

**Carroll, John (BOS)**

---

**From:** Joseph Smooke <josephsmooke@gmail.com>  
**Sent:** Monday, November 16, 2015 9:12 PM  
**To:** BOS Legislation, (BOS)  
**Cc:** Rachel Mansfield-Howlett; Angelica Cabande; Jaymee Faith Cadiz Sagisi; Dyan Ruiz; Johnston, Conor (BOS)  
**Subject:** Fwd: Letter 11/17/15 Board of Supervisor's Hearing re 5M Appeals and Project Approvals  
**Attachments:** 11-16-15 BOS letter 5M.pdf  
**Categories:** 151054, 151058

Hi John  
Sorry it's so late in the day.  
Just realizing that this e-mail from our attorney that was addressed to you didn't make it to your e-mail.

This letter is part of our appeal on the 5M project scheduled to be heard Tuesday, Nov 17.

Please confirm receipt.

Thanks!  
--joseph

----- Forwarded message -----

**From:** Rachel Mansfield-Howlett <[rhowlettlaw@gmail.com](mailto:rhowlettlaw@gmail.com)>  
**Date:** Mon, Nov 16, 2015 at 2:42 PM  
**Subject:** Letter 11/17/15 Board of Supervisor's Hearing re 5M Appeals and Project Approvals  
**To:** [Conor.Johnston@sfgov.org](mailto:Conor.Johnston@sfgov.org), [Breedstaff@sfgov.org](mailto:Breedstaff@sfgov.org)

Hi John,  
On behalf of South of Market Action Committee (SMAC), South of Market Community Action Network (SOMCAN), Save our SoMa (SOS), and Friends of Boeddeker Park, please accept this letter regarding the 5M Project approvals that will be considered at the Nov. 17, 2015 hearing.  
Thank you,  
Rachel

---

Rachel Mansfield-Howlett  
Provencher & Flatt, LLP  
823 Sonoma Ave.  
Santa Rosa CA 95404

Phone: 707/284.2378  
Fax: 707/284.2387  
Cell: 707/291.6585  
[Rhowlettlaw@gmail.com](mailto:Rhowlettlaw@gmail.com)

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. 16, 2015

*Via Email*

**RE: 925 Mission (5M Project), File No 2011.0409PCA**

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", request that the Board of Supervisors reject the proposed General Plan Amendments, Development Agreement, and Raise of the Threshold Shadow Limit on Boeddeker Park you will be considering at the November 17<sup>th</sup> hearing on the 5M Project.

In support of this request, Citizens have cited to the letters that have been submitted to the City that are related to Citizens' Appeal of the certification of the EIR, office allocations and conditional uses and for the Project proposed for consideration at the upcoming hearing. (Citizens' Appeal Packet with Exhibits; Citizens' Appeal letters: 11/6/15; 11/12/15 [Request for Continuance of 11/17/15 Board of Supervisors hearing due to late revision of the Project.]

#### **I. General Plan Amendments**

The General Plan Amendments proposed for the 5M Project should be disallowed for the following reasons.

#### **Spot Zoning**

Spot zoning typically occurs when a site is zoned differently from the surrounding parcels in the area. Development is proposed that is inconsistent with the provisions of the surrounding land uses, disrupting the City's ability to proceed with ordered development consistent with the intent of the existing land use provisions.

Through careful crafting of the language, the Project is made to appear consistent with the surrounding zoning, but as numerous commentators have attested, the Project's General Plan amendments actually constitute spot zoning. The artificial separation of the Project from the provisions of the Eastern Neighborhoods Plan and the Central SoMa Plan and incorporation of the C-3-S "Downtown Support" Zone, constitutes spot zoning.

Instead of trying to rezone the site as C-3-O (SD) "Downtown Office Special Development," the developer proposes a C-3-S "Downtown Support" Zoning. The Project then attempts to amend the height and bulk limits within the "Downtown Support" Zoning, even though the proposed Amendments are more appropriate to planning zones that are not contiguous with the site.

