively and sufficiently deal with a variety of hazardous substances situations. Initial Study pp. 136-137 in FEIR Appendix A describe these steps.

> Major requirements of this ordinance, triggered by the building permit application, include preparation of a site history report to describe past site uses and identify whether the site is listed as a hazardous waste site pursuant to State or Federal regulations; implementation of a soil investigation to evaluate the potential presence of hazardous wastes in the soil; and preparation of a soil analysis report that evaluates the results of chemical analysis of the soil samples. Article 22A requires that the report(s) be prepared by knowledgeable, certified professionals and provide information on historic and current contamination at the property. The soil analysis report is submitted to the San Francisco Department of Public Health (SFDPH), the California Department of Toxic Substances Control (DTSC) and the San Francisco Bay Region Regional Water Quality Control Board.
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> If required on the basis of the soil analysis report, a site mitigation plan must be prepared to 1) assess potential environmental and health and safety risks; 2) recommend cleanup levels and mitigation measures, if any are necessary, that would be protective of workers and visitors to the property; 3) recommend measures to mitigate the risks identified; 4) identify appropriate waste disposal and handling requirements; and 5) present criteria for on-site reuse of soil. The recommended measures would be completed during construction. Upon completion, a certification report is required stating that all mitigation measures recommended in the site mitigation report have been completed and that completion of the mitigation measures has been verified through follow-up soil sampling and analysis, if required.

The FEIR includes sufficient information to assess significance of contaminated soils impacts. Initial Study pp. 135-138 describe the site history, proposed depth of excavation for the proposed project, and results of soil sampling. A soil investigation and analysis report was carried out prior to publication of the Initial Study. It noted several hazardous substances present in soil at reportable quantities.

The appellant claims that, "The FEIR includes no concrete performance standards applicable to this site mitigation plan." On the contrary, the requirements and protocols of the ordinance provide a complete set of performance standards. The ordinance is a regulatory regime for hazards materials testing and remediation that incorporates state regulatory standards and procedures established by the California Department of Toxic Substances Control ("DTSC") or the Regional Water Quality Control Board ("RWQCB") for sampling and testing soil and groundwater. (The agency with primary jurisdiction varies based on certain legal factors.) The ordinance incorporates the standards of the DTSC and/or the RWQCB that are established to protect public health and safety. The relevant sections are quoted here (emphasis added):

> Article 22A, section 22A.10
>
> Unless Section 22A.9 is applicable, if a soil and/or groundwater sampling and analysis report indicates that hazardous substances are present in the soil or hazardous substances in groundwater *exceed the Department of Toxic Substances Control's or Regional Water Quality Control Board's public health risk levels given the intended use*, the applicant shall:
>
> (a) Prepare a site mitigation plan that contains the following information:
>
> (1) A determination by the Qualified Person as to whether the hazardous substances in the soil and/or groundwater are causing, or are likely to cause, significant health and safety risks given the intended use. The Director may require additional soil and/or groundwater sampling and analysis before such a determination can be made.
>
> (2) If a determination of a significant health and safety risk is made under subsection (a)(1), a recommendation by the Qualified Person of measures that will assure that the intended use will not result in public health or safety hazards *in excess of the acceptable public health risk levels established by the Department of Toxic Substances Control or the Regional Water Quality Control Board, or other applicable regulatory standards* and, therefore, will mitigate the significant health and safety risks caused or likely to be caused by the presence of the hazardous substances in the soil and/or groundwater given the intended use. If the report recommends mitigation measures it shall identify any soil and/or groundwater sampling and analysis that it recommends the project applicant conduct following completion of the mitigation measures to verify that mitigation is complete; . . .

For example, as explained on p. 4.T.8 of the RTC, if there is potential for future residents of the proposed project to have "exposure to vapors," guidance developed by the DTSC should be used. DTSC recommends that agencies consider using the soil gas screening numbers published by the Office of Environmental Health Hazard Assessment (OEHHA).

As explained in the RTC on p. 4.T.3, because the project sponsor would be required to comply with Article 22A, which regulates the remediation of hazardous materials contained in soil and/or groundwater, there is no need to include a separate mitigation measure (M-HZ-1a) with

essentially the same features as Article 22A in the EIR. The mitigation measure was removed from the EIR because Article 22A was amended to expand coverage of the ordinance after the Draft EIR was published. While a mitigation measure was needed under the prior version of Article 22A because the detailed requirements of the ordinance did not apply to the entirety of the project site, following amendment of the ordinance, it now applies to the entire site.

The appellant seems to be of the opinion that the City cannot rely on implementation of the Maher Ordinance to support a determination that the impact of excavation of portions of the project site would have a less-than-significant impact. This is incorrect. The Maher Ordinance represents a regulation of general applicability, adopted for the purpose of environmental protection, that is not peculiar to the parcel or to the project. (CEQA Guidelines, § 15183) California courts recognize that an agency may rely on compliance with existing regulations or requirements in finding a project's impacts would be less than significant. (See, e.g., *Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 1933 [holding agency could rely on project's compliance with Building Code's energy efficiency standards for conclusion that project would not have significant energy impacts, and therefore did not require mitigation]; *Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884 [project's compliance with existing laws and regulations provided substantial evidence that seismic impacts would be less than significant].) In fact, reliance on compliance with the applicable regulatory framework is common and widely accepted CEQA practice. (See also *City of Maywood v. Los Angeles Unified School Dist.* (2012) 208 Cal.App.4th 362, 411-412 [citing compliance with regulatory standards as adequately addressing hazardous materials at school site].)

Thus, it is reasonable to assume that the project sponsor will comply with the requirements of the ordinance. The project sponsor filed a Maher Application form in July 2015 (see footnote 2 in the RTC document, p. 4.T.3), and will be required to submit a subsurface investigation plan and implement the plan as reviewed and approved by the San Francisco Department of Public Health ("DPH"), submit a Site Mitigation Plan for review and approval by DPH and implement that plan. Mitigation is not "deferred" because the potential soil contaminants have been disclosed, the basic steps required in the Maher Ordinance are explained, and compliance with the City's ordinance is required.

In conclusion, the RTC and Appendix A (Initial Study) fully disclose and discuss the impacts associated with hazardous substances in the project site's soil and the steps needed to reduce those potential impacts to a less-than-significant level.

CONCLUSION

For all of the reasons provided in this supplemental appeal response, the Planning Department believes that the Final EIR complies with the requirements of CEQA, the CEQA Guidelines, and Chapter 31 of the Administrative Code, and provides an adequate, accurate, and objective analysis of the potential impacts of the proposed project. Therefore, the Planning Department respectfully recommends that the Board uphold the Planning Commission's certification of the Final EIR.

