

Carroll, John (BOS)

From: Dyan Ruiz <dyanruiz@gmail.com>
Sent: Friday, November 06, 2015 3:41 PM
To: Calvillo, Angela (BOS); BOS Legislation, (BOS); Kim, Jane (BOS); Mar, Eric (BOS); Farrell, Mark (BOS); Christensen, Julie (BOS); Tang, Katy (BOS); BreedStaff, (BOS); Yee, Norman (BOS); Wiener, Scott; Campos, David (BOS); Cohen, Malia (BOS); Avalos, John (BOS)
Cc: Joseph Smooke; Angelica Cabande; Betty Traynor; Saul Rockman; Barbara Rockman; Jane Weil; Yadegar, Danny (BOS); Pagoulatos, Nickolas (BOS); Redondiez, Rachel (BOS); Stefani, Catherine; Burns, Kanishka (BOS); Quizon, Dyanna (BOS); Johnston, Conor (BOS); Mormino, Matthias (BOS); Power, Andres; Chung Hagen, Sheila (BOS); Bruss, Andrea (BOS); Pollock, Jeremy (BOS); Rachel Mansfield-Howlett
Subject: 5M Project Appeal- Evidence Letter
Attachments: 11-6-15_BOS 5M appeal letter_SMAC.pdf
Categories: 151058, 151054

Dear Members of the Board of Supervisors,

Please see the attached letter regarding our appeal of the 5M Project (925 Mission St, File No 2011.0409PCA), which includes evidence related to the appeal.

Sincerely,
Dyan Ruiz

On behalf of:
South of Market Action Committee (SMAC)
South of Market Community Action Network (SOMCAN)
Save our SoMa (SOS)
Friends of Boeddeker Park

**RECEIVED AFTER THE ELEVEN-DAY
DEADLINE, BY NOON, PURSUANT TO ADMIN.
CODE, SECTION 31.16(b)(5)**
(Note: Pursuant to California Government Code, Section
86506(b)(2), information received at, or prior to, the public
hearing will be included as part of the official file.)

PROVENCHER & FLATT, LLP
823 Sonoma Ave. Santa Rosa, CA 95404
Phone: 707-284.2380 Fax: 707-284.2387

ATTORNEYS AT LAW
Douglas B. Provencher
Gail F. Flatt

OF COUNSEL
Janis H. Grattan
Rachel Mansfield-Howlett
Roz Bateman Smith

San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place
Room #244
San Francisco, CA 94102

Nov. 6, 2015

Via Email and Hand Delivery

**RE: 5M Project - Appeal of the 9/17/15 Joint Recreation and Parks
Commission/Planning Commission Actions**

Dear Members of the Board of Supervisors:

The South of Market Action Committee (SMAC), South of Market Community Action Network (SOMCAN), Save our SoMa (SOS), and Friends of Boeddeker Park, "Citizens", have appealed the following decisions made at the joint hearing concerning the 5M Project. (Citizens Appeal Packet with attached Exhibits A-H.)

- 1) Certification of the Environmental Impact Report (EIR) and Adoption of Findings and a Statement of Overriding Considerations
- 2) Allocation of Square Footage under the Annual Office Development approvals
- 3) Conditional Use approvals

I. EIR Certification

CEQA achieves its purpose of long-term protection of the environment by functioning as "an environmental full disclosure statute, and the EIR is the method . . . [of] disclosure . . ." *Rural Landowners Association v. City Council* (1983) 143 Cal.App.3d 1013, 1020. An EIR should not just generate paper, but should act as "an environmental 'alarm bell' whose purpose is to alert the public and its responsible officials to environmental changes before they have reached the ecological points of no return." *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

The EIR's analysis of significant environmental impacts is inadequate and incomplete, the EIR fails to function as a full disclosure environmental document

and the findings are not supported by substantial evidence. As the Board is aware, the balance of the Project approvals to be considered by the Board must be premised on adequate environmental review.

Project Description

The fundamental issue concerning the adequacy of the EIR is the failure to adequately describe the project being reviewed. (CEQA Guideline § 15124.) According to CEQA Guideline section 15124, an accurate, stable and consistent project description is necessary to an adequate evaluation of the project's impacts; the project description should describe the physical development that will result if the project is approved; and the description should be sufficiently detailed to provide a foundation for a complete analysis of environmental impacts.

