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Board President David Chiu and Board of Supervisors
c/o Ms. Angela Calvillo
Clerk of the Board of Supervisors
City of San Francisco
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

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Re: Supplemental Argument in Support of Appeal of Department of Public Works approval of Subdivision Map for Project 7969 relating to Block 3706, Lots 275, 277, 093 and 706 Mission Street - Residential Tower and Mexican Museum Project.

Dear President Chiu and Supervisors:

This office represents the 765 Market Street Residential Owners Association ("ROA"), the Friends of Yerba Buena ("FYB"), Paul Sedway, Ron Wornick, Matthew Schoenberg, Joe Fang, and Margaret Collins (collectively "Appellants") in their appeal of the Department of Public Works' approval of a subdivision map for Project 7970 relating to Block 3706, Lots 275, 277, 093 and 706 Mission Street - Residential Tower and Mexican Museum Project ("the Project").

The County Surveyor has made no determination of record regarding the Project's compliance with CEQA, nor has any other City decision-maker. CEQA cannot simply be ignored.

The County Surveyor has not made any findings regarding the adequacy of the environmental impact report prepared for this project. Despite the Board of Supervisors' prior certification of the EIR for this project, the County Surveyor's approval of this subdivision map is a new discretionary decision pursuant to CEQA Guidelines 15090(a)(2). There is no evidence that the final EIR was presented to the County Surveyor, or that the County Surveyor reviewed and considered the information contained in the EIR prior to approving this subdivision map for this Project.

Nor has the County Surveyor complied with San Francisco Administrative Code section 31.17, subdivision (b), which requires that "Before making its decision whether to carry out or approve the project, the decision-making body or appellate body shall review and consider the information contained in the EIR and shall make findings as required by CEQA" or subdivision (c), which provides that "Thereafter, the decision-making body or appellate body may make its decision whether to carry out or approve the project."


Nor has the County Surveyor made the findings required by Public Resources Code section 21081 or CEQA Guidelines 15090 through 15093, which are required here because the Project EIR identified a number of significant adverse environmental effects of the Project.

The Planning Department's brief on this appeal takes the position that "since certification of the EIR, there is no new information of substantial importance raised by Appellants or that has otherwise come to light under CEQA Guidelines Section 15162." This is incorrect because there is new, "post-certification" information requiring preparation of a subsequent or supplemental EIR under Public Resources Code section 21166 and CEQA Guideline 15162, including subdivision (a)(3)(c) of section 15162 ["Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative"]. For example:

- As discussed in paragraph 26.b of my March 31, 2014, letter supporting this appeal, information presented by the Project Sponsor after certification of the EIR (i.e., the May 8, 2013, "EPS Report") shows there are feasible alternative tower heights higher than 351 feet but lower than 520 feet. Therefore, the City cannot lawfully make the finding that there are no feasible mitigation measures that would "substantially lessen" the significant cumulative show impact on Union Square.
- Also, as discussed in paragraph 26.c and d of my March 31, 2014, letter supporting this appeal, information presented by Appellant's after certification of the EIR (i.e., the June 28, 2013, "Sussman Report") shows that a tower height of 351 feet is financially feasible and the EPS Report's analysis and conclusion that the Reduced Shadow Alternative is not financially feasible does not constitute substantial evidence supporting the City's finding because it is "clearly inadequate or unsupported." *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 409.

To the extent the County Surveyor is relying on the Project EIR previously certified by the Planning Commission on March 21, 2013, and the Board of Supervisors on May 7, 2013, that reliance is misplaced because the EIR is defective for all the reasons discussed in my previous letters in support of this appeal.

Thank you for your attention to this matter.

Very Truly Yours,

Thomas N. Lippe