Rincon Point Neighbors Association

88 Howard Street
Post Office Box 193015
San Francisco, CA 94119

November 6, 2015

Angela Calvillo
Clerk of the Board of Supervisors
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689

VIA ELECTRONIC AND HAND DELIVERY

Re: Appellant's Brief in Support of Appeal of Planning Commission's Certification of 75 Howard Street FEIR (2011.1122E)

The Draft Environmental Impact Report ("DEIR") is significantly deficient in its analysis of the potential environmental impacts associated with the proposed project at 75 Howard Street ("Project"). For the reasons outlined below, the Final Environmental Impact Report ("FEIR") fails to comply with the California Environmental Quality Act ("CEQA") and is insufficient as an informational document, incorrect in its conclusions, and fails to reflect the independent judgment and analysis of the City. Thus, at a minimum, the FEIR must be returned for a completely new analysis of its traffic and shadow impacts and recirculated for further public comment and review.

FACTUAL BACKGROUND

On September 3, 2015, more than *two* years after the DEIR was circulated for public review on July 31, 2013, the San Francisco Planning Commission ("Commission") certified the Final Environmental Impact Report ("FEIR") for the Project, opting for the "Code Compliant Alternative".[1]

In certifying the FEIR, the Commission determined that the Project "will have a significant project-specific effect on the environment by creating new shadow in a manner that substantially affects an outdoor public area" and "will have significant cumulative effects on the environment . . . and would contribute considerably to reasonably foreseeable future cumulative traffic increases that could cause levels of

[1] The phrase "Code Compliant Alternative" is a misnomer as applied in this instance. The Project is clearly not in conformance with the Planning Code. Planning Commission Motion 19449, CEQA Findings, clearly states that the Project would "also require a Conditional use authorization for parking in excess of principally permitted amounts, [v]ariances for dwelling unit exposure for 39 units and for the width of the loading and parking access on Howard, and review and consideration by the Planning Commission of a Section 309 Determination of Compliance and Request for Exceptions for rear yard requirements, reduction of ground level wind currents requirements and bulk requirements." (*Id*., § II.D. at p. 5.) Therefore, any assertions that this Project is "of right" are incorrect.

service to deteriorate to unacceptable levels at the intersection of Spear and Howard Streets." (Commission Motion No. 19447 at p. 3.) Despite its reliance on a stale traffic analysis from 2011 and a new shadow study that was introduced at the 11th hour just days before the September 3, 2015 Commission hearing, the Commission approved certification of the FEIR.

In accordance with San Francisco Administrative Code Section 31.16, certain CEQA decisions, including the Commission's certification of the FEIR for the Project, are subject to appeal to the Board of Supervisors ("Board'), applying an independent review to assess whether the Commission's certification complies with the requirements of CEQA. Appellant contends that the following issues were not adequately analyzed as part of the FEIR and thus render certification for the Project FEIR invalid under CEQA:

1. **The FEIR Includes an Inadequate Traffic Analysis and Fails to Consider Mitigation Measures Required Under CEQA**

The FEIR relies on a stale traffic analysis from data collected nearly five years ago in February 2011. San Francisco's Transportation Impact Analysis Guidelines for Environmental Review, October 2002 (SF Guidelines), requires that: "New traffic counts . . . to be taken when there have been recent changes in area conditions, traffic patterns or traffic volumes. In stable areas, where counts have been collected within the *last one or two years*, they may still be useful." (Id., emphasis added.) Here, the FEIR's analysis of traffic impacts is based on data that is nearly five years old and, thus, an incorrect baseline that is no longer in existence due to the passage of time. In the last five years, San Francisco has undergone one of the most drastic growth periods in its history. New housing and new office buildings have created gridlock conditions throughout the City. Yet, this EIR is using data that is over five years old.

Moreover, the study area for the traffic analysis included in the FEIR is far too narrow in scope. Though the FEIR acknowledges that the Ferry Building is less than a half-mile in distance and connected by the primary strip along the Embarcadero, not to mention AT&T Park and other high-congestion attractions along the waterfront, it erroneously deems the Ferry Building and AT&T Park to fall outside of the study area. Failure to include the Ferry Building and the AT&T Park within the study area renders the dated traffic analysis even more flawed, inaccurate, and inconclusive as to capturing actual traffic patterns.

In light of the San Francisco Superior Court's recent ruling, courts have taken the position that adequate and relevant traffic analyses are an important and critical component of CEQA. In *Neighbors to Preserve the Waterfront v. City and County of San Francisco*, the court deemed various environmental approvals as invalid when the city approved an FEIR in 2012 based on outdated traffic data from 2007. Specifically, the court noted that the data in the environmental study was "inadequate to provide the public, the city decision-makers, and this court with information about the project's environmental impacts ... precluding informed decision-making and public participation." The study failed to consider other weekdays, when traffic and parking demand picked up during farmers' markets, and also did not look at traffic increases during the next five years as businesses grew and parking sites dwindled. In response to this holding, the

Board approved a motion (M15-118), effectively rescinding the certification of the FEIR for the 8 Washington Street/Seawall lot No. 351 Project on July 21, 2015. The 8 Washington Street Project is analogous to the facts at issue here because both projects are located on the waterfront, which is part of San Francisco's prime business and tourism industry that is constantly riddled with automobile, bicycle, and pedestrian traffic. Thus, an accurate traffic analysis is critical to mitigating adverse impacts, particularly taking into account the cumulative impacts of projects in surrounding areas.

2. <u>The Project's Shadow Impacts Have Not Been Fully Assessed and are Inadequate as Certified in the FEIR</u>

The Project's analysis of the Shadow Impacts, that have been classified as significant and unavoidable, is also at issue for several reasons. At the request of RDF 75 Howard LP, the project sponsor, Turnstone Consulting prepared a Shadow Analysis for the Project on August 19, 2015 ("July 2015 Shadow Study").[2] (Also attached is a Technical Memorandum, dated July 8, 2015, that was not included as part of the materials available for public review and comment during the environmental review process.) As noted in the technical memorandum, attached hereto as <u>Exhibit A</u>, the July 2015 shadow study differs from the analysis prepared for and included as part of the FEIR in two important ways:

(a) the FEIR analyzes the revised Code Compliant Alternative as a solid massing, whereas the July 2015 shadow study purports to include the Project's rooftop lattice, which would presumably reduce the potential shadow on Rincon Park, and

(b) the July 2015 shadow study adds to existing shadow on Rincon Park the shadow cast by projects that are now under construction or have been built since the baseline for existing conditions.

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[2] Moreover, the City failed to include any of the technical studies in the appendices to the EIR, inclusive of the shadow analysis that was provided just days before the September 3, 2015 Planning Commission hearing and was not included as part of the materials for public review and comment in advance of the Review and Comment period that closed on September 23, 2013.