"An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR." *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185.

As explained in the Draft EIR comment letter submitted by attorney Eric Phillips, the EIR presented two different development schemes that *may* constitute the Project and failed to perform a synonymous comparison of the environmental impacts for each scenario. Compounding the problem, after publication of the Draft EIR the Project was revised "in a manner that is substantially similar to the Preservation Alternative." (Final EIR: RTC-9-13.) The EIR failed to provide an accurate, stable and finite project description.

The EIR explains that "in general, with the exception that the total square footage would be reduced (the Revised Project would represent a 6 percent decrease in overall square footage compared to the Office Scheme and a 5 percent decrease compared to the Residential Scheme) and the mix of uses would be slightly different ..." (Final EIR RTC-12.) In other words, instead of a single consistent project description, the public and decisionmakers must compare three different Projects in order to fairly assess the Project's impacts. Furthermore, revising the Project description and analyses at the Final EIR stage meant that the public was precluded from commenting on the Project and the later prepared analyses.

When a project description is indefinite and confusing, as here, it is impossible for the public to adequately comment on the EIR, evaluate its impacts, propose adequate mitigation or fairly review alternatives. This kind of bait and switch analysis fails to conform to CEQA's threshold requirement, that a thorough analysis of a single project be performed. Thus, the EIR fails to provide the foundation for an adequate analysis of environmental impacts, mitigation measures and alternatives. (Citizens' Appeal Packet, Exhibit E: Goldfarb &

Lipman 1/2/15, pgs. 2-3; *see also* the letters submitted by South of Market Action Committee (SMAC) 9/3/15, pg. 4; Velasco 9/16/15; Save our South of Market (SOS) pg. 3.)

Even absent any other defect, an inadequate project description renders the EIR irretrievably defective as a matter of law. Therefore, Citizens request that the Board reject the certification of the EIR and require it to be revised and recirculated with an accurate stable project description.

Project Setting/Shade and Shadow Effects/Impacts to Adjacent Parks

The EIR must describe the environmental resources on the project site and in the vicinity that may be adversely affected by a project. (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713.) Knowledge of the regional setting is critical to the assessment of environmental impacts. Resources that are rare or unique to the region and would be affected by the project warrant special emphasis. (CEQA Guideline § 15125; *Galante Vineyards v. Monterey Peninsula Water Management District* (1997) 60 Cal.App.4th 1109; *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859.)

Numerous commentators explained that the EIR failed to adequately consider the impacts of the Project on nearby open spaces and parks due to increased shade and shadow effects cause by the Project. (Citizens' Appeal Packet, Exhibit E: Goldfarb & Lipman 1/2/15, pgs. 8-9; SMAC 9/3/15; SMAC 9/10/15 pg. 2; SOS pgs. 2-4; Rockman pgs. 3-4; Friends of Boeddeker Park 9/15/15; Sierra Club 9/17/15; Exhibit D: Park and Recreation Advisory Committee meeting minutes, transcript and resolution.)

Attorney Eric Phillips stated that while the EIR acknowledged that the applicant has requested the Planning Commission raise the threshold for shadow limits for Boeddeker Park, it failed to disclose that without this special approval, the Project would result in a significant impact related to shadows cast on this public space.

The Draft EIR also failed to consider the effects on several open spaces heavily used by the public. (Citizens Appeal Packet, Exhibit E: Goldfarb & Lipman, 1/2/15, pgs. 8-9; SMAC 9/9/15; Friends of Boeddeker Park 9/15/15; Sierra Club 9/17/15.) The testimony given at the September 17, 2015 joint commission hearing by Jane Weil reiterated these objections. (Citizens Appeal Packet, Exhibit C: Transcript pgs. 47, 159, 226, 236.) The applicant conceded that the Project could have been reconfigured to avoid shadow impacts on Boeddeker Park. (Transcript pg. 297.)