This is bad City planning. The carve-outs prohibit the community from reviewing this development within the context of the existing planning provisions and is contrary to the adequate environmental review of relevant land use consistency issues. The proposed height and bulk are completely incongruous with the "Downtown Support" Zone, which should have been the applicable comparison, not the "Downtown Office Special Development."

The proposed amendments would create a second Financial District not intended by the General Plan. The Amendment states that the Developer is proposing to unify the Project Area "under the C-3-S Zoning District ["Downtown Support"] which currently applies to the majority of the site." A portion of the Project Site is also under RSD Zoning, called "Residential/ Service Mixed Use." The proposed amendments are completely out of scale with and violate the intent of both "Downtown Support" and "Residential/ Service Mixed Use" designations.

The H1 Office building proposed on the 5M site is on RSD zoning, which is characterized as a housing opportunity area "intended to facilitate the development of high-density mid-rise housing." This site also overlaps the Youth and Family Special Use District (SUD) zoning. The 5M Project does not comply with the intent of the Youth and Family SUD zoning nor the height and bulk restrictions that exist under these provisions.

The SF Planning Code states the definition of "Downtown Support" is "to accommodate important supporting functions such as wholesaling, printing, building services and secondary office space. It also contains unique housing resources." The Project proposes retention of the "Downtown Support" zoning but separation from the Central SoMa Plan. The current heights and bulk restrictions are in keeping with the "Downtown Support" zoning but the

proposed Project is more similar in scale to the Financial District developments north of Market Street and Transbay to the east, not to the Project's adjacent land uses. Thus, the size and scale of the buildings will change the use of the "Downtown Support" zoning and create a second Financial District in the City. This is not intended in the City's General Plan, which clearly delineates the C-3-O ("Downtown Office") and C-3-O (SD) ("Downtown Office Special Development") as the appropriately designated areas for such use.

Approval of the General Plan Amendment would allow the 5M Project to max out the large-office-allocations for the entire City. Prop M limits the annual office space allocation to 950,000 square feet total for all of the City's developments. The Project proposes 807,600 square feet of office space. This is equal to 85% of the City's entire allocation. Furthermore, all of the office space will be concentrated by one project in one area of the City. By this measure alone, it is apparent that this development is not appropriate for the "Downtown Support" designation but is more similar to "Downtown Office Special Development." (Letters: SMAC 8/5/15, 9/3/15; Coalition for San Francisco Neighborhoods 2/9/15; San Francisco Neighborhood Network 9/16/15; Sierra Club 9/17/2015; SOS 7/22/15.)

### **Failure to Comply with the East SoMa Portion of General Plan**

Objective 1.2 of the East SOMA portion of the San Francisco General Plan reads: "strong building design controls . . . should ensure that these new buildings are compatible with their surroundings" so as to maintain the character of the neighborhood. A grant of the requested SUD is a direct abrogation of those controls. As stated on page 146 of the Draft EIR, "the proposed buildings on the project site would be up to approximately 300 feet taller than buildings surrounding the site." Such a variation cannot be allowed to define "compatible with its surroundings." The EIR points to other large buildings in the vicinity to the east such as the Intercontinental Hotel, which itself was granted an exception to height limitations, and structures such as the PG&E Building which, although geographically close, are not part of the SoMa neighborhood, and consequently are zoned differently. Accepting those structures as relevant points of comparison would effectively open SoMa to the unbridled expansion of downtown.

"The undifferentiated spread of tall buildings without appropriate transitions, or without deference to the larger patterns, iconic and irreplaceable relationships, or to key views of defining elements of the area's landscape, can diminish and obscure the city's coherence and the collective

connection of people to their surroundings.” (Draft Central SOMA Plan, pg. 30.)

5M is planned for development in a “Downtown Support” zoning district. In such districts, floor area ratio (FAR) is limited to 5:1. This ratio can be expanded to 7.5:1 to accommodate increased on-site affordable housing under section 124(f) of the Planning Code. 5M, while only meeting the requirements for a fraction of this exception, would require a special treatment via the SUD to allow a FAR of 11:1, **more than double** the maximum original ratio for the zoning district. Furthermore, as stated on page 168 of the EIR, housing density in the neighborhood currently stands at 283 units/acre. Approval of the Fifth and Mission SUD would allow for **double** that ratio over the four acres 5M would occupy.