CEQA and CEQA case law places a significant emphasis on public disclosure and transparency as being a key component of the environmental review process. Here, the City did not provide copies of the technical documents but rather noted that the documents were in the project files located at the Planning Department. CEQA requires more. First, where technical materials are not included directly in an EIR, CEQA requires the EIR summarize the technical data. (CEQA Guidelines, 15147.) This did not occur here. Second, where technical reports are not provided, CEQA requires that "supporting information and analyses [should be included] as appendices to the main body of the EIR . . . and shall be readily available for public examination." (CEQA Guidelines, 15147.) For these reasons, the City failed to comply with the requirements of CEQA in releasing the DEIR, thus triggering the need for recirculation of the DEIR.

This presumes that the shadow analysis incorporated into the FEIR does not take into account surrounding projects that are now underway and will cumulatively impact the shadow analysis. This confirms that the baseline used in the DEIR and FEIR have changed since the initial shadow analysis and baseline conditions were established in 2012. Again, this analysis becomes dramatically flawed with time due to the lack of consideration regarding cumulative project impacts.

3. Flawed Feasibility of Alternatives Analysis

In conjunction with the shadow analysis, the FEIR erroneously includes several conclusions concerning the alternative analysis that are incorrect. The FEIR explains that a reduced-height alternative was not considered because "construction of a building on the site equal to or lower than the height of the existing parking garage or the Code Compliant Alternative would not be considered a reasonable alternative, as a substantially reduced development program would not meet any of the project sponsor objectives nor would there be sufficient economic viability to warrant construction of such a building." (FEIR, p. 4.N.19.)

There are a number of flaws with this conclusion. First, this sentence suggests an alternative at the "Code Compliant Alternative" height is not feasible, which is clearly erroneous given that the Developer now seeks to build a project similar to the Code Compliant Alternative. Second, stating that a 100-foot alternative would not meet "any of the project sponsor objectives" is false on its face.

The DEIR includes four objectives:

- To improve the architectural and urban design character of the City's waterfront by replacing the existing above-grade parking garage with a high-quality residential project with ground floor retail uses and sufficient parking.
- To increase the City's supply of housing.
- To construct streetscape improvements and open space that serve neighborhood residents, and workers, and enliven pedestrian activity on the waterfront during evening and nighttime hours.
- To construct a high-quality project that includes a sufficient number of residential units to make economically feasible the demolition and replacement of the existing above-grade parking garage, produce a reasonable return on investment for the project sponsor and its investors, attract investment capital and construction financing, and generate sufficient revenue to finance the open space amenities proposed as part of the project.

An 100-foot alternative could achieve three of these goals: (1) "improve the architectural and urban design character of the City's waterfront by replacing the existing above-grade parking garage with a high-quality residential project with ground floor retail uses and sufficient parking", (2) "increase the City's supply of housing", and (3) provide space to "construct streetscape improvements and open space that serve neighborhood residents, and workers, and enliven pedestrian activity."

The only objective that the alternative arguably cannot achieve is the fourth objective regarding "economic feasibility". The FEIR, however, has provided no evidence to support this assertion – the FEIR simply asserts that the alternative would not have "sufficient economic viability to warrant construction of such a building." While the City is correct that economic feasibility is not required to be discussed in an EIR, where the EIR rejects an alternative on the basis of financial feasibility the EIR should include sufficient analysis to support that conclusion. Instead, the City should have included the alternative in the EIR as potentially feasible and noted that the applicant may demonstrate that the alternative is not in fact financially feasible and that the City may reject the alternative on that basis. To exclude the alternative from the EIR in the first instance improperly combines the two steps in the feasibility analysis under CEQA.

The inherent flaw with the City's effort to justify excluding the 100-foot alternative on the basis of financial feasibility is highlighted by the FEIR's revisions concerning the discussion of the Code Compliant Alternative. The DEIR determined that the Code Compliant Alternative did not include "sufficient number of residential units to make economically feasible the demolition and replacement of the existing above-grade parking garage"; yet, the Developer *now seeks a variation of that alternative as the project*. Just as earlier conclusions regarding feasibility of the Code Compliant Alternative were evidently incorrect, so might be the now alleged and yet-to-be supported conclusions regarding the economic feasibility of the 100-foot alternative.

Therefore, Appellant asks that the Board grant the appeal to mandate a more thorough economic analysis that quantifies the level of alleged economical infeasibility for the reduced-height alternative. Thus, the project sponsor should provide a detailed financial analysis of a 100-foot alternative, along with a financial analysis of the Code Complaint Alternative. This information is critical to formulating a conceptual framework for such an alternative, if possible, including an assessment of the feasible number of residential units, retail space, parking, etc.

4. **Failure to Consider Public Health and Safety Concerns with Tsunami & Sea Level Rise**

The FEIR acknowledges the possibility of flooding from a tsunami but concludes the DEIR LTS findings are correct because "the building is very unlikely to suffer catastrophic damage. Rather, sheetrock, paint, and perhaps wiring would need to be replaced. Furniture on the first floor may need to be replaced. The building would remain standing and, after repair, would be functional." (FEIR, p. 4. L.4.) The FEIR fails to acknowledge the public health and safety implications that could ensue if such a natural disaster were to occur. Property damage to cars, furniture, and equipment in the sublevel and ground floor should be considered a significant impact. The threshold as stated in the DEIR (and in CEQA Guidelines) is where a project proposes a "significant risk of loss, injury or death…" The FEIR's conclusion is not supportable in light of the evidence that flooding may occur.

5. <u>FEIR's Failure to Include any Analysis of Hazardous Materials Attributable to the Project</u>

The DEIR fails to include a Hazardous Materials chapter because the Project's Initial Study allegedly adequately addresses the issue. This exclusion from further environmental review is appropriate under CEQA so long as there are not subsequent findings of significance.

The FEIR reiterates evidence demonstrating that fill on the project site is "likely to contain fill associated with the 1906 earthquake and fire" and the project fill likely "would be classified as hazardous waste…" (FEIR, p, 4.T.7.) The potential to disturb contaminated soil is without question not "clearly insignificant" and should have been included as part of the FEIR. In fact, the FEIR actually deleted the mitigation measure included in the Initial Study relating to Hazardous Materials on the basis that the City expanded the "Maher Ordinance" to cover the entire Project site. (FEIR, p. 4.T.3.)

The change in law expanding the "Maher Ordinance" to cover the Project site reiterates why the Hazardous Materials issue should have been analyzed in the DEIR and was not an appropriate exclusion under the scope of the Initial Study. In expanding the Maher Ordinance, the City stated that the goal is "to protect the public health and safety by requiring appropriate handling, treatment, disposal and when necessary, mitigation of contaminated soils…" (http://www.sf-planning.org/ftp/files/legislative_changes/new_code_summaries/130369.pdf.)