I would also like to add that there are many other public open spaces that will be shadowed by this project. Most specifically, the Yerba Buena Children's area and Yerba Buena in the north. And it will be four months in the afternoon at Yerba Buena Children's Garden, it will not be an insignificant increase in shadowing. It will be starting on some days at 3:20 p.m.; on the worst day, it would be a 30 percent increase in shadowing at the children's area. So, there basically is a very significant change to environment of the neighborhood. . . . We think that it's important enough that this should not be pushed through as a joint decision. We think there should be zero tolerance for increased shadowing of our parks in the city. We think this is really a problem and needs to go back to the drawing boards. We also don't agree with the location of the proposed open space. (Transcript pg. 47.)

The EIR failed to acknowledge the Project's impacts regarding shade and shadow and the impacts to adjacent parks.

Traffic, Circulation and Pedestrian Impacts

The EIR's analysis of traffic, circulation and pedestrian impacts is inadequate and incomplete and the Commission's findings are not supported by substantial evidence.

The EIR used an artificially small study area for its traffic analysis. The EIR identified impacts at some intersections but failed to review intersections immediately adjacent to the impacted ones. (Citizens' Appeal Packet, Exhibit E: Goldfarb & Lipman 1/2/15, pgs. 9-11.) When a significant impact occurs at the edge of a Project's study area, this presents substantial evidence that foreseeable impacts remain and the area should be expanded to determine whether the Project would impact adjacent intersections. An EIR must review all foreseeable impacts; it may not limit the area of study in order to avoid review of potentially significant impacts.

Commentors noted the Project will result in unnecessarily severe traffic, circulation, and pedestrian impacts that have not been fully evaluated or mitigated. (Citizens Appeal Packet, Exhibit E: SMAC 8/6/15, pgs. 5-6; SOS, pgs. 4, 6-7; Rockman, pgs. 4-6; Tom Radulovich, 8/6/15 email; Sierra Club 9/17/15.) The EIR failed to consider feasible mitigation for the Project's unavoidable traffic impacts, including: review of a reduced size project; reducing trip generating uses; funding public transportation; removal of the Project's parking garage; payment of traffic impact fees; or creation of a Transportation Demand Management plan. The overarching purpose of preparing an EIR is to identify project impacts and consider all feasible mitigation measures and alternatives that would substantially limit the severity of these impacts. The EIR failed to do

either, adequately. (Citizens Appeal Packet, Exhibit E: Goldfarb & Lipman 1/2/15, pg. 9; Rockman pgs. 4-6.)

Mitigation for expected queuing impacts is not enforceable. (Exhibit E: Goldfarb & Lipman 1/2/15, pg. 10.) Mitigation measures are required to be enforceable and effectively incorporated into project approvals and the mitigation monitoring program. *Lincoln Place Tenants Association v. City of Los Angeles* (2005) 130 Cal.App.4th 1491, held that "mitigating conditions are not mere expressions of hope" and that when an adopted mitigation measure is later determined infeasible, supplemental environmental review must assess appropriate replacement mitigation.

The EIR failed to provide sufficient detail for construction related traffic impacts and failed to impose feasible and enforceable mitigation measures, and therefore, the findings are not supported by substantial evidence. (Exhibit E: Goldfarb & Lipman 1/2/15, pgs. 11-12.)

The testimony given at the joint hearing by Nicole Ferrera noted potentially significant pedestrian impacts and reiterated many of the objections enumerated by Eric Phillips. (Citizens' Appeal Packet, Exhibit C: pg. 132.)

... [T]here are some concerns that we have with transportation. The parking right now is very high for the area. There's about over 450 new parking spots being introduced -- or parking spots being introduced into this project. And if you look at the streets of SOMA, and what is happening currently from a pedestrian safety perspective, you're seeing the streets of SOMA are some of the most dangerous streets in the City, and our lower-income communities, and SOMA are the ones being hit and injured by vehicle through traffic. So, introducing 450 new parking spaces, that's at least 450 new trips every single day into the neighborhood, we're concerned about pedestrian safety from that aspect. And it will be -- this is right adjacent to the 6th Street corridor, one of the most dangerous streets in the City, and a lot of people with disabilities, senior and surrounding housing. So we really want you to reconsider the parking ratios on the project. Right now there's a -- seven percent of commercial parking -- there's seven percent of parking for commercial, the commercial square footage of the project. The Trans Bay terminal has 3.5 percent, so we can look at that as a model. Residential is .5 per residential unit, which is the max without a conditional use permit, so that's another area where we'd like to see that go down. The project is getting additional height, because it's so rich in transit, so close to transit, so it's really reasonable that the parking ratio should actually also be reduced, because so many people will be encouraged to take transit and walk and bike to the building.