Effective City planning principles support locating projects on sites that can absorb the higher densities in the surrounding neighborhood; that is not the case here. There does not appear to be any reasonable justification for the gross exceptions to the Zoning Code proposed by 5M. The enormous variations from well-established standards would have a profoundly negative impact on the surrounding neighborhood and provide further evidence that the proposed deviations from established Planning Code regulations are not in keeping with the character of, and would be wholly detrimental to the SoMa neighborhood.

Page 114 of the EIR reads, “with implementation of the Fifth and Mission SUD and the project specific D4D the project would not obviously conflict with the planning code.” But this is not the case without the SUD, as the Project clearly and obviously conflicts with the portions of the planning code enumerated above, as well as various others detailed in the report. (EIR, pgs. 71-72.) The proposed SUD is an unjustified exception to well-justified policies that results in impacts that should have been discussed in the EIR prior to the consideration of the Project’s claimed benefits. The purpose of the EIR is to review the impacts of the proposed amendments under existing planning provisions absent those amendments, not with the amendments.

Such a grant incentivizes future developers to attempt to circumvent the provisions of the zoning code with further unjustified SUDs. To allow the SUD would be to undermine the established planning standards and practices and prove detrimental to the City as a whole. Construction of this magnitude in a neighborhood without structures of comparable size, and for no justifiable reason, opens the door to practically unlimited expansion of downtown into SoMa. The differences in land values supported by the Project’s height/bulk

ratio offer an incentive for development that will trivialize the SoMa plan that has been years in the making. The justifications for the Fifth and Mission SUD must be reevaluated with these considerations in mind. (Letter: SOS, 7/22/15.)

### **Invalid Bases for General Plan Amendment**

The 5M Project does not satisfy the City's General Plan goals.

The "Basis for Recommendation" section of the General Plan Amendment fails to present why such extreme benefits should be conferred to this well-heeled developer.

The first listed Basis for Recommendation states, "the initiation will enable . . . the 5M project to proceed." Approving a project so it can proceed is not a justification for amending the General Plan; it is simply a possible result if the General Plan Amendment is approved. This makes the proposed Project appear to be inevitable or at least consistent with the area around it, while neither is true.

The second Basis for Recommendation states, "the project will add office and retail uses that will contribute to the employment base of the City and bolster the viability of the Downtown Core as the center of commerce for the City." As stated, the Project will concentrate most of the City's Prop M office allocations in one location. This concentration is at the expense of any other office space proposed throughout the City. Furthermore, the scale of the 5M Project, the Transbay Terminal, and other projects, will in effect create a second Financial District. Under the current zoning, office and retail may be developed. However, planning staff fails to present why adding height and bulk to the current zoning, and thereby changing the use of the area, would benefit the City and community.

The third Basis for Recommendation states, "The Project will add housing opportunities within a dense, walkable urban context." Planning staff fails to present why adding housing above current zoning would benefit the City and community. Also, the lack of traffic analysis for the major, current and future changes, and the increased traffic generated by the Project itself, could cause a dangerous environment for pedestrians.

The fourth Basis for Recommendation states, "The site [will add] . . . publicly accessibly [sic] open spaces [sic] . . ." The only proposed open space consists of a rooftop, a pedestrian-only portion of Mary Street and courtyards between the Project's buildings. All of that open space will be shadowed by the Project's own towers and consists of hardscaped surfaces. The rooftop space has no accessibility plan for public access and is not visible from the street level. The

Project's towers will also cause significant unanalyzed shadow impacts to existing open space, such as Boeddeker Park in the Tenderloin, Yerba Buena Gardens, UN Plaza, Hallidie Plaza, Jessie Square, and Draves Park.

The fifth Basis for Recommendation states, "... employees and residents would be able to walk or utilize transit . . . without reliance on the private automobile." The Project proposes more than doubling the existing number of parking spaces on the site (to 463 parking spaces) even though zero spaces are required in a new development on this site.