The FEIR erroneously asserts that the City may properly rely on the "Maher Ordinance" without mitigation to address this issue. Even if that were true, the DEIR should still have included a detailed analysis of this issue to allow the public a full opportunity to consider and comment on it. Moreover, CEQA does not permit a lead agency to merely conclude an impact will be rendered a low threshold of significance because future "site mitigation plan would identify measures to limit any significant environmental or health and safety risks posed by the presence of hazardous wastes in the soil or groundwater." (FEIR, p. 4.T.7.) The FEIR includes no concrete performance standards applicable to this site mitigation plan. It merely states:

> "The site mitigation plan would contain procedures to be followed in case unknown hazardous materials are encountered on the project site, including cordoning off the area around the material and notifying the appropriate regulatory agency. The site

> mitigation plan would contain protections for workers, identify procedures for handling any hazardous materials disposed off site, and identify and implement any remedial measures needed for any hazardous materials that remain on site."

This is a quintessential example of improperly deferred mitigation. Moreover, the FEIR concludes the Hazardous Materials issue is less than significant because in the "City experience, Mitigation Measure M-HZ-1a is appropriate, reasonable, and sufficient." (FEIR, p. 4.T.9.) Yet, the FEIR deleted Mitigation Measure M-HZ-1a so the FEIR is internally inconsistent.

CONCLUSION

For all the above reasons, the FEIR should at a minimum be returned to City Planning for further, more current analyses of traffic and shadow impacts and be recirculated for additional public review. The need for recirculation is further emphasized by (i) the changes to the project that, City staff itself, acknowledges demonstrates the "Project has been significantly revised", and (ii) the significant changes to conclusions regarding project objectives as they relate to the Code Compliant Alternative.

Specifically, the DEIR once concluded that the "Code Compliant Alternative… would not meet the project sponsor's objective to construct streetscape improvements and open space that serve the neighborhood residents and workers, and enliven pedestrian activity on the waterfront during evening and nighttime hours, nor would it meet the sponsor's objectives to construct a high-quality project that includes a sufficient number of residential units to make economically feasible the demolition and replacement of the existing above-grade parking garage, produce a reasonable return on investment for the project sponsor and its investors, and attract investment." (DEIR, pp. 6-30 to 31.)

The FEIR now concludes, however, the alternative would meet most of the Project objectives. Given that the EIR's view of what is or is not consistent with the project objectives has shifted dramatically, it is reasonable to conclude that alternatives that the City may previously have assumed to be infeasible are at least potentially feasible. The public should have an opportunity to comment on the Project, including any updated analyses and possible alternatives to identify an appropriate range of alternatives.

Sincerely,

David Osgood

TECHNICAL MEMORANDUM

DATE: August 19, 2015

TO: Don Lewis and Kevin Guy, San Francisco Planning Department

FROM: Julie Tilley Barlow, Senior Planner

RE: 75 Howard Street
July 2015 Shadow Analysis for 75 Howard Street Preferred Project
Prepared for Presentation to the Planning Commission
Case No. 2011.1122E

Introduction

This memorandum summarizes the results of a shadow study for the preferred project design[1] that was prepared in July 2015 at the request of RDF 75 Howard LP, the project sponsor for the 75 Howard Street Project. It was conducted by CADP, under the direction of Skidmore, Owings and Merrill, the project architects.[2] The purpose of the study is to showcase the benefits of the preferred project design for consideration by the Planning Commission.

The July 2015 shadow study prepared for the project sponsor differs from the analysis conducted for the EIR in two important ways. First, it makes use of refinements in shadow modeling technology that allow for modeling the transparent elements of the preferred project's rooftop lattice to show how this design would reduce potential project shadow on Rincon Park. In comparison, the EIR conservatively analyzes the revised Code Compliant Alternative (the preferred project) as a solid massing. Second, the July 2015 shadow study adds to existing shadow on Rincon Park the shadow cast by projects that are now under construction or have been built since the baseline for existing conditions was set for the EIR.

Baseline Conditions

A Notice of Preparation for the 75 Howard Street Project was published on December 12, 2012, which established the baseline existing conditions in the EIR. The Draft EIR was published on July 31, 2013. The EIR analysis was done in accordance with methods typical for an open space property not subject to

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[1] The preferred project design is referred to as the revised Code Compliant Alternative in the 75 Howard Street Project EIR Responses to Comments document.

[2] The July 2015 shadow calculations and projections prepared for the project sponsor for the preferred project are available for review at the San Francisco Planning Department, 1650 Mission Street, Suite 400, as part of Case File No. 2011.1122E.

EXHIBIT A

Section 295 of the Planning Code.[3] The existing shadow on Rincon Park used in the EIR to establish net new project shadow is shown as 38,552,842 shadow foot hours (sfh).[4]

Since the establishment of the EIR existing baseline conditions in 2012, projects that were not part of the baseline have been approved and are now built or under construction around Rincon Park.[5] This July 2015 shadow study adds them to the EIR baseline condition, increasing the amount of existing shadow in its analysis. This study identifies 77,108,318 sfh of existing shadow on Rincon Park.

The theoretical annual available sunlight (TAAS) on Rincon Park is an absolute number, 471,910,734 sfh. It is derived from the area of the park, and is the same in the EIR analysis and July 2015 shadow study.

Summary of Shadow Results

As noted above, and described on pp. 4.I.2-4.I.3 of the RTC, Rincon Park receives about 471,910,734 sfh of TAAS. The original proposed project (as analyzed in the EIR) would cast about 9,715,526 sfh of net new shadow per year (about 2.1% of the TAAS) on Rincon Park.

As analyzed in the EIR (p. 2.38 of the RTC), the revised Code Compliant Alternative (the project sponsor's preferred project) would cast about 6,276,795 sfh of net new shadow per year (about 1.3 % of the TAAS).

The July 2015 shadow study shows that the preferred project would cast approximately 3,604,113 sfh of net new shadow per year on Rincon Park (about 0.76 % of the TAAS). This reduction in net new shadow from that shown in the EIR for the preferred project is due to two factors. The July 2015 study analyzes a more-detailed version of the preferred project design and makes use of refinements in shadow modeling technology that allow for modeling the transparent elements of the preferred project's rooftop lattice, so the net new shadow from the preferred project is presented more accurately and is reduced. In addition, the July 2015 study includes shadows on Rincon Park cast by buildings that have been built or that are under construction since the baseline for the EIR was established. Where shadows from the preferred project would overlap shadow from the buildings added to the baseline in the July 2015 study, the net new project shadow may also be somewhat reduced.

[3] Cumulative shadow analysis for the 75 Howard Street Project is described on DEIR pp. 4.H.30-4.H.39.

[4] Sunlight and shadow are measured in units known as square-foot-hours (sfh), which are calculated by multiplying the area that is in sunlight or shadow (in square feet) by the amount of time that the sunlight or shadow is present (in hours).

[5] These projects include 101 First Street (Transit Center Tower), 181 Fremont Street, 299 Fremont Street, 399 Fremont Street, 201 Folsom Street, 222 Second Street, and 535 Mission Street, and 325 Fremont Street.