Residents Saul and Barbara Rockman noted the Project entails conversion of a public street to a private street in violation of the General Plan provisions and resulting in traffic and pedestrian impacts. (Citizens' Appeal Packet, Exhibit E: Rockman undated letter; Rockman 9/13/15; *see also* Tom Radulovich, 8/6/15 email; Sierra Club 9/17/15.)

Open Space

Attorney Eric Phillips and numerous others thoroughly recounted the EIR's inadequacies concerning impacts to Open Space. (Citizens' Appeal Packet, Exhibit E: Goldfarb & Lipman 1/2/15, pgs. 2-3; SMAC 9/3/15; Velasco 9/16/15; SOS; Friends of Boedcker Park 9/15/15; Sierra Club 9/17/15; James Joannides 9/17/15.)

The San Francisco Park and Recreation and Open Space Advisory committee passed a resolution requesting the Board of Supervisors postpone the September 17, 2015 hearing on the Project, require further studies and stating their concerns about the Project's Open Space provisions.

The committee has not had a formal presentation of the open space component of this major project; District 6 has been identified as the most Open Space Deficient in the city and in which active efforts to identify sites in D-6 suitable for parks and open space are ongoing; the ground level open space is poorly sited: enclosed in the middle of the complex, surrounded by towers and not visible from any major street; the location is subject to the highest level wind and shadows identified in the EIR; the site will be "primarily hardscaped", as described in the EIR; a nearly identical park, one block away, Tutubi Plaza, is tucked inside the alleyways, is non-functional, a haven of anti-social behavior and a detriment to the neighborhood; Neighbors are asking for its removal as a failed experiment; and 50% of the open space will be rooftop, accessible only during business hours via an elevator.

(Citizens Appeal Packet, Exhibit D: Resolution of the San Francisco Park and Recreation and Open Space Advisory committee regarding the 5M Project; Transcript of the San Francisco Park and Recreation and Open Space Advisory hearing, pgs. 34, 41-44.)

The testimony given at the joint hearing by area citizens concurred with the Park and Recreation and Open Space Advisory Committee's concerns. (Citizens' Appeal Packet, Exhibit B.)

As they are proposed, the open space areas of this project will be sequestered between non-code compliant buildings, in shadow, and exposed to mechanical room noise and air return, being hidden in the

back core of the building or on a rooftop accessible only by elevator, they will have little use or public benefit. They're platonic spaces merely conceptual, rather pragmatic naturalistic, real. There are no plant lists, there are no landscape drawings proposing to go in there, as opposed to other projects at this stage of development. In addition to shadowing over their own open space, they will cut down direct light and ambient that falls over mid plaza. The mid plaza is one of the areas they cite as they're ideal, but at the same time they're going to overwhelm mid plaza. (pg. 141.)

CHRIS DURAZO: Lastly - or a couple of last things: Open space is a huge issue. We brought this to the Commission and felt it should have been a separate issue. We're sorry that you're here this many hours, but it would have been resolved if you had a separate meeting and had this discussion beforehand. This is a serious issue. The opens space they're promising has three hours of sunshine on it. That three hours is from 11:00 to 1:00, and I'm being generous there. The rest of the time there's shade on what they're promising. That is not of value to this neighborhood. (pg. 216.)