Studies, such as the 2014 study by the California Housing Partnership, show that people who can afford higher housing costs are more likely to use their cars instead of public transit. With the majority of the housing, office and retail space proposed for market-rate – catering to San Francisco's high-end market – the influx will increase private automobile use.

The final Basis for Recommendation states, "the project is, on balance, consistent with the Goals, Policies, and Objectives of the General Plan." Citizens have noted that the Project is inconsistent with numerous provisions of the General Plan and the existing zoning designation – and if the Project is consistent, why would the General Plan need amending? This is an example of the type of circular reasoning used in the EIR: the project is consistent because it has been deemed consistent through a General Plan Amendment. The Project's inconsistencies with the General Plan have not been analyzed or adequately considered.

In 2008, the SoMa Youth and Family Zone was established as part of the Eastern Neighborhoods Plan. The Zone was adopted to protect the delicate infrastructure and character of SoMa's low-income senior and family residential base. The SoMa Youth and Family Zone directs future development to maintain the low to mid-scale residential enclaves of 40 feet to 85 feet, and provides more restrictive controls on "large-footprint uses" that displace small neighborhood-serving businesses and community organizations.

The 5M Project Area was intentionally kept in the SoMa Youth and Family Zone in order to maintain the sensitive character of this area. The proposed Project greatly exceeds the height limits of both the SoMa Youth and Family Zone and the Downtown C-3-S Zoning District. (Letter: SMAC 8/5/15.)

## **GP Amendment Fails to Comply with SoMa Youth and Family Special Use District**

The 5M site sits in the Youth and Family SUD. The existing Youth and Family SUD is “intended to expand the provision of affordable housing in the area defined . . . in addition, this zoning is intended to protect and enhance the health and environment of youth and families by adopting policies that focus on certain lower density areas of this District for the expansion of affordable housing opportunities.”

Efforts have been made by the SoMa community to strengthen and expand the SUD. The following is an excerpt from the Central SOMA Community Plan EIR Draft May 2013:

The South of Market Youth and Family Zone was adopted as a Special Use District for parts of Central SOMA as part of the Eastern Neighborhoods Rezoning approved in 2010, in response to community concerns about the long term gentrification of SOMA and property use conflicts with families living here. It is very limited in scope, requiring conditional use approvals for a list of property uses that might be incompatible with family residents, and setting a higher requirement for inclusionary affordable housing for any new developments on the handful of small alleyway lots within the district.

To be of real value for Central South of Market Neighborhood / Community Building and meaningfully counter continued gentrification of the private housing market, the existing Youth and Family Zone needs to be expanded and strengthened significantly in several ways.

The Draft Community EIR describes ways that the SoMa Youth and Family SUD should be strengthened and expanded, including the protection of the elderly, the expansion of its boundaries, and higher inclusionary housing requirements. The expansion and strengthening of the Youth and Family SUD is a fundamental goal of the Central SOMA plan that is jeopardized by the proposed General Plan amendment.

As stated, our coalition supports the expansion and strengthening of the Youth and Family SUD; the SUD for the 5M Project will substantially hinder these efforts. The expanded Youth and Family SUD should include the entirety of the 5M site. A code-compliant project that respects and expands upon the provisions of the Youth and Family SUD is the right approach for planning, whereas adoption of the SUD for a single project, constitutes spot zoning that



controverts considerable ongoing planning efforts. (Letters: Coalition for San Francisco Neighborhoods 9/2/15; SMAC 9/10/15.)

### **GP Amendment Hampers Establishment of Filipino Heritage District**

The establishment of a Filipino Heritage District is of critical importance to preserve, enhance and advocate for Filipino cultural continuity, vitality, and community in the South of Market neighborhood. The neighborhood is home to many Filipino families that have been established there since the 1960s. The area contains cultural resources that express the rich cultural and immigrant history of the Filipino community in San Francisco. In order to recognize, protect and memorialize these South of Market Filipino cultural assets, the Western Soma Citizens Planning Task Force proposed the Filipino Heritage Special Use District in West Soma.