EXHIBIT A

Conclusion

As described on EIR p. 4.H.24, the proposed project would cast net new shadow on the lawn, seating areas and pedestrian paths in the northern and central portions of Rincon Park in the afternoon on most days throughout the year, where many park users prefer to sit. Similar conditions are identified for the revised Code Compliant Alternative (EIR pp. 6.26-6.27). Given the number of people who sit in the sunlit areas of Rincon Park in the afternoon, the net new shadows from both the proposed project and revised Code Compliant Alternative are determined in the EIR to adversely affect the use of these areas, and therefore result in significant and unavoidable shadow impacts on Rincon Park. The results presented in the July 2015 shadow study show similar conditions in Rincon Park for the preferred project, and would not alter any conclusions presented in the EIR.

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November 6, 2015

VIA HAND DELIVERY

Board President London Breed and Members of
the Board of Supervisors c/o Clerk of the Board
of Supervisors
#1 Dr. Carlton B. Goodlett Place
City Hall, Room #244
San Francisco, CA 94102-4689

Re: Board of Supervisors November 17, 2015 Meeting: Agenda Item: Appeal of California Environmental Quality Act (CEQA) Certification of Final Environmental Impact Report - 75 Howard Street

Dear President Breed and Members of the Board:

This firm represents RDF 75 Howard LP ("Project Sponsor"), the Project Sponsor for the 75 Howard Street Project. On September 3, 2015, the San Francisco Planning Commission certified the Final Environmental Impact Report ("FEIR" or "EIR") for the 75 Howard Street project. An appeal of the Certification was filed on October 5, 2015, by David Osgood, on behalf of Rincon Point Neighbors Association ("Appellant"). We respectfully submit that the FEIR is adequate, sufficient and complete and that the Appellant's objections are without merit. We respectfully request that this Board affirm the certification of the FEIR and reject this appeal.

This letter responds to some of the objections raised by Appellant in its letter. However, before addressing the specific issues, it is worth noting that the project, as it was approved by the Planning Commission and analyzed in the FEIR, had only three significant unavoidable impacts: a project-specific and cumulative impact shadows on Rincon Park and a cumulative traffic impact that will occur only if the Transit Center District Public Realm recommendations are implemented by the City. (RTC at Table 6.1.)

By way of background, the original project proposed by the Project Sponsor was a 348-foot, 186-unit project. The Draft EIR (DEIR) analyzed three alternatives to that proposed project: (1) a no project alternative that retained the 91-foot existing garage, (2) a 281-foot building (with 172 units), and (3) a Code Compliant Alternative at 200 feet (with 169 units). The DEIR identified the Code Compliant Alternative as the Environmentally Superior

Alternative. Subsequently, the Project Sponsor revised its applications to propose a revised 220-foot project, consistent with the site's 200-S zoning (which permits up to a 220-foot building). The RTC revised the Code Compliant Alternative to reflect the approximately 220-foot, 133-unit project, which was the subject of the Planning Commission approval.

1. Objections to the Alternatives Analysis [*Appellant's Argument 9*].

Appellant claims that the FEIR should have included an analysis on an alternative shorter than the project currently proposed and seems to suggest that the EIR should have included a 100-foot alternative. As discussed in the Response to Comments ("RTC") document of the FEIR, the number and range of alternatives analyzed in the EIR is adequate and complies with the CEQA Guidelines. The CEQA Guidelines do not require a minimum or maximum number of alternatives that must be analyzed. Section 15126.6(a) of the CEQA Guidelines requires only that an EIR consider a reasonable range of alternatives that will foster informed decision-making, and limits the range of alternatives to the "rule of reason.,", stating in part, that "a "rule of reason" that requires the EIR to set forth only those alternatives necessary to permit a reasoned choice. The alternatives shall be limited to ones that would avoid or substantially lessen any of the significant effects of the project. Of those alternatives, the EIR need examine in detail only the ones that the Lead Agency determines could obtain most of the basic objectives of the project." The FEIR discusses this concept in greater detail, saying:

> CEQA Guidelines Section 15126.6(a) requires that an EIR evaluate "a range of reasonable alternatives to the project, or the location of the project, which would feasibly attain most of the basic project objectives but would avoid or substantially lessen any of the significant effects, and evaluate the comparative merits of the alternatives." An EIR need not consider every conceivable alternative to a proposed project. Rather, it must consider a range of potentially feasible alternatives governed by the "rule of reason" in order to foster informed decision-making and public participation. (CEQA Guidelines § 15126.6(f).)

(FEIR at p. 6.1.)

As noted above, the FEIR analyzed a 348-foot building, a 281-foot building, the Code Compliant Alternative (first analyzed at 200 feet in the DEIR, and subsequently revised to 220 feet in the RTC) and a no project alternative which maintained the existing 91-foot

garage. The FEIR analysis of the alternatives in DEIR Chapter 6 and as further revised in the RTC satisfies the requirements of CEQA and no additional EIR alternatives are required. The shadow analysis in the FEIR shows the net additional shadow, as well as showing the shadows cast today by the existing 91-foot building. As stated on p. 4.N.9 of the RTC, the purpose of presenting a range of alternatives to a proposed project is to focus on alternatives that are capable of reducing or eliminating any of the significant effects of the proposed project identified in the EIR. The Guidelines do not state that all significant effects identified for the proposed project need to be eliminated or reduced by an alternative. On the issue of alternatives that would mitigate the shadow on Rincon Park, the RTC explains clearly why a 100 foot alternative was not analyzed, stating:

> The EIR does not present an alternative that would not result in any net new shadow on Rincon Park because virtually any new building constructed on the site as tall as or slightly taller than the existing 8-level (91-foot-tall) parking garage on the site would cast net new shadow on Rincon Park. As stated on EIR p.4.H.32, any development of approximately 100 feet or taller on the project site would shadow Rincon Park. Further, construction of a building on the site equal to or lower than the height of the existing parking garage or the Code Compliant Alternative would not be considered a reasonable alternative, as a substantially reduced development program would not meet any of the project sponsor objectives nor would there be sufficient economic viability to warrant construction of such a building.

(RTC at p. 4.N.18-19.)

The FEIR expands on this issue, stating:

> CEQA Guidelines Sections 15126.6(f)(1) and (f)(3) state that "among the factors that may be taken into account when addressing the feasibility of alternatives are site suitability, economic viability, availability of infrastructure, general plan consistency, other plans or regulatory limitations, jurisdictional boundaries (projects with a regionally significant impact should consider the regional context), and whether the proponent can reasonably acquire, control or otherwise have access to the alternative site (or the site is already owned by the proponent)" and that an EIR "need not consider an alternative whose effect cannot be reasonably ascertained and whose implementation is remote and speculative." The final determination of

> feasibility will be made by project decision-makers based on substantial evidence in the record, which includes, but is not limited to, information presented in the EIR, comments received on the Draft EIR, and responses to those comments.
>
> The purpose of presenting a range of alternatives to a proposed project is to focus on alternatives that are capable of reducing or eliminating any of the significant effects of the proposed project identified in the EIR, and to foster informed decision-making and public participation by disclosing the comparative environmental consequences of alternatives vis-à-vis the proposed project.