COMMISSIONER MOORE: There are two instances historically where shadow limits have been raised, one in Boeddeker Park, one in 2006 the Curran House with 66 portable drawing units, and as recent as 2015, 168 Eddy was 103 affordable units, and I supported raising the shadow limits for those two projects. ... [S]ince the other 14 downtown parks which are codified by Prop K and by Planning Code Section 295, I have consistently wrote it as the parks and rec commission knows against raising shadow limits. And five and six for this partially, because I do think that fulfilling the public benefit, particularly when it comes the housing and underprivileged parts of the city or where there is weight lack of sufficient and some less open space, requires that attention. However, as we are extending these benefits, we're raising the shadow limits to private enterprises, who has the ability to shape the buildings and avoid casting shadow, that has the ability the create open spaces on their own, I believe that that is asking too much and I cannot support it. I worked for many, many years in the fog, but no building ever cast a shadow on the public open space or asked for exemptions for that. And I do know that there is an ability or skill by which that can be avoided, and it's for that reason that I consistently voted against raising shadow limits when it comes to parks. And you all know that, you have been around for the many years that we have worked together. (pgs. 295-296.)

COMMISSIONER HILLIS: Just a follow-up question, I mean, one mitigation I see to having the -- the -- open Boeddeker shaded, which I don't think is enormously significant, but is the construction of new open space, and especially the ground level open space which I think is more open and inviting to the public and necessary Chronicle building upper floor open space. (pg. 284.)

COMMISSIONER WU: I think there's only been a few cases in which the Boeddeker limit has been expanded. Bloomingdale's and the maybe tower or never built. Two DNDC projects 100 percent affordable housing, and the most recent time was a district plan. (pg. 294.)

JOHSON: Almost half of the space, that's the open space in the project is the Chronicle building, which is privately-owned publicly available space. But it's on the top floor of the Chronicle building, accessible only by an elevator. And I feel that that's not necessarily -- even though it's open during the day hours, and technically, it's public, anyone can come in there, I don't necessarily feel that that is the best option to have sort of equitable open space. (pg. 311.)

Growth Inducing and Cumulative Impacts

The EIR fails to adequately analyze growth inducing and cumulative impacts as noted in the DEIR comment letters by attorneys Eric Phillips and Susan Brandt-Hawley. (Final EIR: Brandt-Hawley Law Group; Citizens' Appeal Packet, Exhibit E: Goldfarb & Lipman 1/2/15, pgs. 3-4; *see also* SMAC 9/3/15, pg. 4; SMAC 9/10/15, pg. 2; SOS, pgs. 3-4.)

"Cumulative impacts" refer to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts. (CEQA Guideline §15355.) An EIR may address the cumulative impacts of a project through compilation of a list or through a summary of projections. The EIR discussion of cumulative impacts must describe the severity of impacts and likelihood of occurrence.

Here, the EIR used an outdated 2012 project list that was developed during the recession to analyze the cumulative impacts of foreseeable area projects despite evidence that the area has undergone considerable growth in recent years and the list was no longer reflective of current conditions. Therefore, the EIR underestimated the cumulative significant effects of the Project when considered together with other projects and failed to account for the likelihood of their occurrence. Cumulative effects affect the evaluation of each of the impact areas being considered for the Project.

Understated cumulative impacts analysis “impedes meaningful public discussion and skews the decision maker’s perspective concerning the environmental consequences of a project, the necessity for mitigation measures, and the appropriateness of project approval.” (*Citizens to Preserve the Ojai v. County of Ventura* (1985) 176 Cal.App.3d 421.)

Failure to use existing conditions as the baseline for analysis of environmental impacts also runs counter to CEQA. The physical conditions existing when the Notice of Preparation is published “will normally constitute the physical baseline conditions” used to describe the environmental setting and to determine whether an impact is significant. (Guideline § 15125(a).) Here, the EIR failed to include the existing foreseeable projects in its cumulative impacts analysis, therefore, the effects in each of the impact areas may be more severe than have been acknowledged. And, feasible mitigation and alternatives that would substantially avoid these impacts has not been considered or analyzed.

Inconsistency with Area Plans and Policies

The EIR failed to acknowledge the Project’s inconsistency with zoning and land use regulations and numerous area plans and policies. Under CEQA, the Project’s inconsistency with area plans and policies must be discussed. (Guideline § 15125(d).)