The scale and magnitude of the buildings proposed in the 5M Project substantially hampers the continued existence of the Filipino community living in SoMa due to the foreseeable rise in property values and rents around the Project due to its growth inducing impacts. The Project must be analyzed for its potential to contravene the Filipino Heritage District SUD.

Since 1990, as part of efforts by the Redevelopment Agency, the South of Market Project Area Committee published a number of documents that contribute to recognizing a Filipino based district in South of Market. From 2008 to 2011, the SoMa Filipino community worked together with the Planning Department to lay the groundwork for the development of the Filipino Heritage District as part of the Western SoMa Plan. In order to recognize, protect and memorialize these South of Market Filipino cultural assets, the Western SoMa Citizens Planning Task Force proposed the Filipino Social Heritage SUD in an identified boundary in West SoMa.

The July 2011, *Recognizing, Protecting and Memorializing South of Market Filipino Social Heritage Neighborhood Resources* was issued by the Western SoMa Citizens Planning Task Force to present the evolution of the Filipino community in San Francisco from the 1920s through the 1980s, with an emphasis on identifying buildings or sites in the South of Market neighborhood that are viewed as cultural assets by the Filipino community.

Unfortunately, the proposal for establishment of a Filipino Heritage District under the Western SoMa Plan was not completed. As recent as October 27, 2015, a Resolution was introduced to the Board of Supervisors for the establishment of the SoMa Pilipinas – Filipino Cultural Heritage District;

adoption of the 5M Project, under the current Project proposal, will prevent the establishment of SoMA Pilipinas. (Letters: SMAC 9/3/15, 9/16/2015.)

### **Project Not Considered Under Draft Central SoMa Plan**

The Central SoMa Environmental Impact Report (EIR) must include the 5M Project, inclusive of the Youth and Family Special Use District. There is no valid reason to exclude the 5M Project from the Central SoMa Plan.

The first hearing for the Central SoMa Plan and 5M's application to planning for the initiation of the review of the Project both occurred in April 2011. There is no reason why 5M, especially considering how large a footprint it occupies, should have been planned separately from the Central SoMa Plan. The amendment states, "the Planning Department began conversations with the project sponsor in 2008." But planning's conversations with the developer are irrelevant. The Developer did not submit their application to planning until April 2011, after staff had already begun work on the Central SoMa Plan. All projects within the geographical boundaries of the Central SoMa Plan Area should be subjected to Central SoMa planning.

In both the existing zoning and the draft Central SoMa Plan, this area of SoMa is envisioned as a step down transition from the larger scale zoning east of the site to the mid and low-rise residential and mixed-use buildings to the west. The Central SoMa EIR is based on the Draft Central SoMa Plan, which does not include the heights and bulk of the 5M site as proposed by the developer. The Central SoMa EIR also does not include analyses of the proposed shadows, massive parking garage, and traffic modifications proposed by 5M. Due to the failure to include the Project in the consideration of the Central SoMa EIR, the analyses do not consider the foreseeable cumulative impacts of the implementation of the Project. Carving out the 5M Project from the Central SoMa Plan means that the cumulative impacts of the Project have not been adequately analyzed.

The Proposed Development has been improperly removed from consideration in the Central SoMa Draft Plan. The following are quotations from the Plan that clearly show that the 5M Project is inconsistent with the Plan.

The 5M Project does not respect the existing context and character of SoMa because it completely disregards the zoning contemplated on the site. (Central SoMa Draft Plan, pg. 6, "[A]ny increases in development capacity need to be balanced with other Plan goals - respecting the rich context, character and community of SoMa.")

The 5M Project exceeds the height limits shown for this site in the Mid Rise Alternative and High Rise Alternative of the Draft Central SoMa Plan. The Draft Central SoMa Plan still zones the Project site at heights ranging from 40-feet to 160-feet. (Central SoMa Draft Plan, pgs. 41 and 42.)

A 470-foot, 45-storey condo tower, and 395 foot and 350 foot office towers are not mid-rise buildings. (Central SoMa Draft Plan, pg. 6 “This plan sets forth a proposal for a mostly mid-rise district, based on an overall base height set by the width of the area’s streets. The plan uses a number of urban design strategies, from lowering heights to preventing lot mergers, to protect assets like existing open spaces, residential enclaves, small-scale neighborhood commercial clusters and historic districts.”)