(RTC at pp. 4.N.8-9 (quoting, in part, the DEIR).)

The RTC correctly concludes:

> [A]n EIR need not consider every possible height between the proposed and existing building. There are an unlimited number of possible heights that could be considered as an alternative. The alternatives discussed in the EIR are of sufficient range to fully examine alternatives to reduce the potential impacts of the proposed project.

(RTC at p. 4.N.19.)

Attached to this response as Exhibit A is a letter from the Project Sponsor with an attached memo from Skidmore Owings & Merrill, LLP discussing the 100-foot alternative and the Project Sponsor's objectives in greater detail.

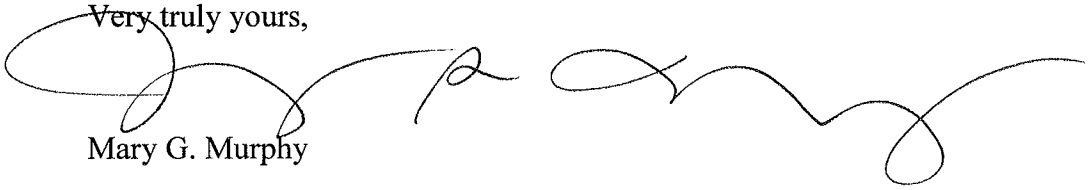
2. Objections to the Analysis of Traffic Impacts [*Appellant's Argument 4*].

Appellant claims that the FEIR was inadequate in analyzing and mitigating traffic impacts. As stated above, only one traffic impact was identified in the FEIR, namely, the cumulative impact that occurs only if the City implements the Transit Center District Plan Public Realm recommendations. As the FEIR explains, mitigation to address that impact is uncertain. In addition, the Appellant appears to claim that the analysis in the FEIR requires updating. As explained in the RTC, the methodology used in the FEIR is consistent with the standard approach used by the City in its EIRs. (RTC at p. 4.F.22-29). However, the Project Sponsor retained LCW Consulting, a traffic consultant, to re-examine the intersection traffic counts

discussed in the FEIR. The conclusions from that study are attached to this letter as Exhibit B and demonstrate that the traffic in the vicinity has remained around the same or somewhat less in 2015 than presented in the EIR. Thus, the analysis in the EIR is more conservative in assuming higher traffic volumes than shown in the attached study. As you can see, on this point, the Appellant's objections are without merit and do not deserve further consideration.

In summary, we respectfully submit that the FEIR presents a very thorough analysis of the 75 Howard project and clearly fulfills CEQA's goal of providing decision makers information which enables them to make a decision which intelligently takes account of environmental consequences (CEQA Guidelines Section 15151). We therefore respectfully request that this Board affirm the certification of the FEIR by the Planning Commission and deny this appeal.

Very truly yours,



Mary G. Murphy

Exhibit A

PARAMOUNT GROUP, INC.

MARCE SANCHEZ
VICE PRESIDENT
CONSTRUCTION & DEVELOPMENT

November 6, 2015

London Breed, President
San Francisco Board of Supervisors
1 Carlton B. Goodlett Place, #244
San Francisco, CA 94102

Re: 75 Howard

Dear President Breed and Members of the Board:

On behalf of RDF 75 Howard LP, the Project Sponsor of the 75 Howard mixed-use residential project (the "Proposed Project"), I write to share the Project Sponsor's perspective with the Board of Supervisors (the "Board"). As you know, 75 Howard is currently occupied by an eight story 91 foot tall above-grade approximately 550 car parking garage. The Proposed Project would demolish the garage and replace it with a 133 unit 220 foot residential building with ground floor retail and below-grade parking. We are hoping to achieve a LEED Platinum certification for the new building, because we see this building in its entirety as the right environmental choice: replacing an above-grade public parking garage in the heart of a transit-rich downtown with a residential building containing a lively, activated ground floor streetscape.

Mr. Osgood, on behalf of the Rincon Point Neighbors Association, the appellant (the "Appellant") of the Final Environmental Impact Report (FEIR) for the Proposed Project has argued that an alternative of a 100 foot building should have been considered in the FEIR. Our counsel, Gibson Dunn, has addressed the reasons under the California Environmental Quality Act (CEQA) that such an analysis is not warranted. The purpose of this letter is to explain why, from the Project Sponsor's perspective, such a 100 foot building would not meet the Project Sponsor's objectives and economic goals.

In considering the Project Sponsor's view of the proposed project, it is important to note that the existing above-grade garage that could not be constructed under today's Planning Code. However, the Project Sponsor believes that the urban design principles that have informed the City's approach to parking facilities like the existing garage are correct and necessary for the environment. The Proposed Project offers a dramatic improvement to the streetscape and is in keeping with sound environmental planning, given the site's location in the transit-rich downtown core. The Project will further assist in enhancing those environmental principles because it is in the Transit Center District Plan Area, and as a result, pays special additional

fees beyond the standard City fees. More specifically, the Project pays the Transit Center Open Space fee, the Transit Center Transportation and Street Improvement fee, and will participate and pay into the Transit Center Community Facilities District (CFD).

In order to realize the many environmental benefits of the Proposed Project, the business case for removing an existing cash flow positive structure, losing the income associated with it, and taking the risk of constructing a new structure in its place must make sense to potential investors and lenders. The Appellant has proposed that the Project Sponsor consider replacing the existing 91 foot garage with a 100 foot residential building; in addressing this, one must consider the costs associated with constructing such a 100 foot building, particularly in light of the existing water table at the site, as well as the additional costs associated with being in the Transit Center District.

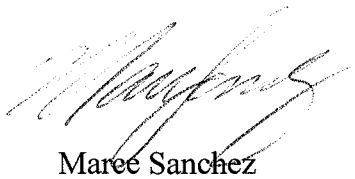
I attach a letter from Skidmore Owings and Merrill (SOM), the architects of the Proposed Project, on the requirements of the Planning and Building Codes as they apply to the Proposed Project and the 75 Howard site. As you can see from those materials, the Planning Code requires that any parking provided to serve the project must be below-grade. Their letter notes that the water table on the 75 Howard site makes the construction of below-grade parking more expensive than both above-grade and below-grade garages on other sites with different site conditions.

The SOM memo also explains the Building Code requirements of buildings as they increase in height. As they explain, any building that is over approximately 85 feet in height is tall enough to trigger the building code requirement applicable to "high rise" construction. The construction costs of such features are more expensive on a square foot basis than non-high rise construction regulations applicable to buildings that are shorter than 85 feet. The increased costs associated with the change in building type requires spreading those increased costs over more units in order to absorb the construction cost premium associated with the more expensive high rise building construction type. Attracting investors and securing construction financing requires the Project Sponsor to improve the economic efficiency and reduce, as much as possible, the risk of the proposed project by programming enough units to justify the increased cost structure of the high rise construction.