As explained in the extensive Draft EIR comment letter submitted by attorney Eric Phillips, the Project is inconsistent with the General Plan, Central SoMa Plan, Proposition K, Regional Housing Need Allocation, South of Market Area Plan, zoning codes, shadow regulations, numerous City policy documents and is vastly out of scale with the existing surroundings. “Instead of disclosing the impacts that would result if the Project were implemented under the currently-applicable codes and regulations, the Draft EIR analyzes the Project’s impacts under the proposed amendments to the City’s codes and regulations – amendments that the Applicant has tailor-made for the Project so that the City may zone the Project Site into compliance.” (Citizens’ Appeal Packet, Exhibit E: Goldfarb & Lipman 1/2/15, pgs. 5-8; SMAC 8/6/15, 9/3/15, 9/10/15, 9/13/15, 9/16/15; SOMCAN 9/15/15; Velasco 9/16/15; SOS; Rockman; Friends of Boeddeker Park 9/15/15; Sierra Club 9/17/15; Marlayne Morgan 9/16/15.)

Wind Effects

Potentially significant wind effects proposed by the Preservation Alternative have not been fully analyzed. Barbara and Saul Rockman noted, and the Final EIR concurred, that the Revised Project closely resembles the Preservation Alternative, an alternative that was ultimately rejected by the EIR due to the potential to generate excessive wind tunnel effects. (Citizens’ Appeal Packet, Exhibit E: Rockman letter, pgs. 2-3; SOS, pgs. 2-3.) Moreover, the wind

tunnel effects are forecast to be the most severe towards the interior of the site where most of the open space is proposed. Further wind studies must be performed for the Revised Project to analyze this effect.

Alternatives Review

The EIR failed to perform an adequate alternatives analysis and failed to consider a reasonable range of alternatives. (Citizens' Appeal Packet, Exhibit E: Goldfarb & Lipman 1/2/15, pgs. 12-13; SMAC 9/3/15, 9/13/15; SOMCAN 9/15/15; SOS, pgs. 3, 5-6; Tom Radulovich 8/6/15 email; SOMCAN 9/5/15; SOS, pgs. 5-6)

The primary feature of the Preservation Alternative, identified as the environmentally superior alternative, is that it retains the Camelline building, otherwise, its impacts are just as severe as the Project. As noted, the Final EIR confirms that the Revised Project is substantially similar to the Preservation Alternative.

Citizens have put forward a "Community Alternative" that substantially reduces the Project's impacts and retains the existing zoning on the site consistent with the comprehensive rezoning in the new Draft Central SoMa Plan. The alternative would satisfy most project objectives, provide for publicly accessible open space, reduce traffic, circulation, pedestrian and air quality impacts and reduce the Project's scale and massing so that it complies with existing and proposed land use regulations. Capping buildings at their current heights would avoid wind and shadow impacts proposed by the Project and would also avoid impacts to adjacent public parks. And this alternative would have the benefit of avoiding the illegal spot zoning proposed by the current Project. The Community Alternative would also comply with Proposition K Housing Balance, reserving at least 50% of the total units as affordable housing.

The inadequate Project Description discussed above also infected the evaluation of project alternatives. CEQA does not require alternatives to be analyzed at the same depth as an identified project. So too here, the Draft EIR's analyses are premised on the two development scenarios, not the Preservation Alternative/Revised Project. And each of the alternatives were compared to the two development scenarios, not to the Preservation Alternative/Revised Project. CEQA requires that alternatives be compared with an identified project; the Draft EIR did not perform the necessary analysis. As noted, the Preservation Alternative was discounted due to excessive wind effects; the necessary studies have not been performed to adequately analyze this impact and feasible mitigation and alternatives have not been analyzed or considered.

II. CEQA Findings and Statement of Overriding Considerations

The lead agency cannot merely adopt a statement of overriding considerations and approve a project with significant impacts; it must *first* adopt feasible alternatives and mitigation measures. (*Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal.4th 165, 185.) *City of Marina v. Board of Trustees of the California State University* (2006) 39 Cal.4th 341, held CEQA does not authorize an agency to proceed with a project that will have significant, unmitigated effects on the environment, based simply on a weighing of those effects against the project's benefits, unless the measures necessary to mitigate those effects are truly infeasible. As explained by the California Supreme Court in *Mountain Lion Foundation v. Fish & Game Commission* (1997) 16 Cal.4th 105, 124, "Under CEQA, a public agency must . . . consider measures that might mitigate a project's adverse environmental impact and adopt them if feasible. ([Pub. Res. Code] §§ 21002, 21081.)" The Court reiterated "CEQA's substantive mandate that public agencies refrain from approving projects for which there are feasible alternatives or mitigation measures."