The Community Plan has not yet been completed because TODCO has not been leading a community planning process. (Central SoMa Draft Plan, pg. 11 “The TODCO Group... is developing a Central SOMA Community Plan as a community-driven alternative to this Plan.”)

The Central SoMa Plan acknowledges that adding increased heights would increase land values. (Central SoMa Draft Plan, pg. 22 “Removing industrial restrictions on land and allowing other, higher-paying uses will substantially increase its value, as would major increases in height limits.”)

The Central Soma Plan acknowledges the SoMa Youth & Family SUD; the 5M Project does not. (Central SoMa Draft Plan, pg. 25 “Community facilities such as schools, child care, community centers, and public services (like police and fire) are an essential part of any complete community. Such uses will continue to be permitted throughout the Plan Area. The Planning Department will work with other City agencies to provide adequate provision for these facilities within the Plan Area. Additionally, incentives such as FAR exemptions or bonuses should be considered to encourage creation of such facilities in new construction. Special attention should be paid to incentivizing such facilities in the existing SoMa Youth & Family Special Use District.”)

Developers can provide a lot of housing and a lot of jobs with the height and bulk currently zoned on the 5M site. (Central SoMa Draft Plan, pg. 32 “It is important to note that mid-rise buildings are not necessarily synchronous with low densities. On the contrary, buildings heights of 65-130 feet combined with the larger floorplate buildings characteristic of the area can easily reach Floor Area Ratios (FAR) of over 6:1. (By comparison, the core of the downtown averages 9:1.) Finally, the essential historic character that defines the South of

Market is that of the large commercial and industrial warehouse mid-rise building.”)

The floor plates of the 5M Project have not been described in the Final EIR nor is there enough information to even calculate them. Without this information, the project cannot be evaluated fully. (Central SoMa Draft Plan, pg. 32 “As such, the Draft Plan proposes that towers taller than 130’ in height should not exceed a floorplate of 12,000 gross square feet for residential or hotel uses and an average of 15,000 square feet for commercial uses. Outside of the downtown core, typical tower separation requirements are 115 feet to ensure light, air and views between tall buildings. Such controls should be considered here. Tower separation less than 115’ might be considered where adjacent towers are very slender (e.g. 8,500 gsf) and adjacent towers vary in height by a significant amount (e.g. 50’ or more).”) (Letters: SMAC 8/5/15, 9/3/15, 9/13/15; Coalition for San Francisco Neighborhoods 2/9/15.)

## **II. Development Agreement**

The Development Agreement (DA) should be rejected for the following reasons.

### **DA Violates City’s Inclusionary Housing Program**

Under the Inclusionary Housing Program of the Planning Code, the developer is required to build all of the offsite affordable housing units *without subsidy* and they must be built before the market rate housing. The Agreement does not comply with these provisions.

The recent negotiations changed the Project to increase the onsite affordable housing to higher income levels, therefore the Project should include more low income affordable housing. The 87 units of onsite Below Market Rate (BMR) rental units that are part of the recently negotiated Project revision aren’t affordable. A two-bedroom would range from \$2,293/month to \$3,439/month which is targeted to be 100% to 150% Area Median Income (AMI). These BMR units used to be 50% AMI (\$1,146/month). On site BMR rentals are supposed to be targeted at 55% AMI pursuant to the Inclusionary Housing Program.

The Citywide onsite inclusionary requirement sets the number of onsite affordable units at 12%. In the SoMa Youth and Family SUD, pursuant to MOHCD, the requirement is higher – 17.6% of the Project units are required to be located onsite. The Project does not propose any onsite affordable home ownership.

The developer is not required to build the 83 units of proposed senior housing; the developers are merely giving the land at 967 Mission Street to the City. The City may opt to sell the land rather than build affordable housing. This violates the Inclusionary Housing Program.

The cost of the land (\$3.5million) is being deducted from Forest City's fees but there has been no corresponding analysis as to whether this constituted the fair market value of the land. To Citizens' knowledge, the purchase and sale agreements have not been provided for review.