The proposed project, at 220 feet, is within the current zoning for the site and would permit the Project Sponsor to spread the additional cost structure of the more expensive building type, the below-grade parking and the additional fees (including the CFD) over more units, specifically 133. In other words, a 100 foot alternative is at a height that triggers the increased costs of high rise construction but does not allow for enough units to efficiently defray those higher costs. The Proposed Project also results in higher fees and benefits to the City than a 100 foot building.

A rational economic decision requires a balancing of risk and opportunity cost with the potential positives of the proposed project. The 100 foot alternative is burdened with the additional costs of the more expensive building type without optimizing the decision to exceed 85 feet. In addition, given that the economic model for the proposed project must also justify the Project Sponsor's loss of income from the existing garage and the assumption of the risks of construction, the Project Sponsor does not believe replacing a 91 foot building with a 100 foot building is consistent with its objectives of making it economically feasible to demolish and replace the garage and produce a reasonable investment for the Project Sponsor and attract investment capital and construction financing.

Sincerely,



Maree Sanchez

102019751.4

SKIDMORE, OWINGS & MERRILL LLP
ONE FRONT STREET
SAN FRANCISCO, CA 94111

SOM

November 1, 2015

Marce L. Sanchez
Vice President Construction & Development
Paramount Group, Inc.
1633 Broadway, Suite 1801
New York, New York 10019

Dear Marce,

Per your request, we have studied the feasibility of a significantly shorter (approximately 100 feet) residential building at the 75 Howard project site. As you know, our firm has worked on multi-family residential projects of all sizes for over 75 years including dozens of projects of similar scale to both the current proposal for 75 Howard and a hypothetical 100 foot variation. A 10 story multi-family residential building is not inherently unreasonable, but such buildings typically feature larger floor plates to spread costs among more units. From our experience of these building types as well as a recent review of the relevant codes, we have summarized some of the important issues below.

The California Building code defines a "high-rise" as a building in which the floor elevation of the highest floor is more than 75 feet from the ground elevation. With a height for each floor of around 10 feet, this means a building of about 85 feet or more to the roof is considered a high rise. A 100 foot tall project on the project site would exceed that by 15 feet, triggering a number of specific requirements of the building code. These requirements are described in section 403.1 of the California Building Code, and include but are not limited to, smoke control systems, centralized fire alarm and command systems, emergency voice communication systems, fire-fighting standpipes, emergency power generation systems, and smoke-proof vestibules at all exit stairs. These requirements include physical spaces on each floor of the building, such as the vestibules and increased minimum separation of the exit stairs, but also centralized equipment such as emergency generators and smoke control fans. This centralized equipment has a minimum cost and size regardless of the area served, resulting in a very high per-unit cost for high rise buildings which are not of sufficient size.

In addition to the life-safety systems described above, for buildings above 75 feet to the roof, Type I construction is generally required. This construction type requires fire-resistive construction of all structural elements, typically in reinforced concrete or fireproofed steel. The common mid-rise construction typology of wood or light metal framing over a single level of reinforced concrete is not allowed at this height. Once Type I construction is required, there are no significant changes in building structure required until a height of 240 feet, at which point more complex lateral force resisting systems are required, such as dual lateral systems or performance-based-design of concrete shear walls. Because of these stepping points in the structural and life-safety system requirements for multi-story buildings, buildings are often just below 75 feet to the last floor, or significantly higher to spread the cost of the more complex building systems out over more usable space.

The urban design goals of the planning department for this site include the continuation of the predominant pattern of the neighboring buildings, particularly the Rincon Center and the Gap Headquarters. These buildings feature a podium height of approximately 80 feet with towers of 200 to 300 feet in height. A building with an uninterrupted vertical rise of 100 feet would be out of scale with the predominant street wall, necessitating a setback for the top two floors. This setback would require transferring structure and mechanical systems for the change in residential space layouts.

SKIDMORE, OWINGS & MERRILL LLP
ONE FRONT STREET
SAN FRANCISCO, CA 94111

Such transfers are feasible but typically serve many floors, as it would be very inefficient to shift structure, plumbing, and air shafts to serve just the small number of units which would occupy only two floors.

In addition to the practical and aesthetic challenges of a 100 foot building, there are a number of specific requirements of the San Francisco Planning Code which apply to buildings over a certain size. The code requires one off-street loading space for residential projects between 100,000 and 200,000 square feet. A 100 foot tall building on the project site would be in this range, and unlike the additional spaces required for projects over 200,000 square feet, smaller service vehicle spaces may not be substituted for this space. To meet the City's goals of minimizing curb cuts and minimizing conflicts between pedestrians and vehicles, these loading spaces are being provided below grade, resulting in significant construction costs for increased excavation, a longer ramp, and a loading turntable, all of which would still be required but now serve only one loading space and a project of less than half the total size, further increasing the additional per-unit costs.

Per the San Francisco planning code, the allowable parking spaces for the project must be provided below grade. Together with the below-grade loading and below grade mechanical equipment such as transformers, water storage tanks, and fire pumps, the basement depth for this 100 foot building would not be 45% of the depth of the 220 foot building. It would likely be approximately 30 feet in depth, allowing one parking level in addition to the service level, or about 75% of the depth required for the twenty story building currently proposed for the site. This depth is still significantly below the water table of the site, requiring construction dewatering and a permanently waterproofed basement.

Collectively, these planning code and building code requirements combine with the geotechnical conditions of the site, the fixed cost of demolishing an existing structure and the fixed opportunity cost of losing the existing parking to make a project of 100 feet – only two stories higher than the existing structure – very inefficient architecturally and economically.

Sincerely,

Mark Schwettmann, AIA

Exhibit B

LCW Consulting

Memo

To: Mary Murphy, Gibson, Dunn & Crutcher LLP

From: Luba C. Wyznyckyj, LCW Consulting

Date: November 5, 2015

Re: 75 Howard Street Project Transportation Study – Traffic Volume Comparisons

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This memorandum presents a comparison of the weekday p.m. peak hour intersection turning movement traffic volumes between the existing traffic volumes used in the analysis of project impacts contained within the 75 Howard Street Project Transportation Study[1], and new counts conducted in October 2015. Comparison of the traffic volumes indicate that, in general, the traffic volumes used in the traffic impact analysis were higher than the recent counts, and, therefore, the 75 Howard Street Project Transportation Study impact analysis represents a conservative assessment of project traffic impacts.