As discussed above, feasible mitigation and alternatives have not been fully considered or analyzed for the Project's admittedly significant impacts; the Findings and Statement of Overriding Considerations are not supported by substantial evidence. (*Ibid*; see also Citizens' Appeal Packet, Exhibit E: Goldfarb & Lipman 1/2/15; SMAC 9/3/15, 9/10/15, 9/13/15; 9/16/15; Velasco 9/16/15; Wermer 9/16/15.)

As just one example of improper weighing of benefits against impacts prior to adoption of feasible mitigation measures and alternatives, Commissioner Low stated at the joint hearing that community benefits outweigh any shadow impacts on Boeddeker Park, yet the applicant conceded that the Project could be reconfigured to avoid any shadow effects. (Citizens' Appeal Packet, Exhibit C: 9/17/15 Joint Hearing Transcript, pgs. 297, 300.) And as discussed above, Citizens and others suggested feasible mitigation and alternatives for significant traffic, circulation and pedestrian impacts, shade and shadow effects, inconsistency with area plans and policies, and impacts to wind and open space.

III. Office Allocations

The public did not receive adequate notice prior to the actions taken at the joint hearing and were precluded from effectively participating in the public process. (Citizens Appeal Packet, Exhibit H; Letter of Notice Violation.)

The approval of the Office Allocations must be premised on adequate environmental review and was not.

The H1 Office Building is inconsistent with the Residential/Service Mixed Use (RSD) zoning designation. (Citizens Appeal Packet, Exhibit E: SMAC

9/3/15, pg. 1.) The proposed use is inconsistent with the Youth and Family Special Use District (SUD) zoning designation. (Exhibit E: SMAC 9/3/15, pgs. 1, 7-8; SMAC 9/10/15.) The proposal fails to mention the Youth and Family Special Use District nor does it consider the intent of the District designation or the land use restrictions placed on the SUD. (Exhibit E: SMAC 9/3/15, pg. 1.)

As discussed above, the open space designation is inadequate and incomplete; the approvals are in violation of and inconsistent with area plans, codes, zoning designations and regulations; the approvals are based on an inadequate and incomplete EIR and feasible mitigation measures and alternatives have not been fully considered; the findings are inadequate and incomplete and are not supported by substantial evidence. (*Ibid.*)

IV. Conditional Uses

The public did not receive adequate notice prior to the actions taken at the joint hearing and were precluded from effectively participating in the public process. (Citizens' Appeal Packet, Exhibit H; Letter of Notice Violation.)

The approval of the Conditional Uses must be premised on adequate environmental review and was not.

As discussed above:

- Necessary wind, shadow, height, massing, and traffic and circulation analyses have not been conducted;
- The approval constitutes spot zoning;
- The approval is inconsistent with area plans, codes, zoning designations and regulations;
- The approval is based on an inadequate and incomplete EIR and feasible mitigation measures and alternatives have not been fully considered;
- The approval will unnecessarily impact surrounding neighborhoods and result in the displacement of the Filipino community;
- The approval will hamper and jeopardize the development and establishment of the Filipino Cultural Heritage District;
- The approval will impact the aesthetic and cultural integrity of surrounding neighborhoods;
- The approval will obliterate the Youth and Family Special Use District;
- Open space and shade/shadow impacts have not been fully considered;
- The approval provides insufficient affordable housing;

- Inconsistent application of land use laws sets bad precedent for future development applications and jeopardizes the orderly development of San Francisco;
- The stated benefits of the conditional uses are inaccurate and are not supported by substantial evidence;
- The findings are inadequate and incomplete and not supported by substantial evidence.

(*Ibid*; see also Citizens' Appeal Packet Exhibit E: SMAC 9/3/15, 9/10/15, 9/13/15; Angelica Cabande 9/16/15; Lorna Velasco 9/16/15; Paul Wermer 9/16/15; Marlayne Morgan 9/16/15.)

Thank you,

Rachel Mansfield-Howlett
Attorney for Appellants