The Development Agreement allows the City to sell the site proposed for senior housing and build housing elsewhere. Affordable housing should be included in the Youth and Family SUD.

The funding for the 71 units in the Tenderloin, at Eddy and Taylor, derives from the Jobs Housing Linkage fees the developer has to pay to offset the development of its massive Office Towers. The developer is already obligated to pay Jobs Housing Linkage Fees; they shouldn't be counted as augmenting the inclusionary requirement.

The vast majority of the 5M Project's affordable units are market rate. The 400-unit, 45-story condo tower constitutes 100% luxury home ownership. The 201-unit rental building constitutes 100% luxury rentals.

The newly negotiated deal allows the development of higher income units for the SoMa area while concurrently moving low-income people out of SoMa and into the Tenderloin. Below Market Rate low income affordable housing should be included in the SoMa area.

The 2007 housing nexus study showed that market rate projects create a direct, indirect and induced demand for below market rate housing on the order of 40% of a project's market rate units. Adjusting for the Project's 58 units of onsite Below Market Rate units (BMR), the 33% BMR contribution means that San Francisco will be another 44 units short of BMR housing in a housing segment that is under the greatest stress. If the City needs 44 more units of BMR housing than this project will provide just to offset the demand for housing the project creates, how does this help the City? How does the City reconcile the nexus study with the EIR's conclusion of no adverse housing impacts? (Wermer, 9/16/2015.)

## DA Fails to Mitigate Traffic Impacts

The San Francisco Municipal Traffic Agency's second Strategic Goal is to "Make transit, walking, cycling, taxi, ridesharing and car sharing the preferred means of travel Objective 2.3 – Increase use of all non-private auto modes." The Project increases the number of private cars parking in the 5M area; it includes 331 parking spaces, which constitutes a significant increase of the existing 219 spaces. This project will increase traffic congestion by encouraging the use of private cars, contrary to the City's strategic goals.

The Final EIR states, "the Revised Project would contribute considerably to significant cumulative traffic impacts." The Draft EIR stated that existing traffic conditions would be made worse with the Project, converting almost all of the 21 intersections that were studied to a Level Of Service, F. The Draft EIR opined that, "overall, no feasible mitigation measures were found to mitigate significant, cumulative impacts for the affected intersections." (Draft EIR, pg. 352).

The Transportation Sustainability Fee (TSF) was just passed by the Board of Supervisors. 5M should not be exempted from these fees via the Development Agreement, they should be included in the ordinance. (Letters: Rockman 10/20/15; Coalition for San Francisco Neighborhoods 2/9/15; SOS 7/22/15.) While the City claimed that 5M is paying its fair share of the TSF, there is no economic analysis to show the veracity of this claim. (Letter: Citizens Appeal 11/12/15.)

As reported in the San Francisco Chronicle on June 11<sup>th</sup>, there are two currently planned significant changes to the layout and traffic patterns on Market Street, both with potentially severe adverse functional and environmental impacts on traffic in the 5M area. The "Safer Market Street Plan" will prevent private automobiles from entering Market Street between 3<sup>rd</sup> and 8<sup>th</sup> streets, reducing traffic on Market Street by up to 30-50%. The question must be asked, where will this traffic go? The answer is, traffic will invariably divert onto side streets, including those surrounding the 5M block, causing congestion well beyond what is accounted for in the EIR. "The Better Market Street Plan" also seeks to improve Market Street and surrounding areas via "changes to roadway configuration and private vehicle access; traffic signals; surface transit, including transit-only lanes, stop spacing, service, stop location, stop characteristics and infrastructure; bicycle facilities; pedestrian facilities; streetscapes; commercial and passenger loading; vehicular parking; plazas; and utilities." The transportation impact of 5M was assessed without consideration of these two

substantial alterations to a major thoroughfare in its direct vicinity. (Letter: SOS 7/22/15.)