New intersection traffic turning movement volume counts were conducted for the weekday p.m. peak period on Tuesday, October 27, 2015 at eight of the nine study intersections analyzed in the 75 Howard Street Project Transportation Study. The traffic volume counts were conducted on a Tuesday when the Ferry Building farmers market was open (i.e., the farmers market is open between 10:00 a.m. and 2:00 p.m. on Tuesdays and Thursdays, and between 8:00 a.m. and 2:00 p.m. on Saturdays). The intersections include:

1. The Embarcadero/Mission
2. The Embarcadero/Howard
3. The Embarcadero/Folsom
4. The Embarcadero/Harrison
5. Steuart/Mission
6. Steuart/Howard
7. Spear/Howard
8. Spear/Folsom

New intersection volume counts were not conducted at the intersection of Fremont/Folsom due to the recent changes in the I-80 westbound off-ramp configuration, temporary travel lane changes associated with the temporary Transbay Terminal, and nearby ongoing construction projects in the vicinity of the intersection of Folsom/Beale which affect the availability of travel lanes.

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[1] 75 Howard Street Project Transportation Study, Final Report, July 1, 2013. 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. 2011.1122E.

The attached spreadsheet presents the summary of the intersection turning movement volumes by approach (i.e., northbound, southbound, eastbound, and westbound) and movement (left, through, right) as presented in Figure 12: Existing Traffic Volumes and LOS Weekday PM peak Hour of the 75 Howard Street Project Transportation Study, and the new counts conducted on October 27, 2015. Traffic volumes used in the 75 Howard Street Project Transportation Study were conducted in June 2012 at the intersections of The Embarcadero/Howard, The Embarcadero/Folsom, Steuart/Mission, Steuart/Howard, Spear/Howard, and Spear/Folsom, and in February 2011 at the intersections of The Embarcadero/Mission and The Embarcadero/Harrison).

As indicated on the attached spreadsheet, overall intersection traffic volumes were lower in 2015 than 2011/2012 counts, with the exception of the intersection of Steuart/Mission where the overall traffic volumes in 2015 are about 7 percent greater (about 55 vehicles). In general, a daily variation of up to 10 percent can be expected on typical days. Therefore, the increase at Steuart/Mission is within the margin of variance. The intersection of Steuart/Mission was identified in the 75 Howard Street Project Transportation Study as operating at LOS B for existing and existing plus project conditions, and a minimal increase in traffic volumes at this intersection would not change the impact analysis conclusions presented in the 75 Howard Street Project Transportation Study.

At seven of the eight intersections, comparison of the traffic volumes indicate a reduction of traffic volume between 2011/2012 and 2015 of between 15 and 23 percent. The greatest traffic volume reduction occurs on northbound and southbound The Embarcadero, with lesser volume differences at the intersections on Spear and Steuart. The lower volumes in 2015, as compared to the 2011/2012 counts (i.e., decreases of more than 10 percent) are likely attributed to a combination of factors, including:

- Reconfiguration of I-80 westbound off-ramp at Fremont Street, which eliminated the direct access onto Folsom Street eastbound.
- Nearby ongoing construction projects in the vicinity of Folsom, Beale, and Fremont Streets which affect the availability of travel lanes.
- Spear Street southbound between Market and Mission Streets was closed by DPW.
- Congestion at the I-280 ramps at King Street, which may have reduced the attractiveness of The Embarcadero.
- Completion of development projects along Eighth, Ninth and Tenth Streets, reduction in congestion along these north/south streets.
- Implementation of Safer Market Street turn restrictions in August 2015.

Overall, the higher 2011/2012 traffic volumes used in the traffic analysis in the 75 Howard Street Project Transportation represent the more conservative analysis of project impacts.

75 HOWARD STREET PROJECT - INTERSECTION TRAFFIC VOLUME COMPARISONS

WEEKDAY PM PEAK HOUR VOLUMES

Intersection	Northbound			Southbound			Eastbound			Westbound			Intersection Total	Intersection % Change
	L	T	R	L	T	R	L	T	R	L	T	R		
1. The Embarcadero/Mission														
PM February 2011	0	1,740	0	0	1,388	179	187	0	97	0	0	0	3,591	
PM Oct 2015 (10/27/15)	0	1,432	0	0	957	173	199	0	90	0	0	0	2,851	
2015 minus 2011	0	-308	0	0	-431	-6	12	0	-7	0	0	0	-740	-20.6%
2. The Embarcadero/Howard														
PM June 2012 (6/28/12)	218	1,527	0	3	1,060	420	211	0	172	0	0	0	3,611	
PM Oct 2015 (10/27/15)	144	1,234	0	7	863	183	200	0	139	0	0	0	2,770	
2015 minus 2012	-74	-293	0	4	-197	-237	-11	0	-33	0	0	0	-841	-23.3%
3. The Embarcadero/Folsom														
PM June 2012 (6/28/12)	124	1,386	0	0	1,208	23	359	0	229	0	0	0	3,329	
PM Oct 2015 (10/27/15)	129	1,154	0	0	913	37	211	0	139	0	0	0	2,583	
2015 minus 2012	5	-232	0	0	-295	14	-148	0	-90	0	0	0	-746	-22.4%
4. The Embarcadero/Harrison														
PM February 2011	0	1,313	0	0	1,127	310	197	0	169	0	0	0	3,116	
PM Oct 2015 (10/27/15)	0	1,095	0	0	917	275	160	0	169	0	0	0	2,616	
2015 minus 2011	0	-218	0	0	-210	-35	-37	0	0	0	0	0	-500	-16.0%
5. Steuart/Mission														
PM June 2012 (6/28/12)	0	0	0	75	88	43	44	212	104	33	132	13	744	
PM Oct 2015 (10/27/15)	0	0	0	82	78	67	71	226	71	43	122	39	799	
2015 minus 2012	0	0	0	7	-10	24	27	14	-33	10	-10	26	55	7.4%
6. Steuart/Howard														
PM June 2012 (6/28/12)	56	0	56	86	9	129	0	241	23	8	632	0	1,240	
PM Oct 2015 (10/27/15)	37	0	39	56	5	125	0	266	15	13	352	0	908	
2015 minus 2012	-19	0	-17	-30	-4	-4	0	25	-8	5	-280	0	-332	-26.8%
7. Spear/Howard														
PM June 2012 (6/28/12)	0	0	0	63	280	232	0	172	69	194	661	0	1,671	
PM Oct 2015 (10/27/15)	0	0	0	71	364	151	0	209	95	129	393	0	1,412	
2015 minus 2012	0	0	0	8	84	-81	0	37	26	-65	-268	0	-259	-15.5%
8. Spear/Folsom														
PM June 2012 (6/28/12)	0	0	0	142	276	216	0	445	59	36	111	0	1,285	
PM Oct 2015 (10/27/15)	0	0	0	154	365	207	0	184	46	35	91	0	1,082	
2015 minus 2012	0	0	0	12	89	-9	0	-261	-13	-1	-20	0	-203	-15.8%