5M will create a demand for over \$96 million in project related transit capital investments. The recent transit nexus study data showed that the 821,000 sq. ft. of new residential property will cost San Francisco \$25.4 million, while the 68,700 sq. ft. of new commercial space will create a demand for an additional \$70.6 million. This, of course, does not include the demand generated by new, offsite BMR housing. This is balanced by a Development Agreement total of \$29 million, of which \$11 million offsets transit demands. Why are we subsidizing the development to the tune of over \$67 million? Would we not be better off applying those dollars to a mix of BMR housing and transit costs? (Letter: Wermer 9/16/2015.)

### **DA Conflicts with Transit First Policy and Vision Zero Goals**

Given the location of this project, within a congested downtown area served by bus and BART and adjacent to bike lanes, a zero-parking project alternative should be studied. The 5M project as proposed, with its hundreds of off-street parking spaces, will have substantial impacts on sustainable transportation modes, including public transit, walking, and cycling. This is the wrong direction for a Transit First city to be headed. It also conflicts with the City's goal to eliminate traffic fatalities by 2024.

Specifically, the additional automobile traffic resulting from the inclusion of large amounts of parking in this project will slow buses and impede bicycle traffic and will endanger the lives of pedestrians and bicyclists traveling in and through this already-congested area. In addition to the increased automobile traffic, the location of a garage opening and loading entrance adjacent to the Howard Street bicycle lane is problematic. It will result in autos and trucks continually crossing and/or lining up in bicycle lanes. This both blocks bicycle traffic and puts cyclists in danger. (Letter: Sierra Club 9/17/15.)

### **DA Needs More Analysis**

SMAC requested a displacement study that compares market rate development to evictions and a detailed inventory/ map of soft sites and rent controlled buildings, and single room occupancy units that are not "stabilized."

SMAC requested a real Community Benefits Analysis that includes a presentation of the schedule of Community Benefits relative to phased construction or occupancy of each building, and a presentation of the ramifications if parts of the development are sold or transferred. SMAC has also

requested an independent review of the Development Agreement. The Board of Supervisors should request an independent report on the financial and legal risks related to the Development Agreement. (Letters: SMAC 9/13/15; Citizens Appeal 11/12/15.)

### **III. Threshold Shadow Limits on Boeddeker Park**

The request to Raise the Threshold for Shadow Limits on Boeddeker Park should be rejected for the following reasons.

The public did not receive adequate notice prior to the actions taken at the Planning Commission hearing regarding the request to Raise the Threshold for Shadow Limits on Boeddeker Park and were precluded from effectively participating in the public process. (Citizens Letter of Notice Violation.)

The EIR's analysis of shade and shadow impacts was inadequate and incomplete, therefore the Board has not been apprised of the Project's true 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.4<sup>th</sup> 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.4<sup>th</sup> 1109; *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4<sup>th</sup> 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. (Letters: Goldfarb & Lipman 1/2/15, pgs. 8-9; SMAC 9/3/15, 9/10/15 pg. 2; SOS pgs. 2-4; Rockman pgs. 3-4; Friends of Boedekker Park 9/15/15; Sierra Club 9/17/15; 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. (Letter: Goldfarb & Lipman 1/2/15.)

The Draft EIR also failed to consider the effects on several open spaces heavily used by the public. (Letters: Goldfarb & Lipman, 1/2/15, pgs. 8-9; SMAC

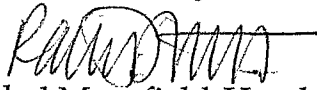


9/9/15; Friends of Boeddeker Park 9/15/15; Sierra Club 9/17/15.) The testimony given at the September 17, 2015 joint commission hearing by Jane Weil reiterated these objections. (Hearing Transcript pgs. 47, 159, 226, 236.)

Importantly, the applicant conceded that the Project could have been reconfigured to completely avoid shadow impacts on Boeddeker Park. (Hearing Transcript pg. 297.)

For the reasons stated herein, Citizens request the Board reject the proposed General Plan Amendments, Development Agreement, and Raise of the Threshold Shadow Limit on Boeddeker Park.

Sincerely,



Rachel Mansfield-Howlett

Attorney for Citizens

South of Market Action Committee (SMAC)

South of Market Community Action Network (SOMCAN)

Save our SoMa (SOS)

Friends of Boeddeker Park