



July 17, 2017

Hon. London Breed
San Francisco Board of Supervisors
City Hall Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Re: 1850 Bryant Street
File No. 170804 (CEQA Appeal)
Hearing Date: July 25, 2017

Dear President Breed and Supervisors,

I am writing on behalf of my client, 1850 Bryant Land, LLC, regarding the appeal of the Community Plan Exemption (“CPE”) issued under the California Environmental Quality Act (“CEQA”) for the proposed development at 1850 Bryant Street (“Project Site”).

On June 1, 2017, the Planning Commission unanimously (7-0) approved a Conditional Use authorization for the development of a five-story, 226,042 gross square foot building that will include approximately 166,483 square feet of social service/philanthropic facility uses, 18,652 square feet of production, distribution and repair uses, and 2,281 square feet of ground floor retail uses on the Project Site (the “Project”). On July 3, 2017, the Franklin Square Owners Association (“Appellant”) filed an appeal of the determination to prepare a CPE under CEQA for the Project.

The Appellant is the homeowners association for the residents of 1800 Bryant Street, the live-work building that is located to the immediate north of the Project Site. The Appellant also attempted to appeal the Conditional Use authorization granted for the Project, but was unsuccessful as they failed to secure the required number of signatures for such an appeal.¹

The Planning Department is preparing a detailed response and analysis of the Appellant’s Claims based on the evidence presented and the substantial evidence in the record. It is our understanding that the Planning Department staff is recommending that the Board of Supervisors uphold the CPE determination and deny the appeal. **For all the reasons stated below, we also believe that the Appellant’s claims are baseless and respectfully request that you deny the appeal, and uphold the decision of the Planning Commission.**

PROJECT BACKGROUND

1850 Bryant Street is a 36,500-square foot through lot with frontages on Bryant Street and Florida Street. It is in the Mission Area of the Eastern Neighborhoods Plan Area, near the boundaries of the South of Market Area (“SoMa”) and the Potrero Hill neighborhoods. The Project

¹ Planning Code Section 308.1 requires that at least 20% of affected property owners sign the appeal. The City Surveyor determined that the signatures on the Conditional Use appeal only represented 5.46% of the affected area, and therefore the appeal failed.

Site is within the Production, Distribution and Repair: General (“PDR-1-G”) zoning district and the 68-X height and bulk district.

The Project Site is currently developed with a 2-story, 13,900 square foot building that is used as office and storage for an electrical contractor. The remainder of the lot is used for parking and outdoor storage. The Project proposes to demolish the existing building on the site and construct a five-story, 68-foot-high, approximately 226,042 gross square foot mixed-use development. The Project would include approximately 166,728 square feet of social service uses, 18,407 square feet of PDR use, 2,281 square feet of ground floor retail uses, 89 accessory off-street vehicle parking spaces (plus two car-share spaces), one (1) off-street freight loading space and four (4) service vehicle spaces, and 30 Class 1 bicycle parking spaces. It includes a 2,280-square foot interior courtyard adjacent to the live-work building to the north, and a 16,934-square foot roof deck.

The Project proposes exceptional design that responds to the neighborhood and surrounding structures. All public areas of the Project, have been conceived with a pedestrian viewpoint in mind. The proposed façade clearly designates entry points to the building and provides high quality elements such as expansive glazing and awnings to create visual interest for pedestrians as well as new streetscape adding street trees and plantings where little exist currently.

In addition to the exceptional design, the Project meets a very real need for the City and the Mission District by developing a building for social service agencies and other non-profit organizations. The Project will also help in obtaining the necessary tax credits and utilizing other financial tools and grants to allow these users to purchase commercial condominiums in the Project at rates that are approximately 25%-40% below market. The Project also includes PDR space, replacing the existing PDR on site at a 2:1 ratio, and ensuring PDR uses remain in the neighborhood and in the Mission District. **For all these reasons, the Project was unanimously approved by the Planning Commission on June 1, 2017.**

COMMUNITY PLAN EXEMPTION DETERMINATION

Planning Department staff, based on substantial evidence in the record, issued a CPE for the Project on May 10, 2017. The CPE was issued following review and analysis of various technical studies (including studies by acoustic and transportation experts) prepared under the City’s direction to analyze whether the Project would have a peculiar or new significant or potentially significant environmental impact that was not identified in the 2008 Eastern Neighborhoods Program EIR (the “PEIR”). Based on that analysis and evidence, the Project, which is consistent with the development density established for the Project Site under the Eastern Neighborhoods Rezoning, qualified for a CPE.

The Planning Department in issuing the CPE (and the Planning Commission’s reliance upon it) complied with CEQA, and specifically CEQA Section 21083.3 and CEQA Guidelines Section 15183. These provisions of CEQA mandate the issuance of a CPE for projects that are consistent with the development density established by existing zoning, community plan or general plan policies for which an EIR was certified and specifically provide that the City cannot require further environmental review unless necessary to examine whether there are project-specific impacts peculiar to the project or its site that were not disclosed as significant impacts in the prior Program EIR. Because the Project is consistent with the existing PDR1-G zoning and the Mission Area Plan,

and there are no impacts peculiar to the Project or Project site that were not disclosed in the PEIR, the City cannot require any further CEQA review and the Planning Department complied with CEQA in issuing the CPE.

In its appeal letter, the Appellant argues that the CPE is deficient due to inadequate studies or analysis of noise, shadow, and transportation impacts, and geotechnical conditions. However, the Appellant has not provided any **substantial evidence** to support these claims and instead is basing them on unsubstantiated opinion and speculation.²

Established case law makes clear that projects qualify for an exemption under Public Resources Code section 21083.3 and 14 Cal. Code Regs. Chapter 3 (“CEQA Guidelines”), section 15183), where **substantial evidence exists to support the decision that a project is exempt and that evidence exists in the record.**³ That evidence has been presented by the Planning Department in the preparation of the CPE and in the response to the Appellant’s Claims. In contrast, the Appellant has not presented any technical studies that counter the analysis conducted as part of the CPE or any substantial evidence that creates the necessary link between the Project and any physical environmental impacts.

As we fully support and agree with the Planning Department, instead of restating their analysis, we incorporate their responses by reference. The following are a few additional points to consider in evaluating the merits of the Appellant’s Claims.

1. **Noise Study**

The Appellant argues that the noise study prepared for the Project is inadequate because the study improperly assumed that there would be closed windows at 1800 Bryant Street. According to the Appellant, the building has no air conditioning, and therefore the windows would need to be open on hot days. However, the Appellant has not prepared a separate noise study, nor submitted any evidence as to how often the lack of air conditioning would truly require open windows at the property line facing the Project Site or, more importantly, established whether this would even make a difference for purposes of meeting the applicable noise standards. Not only it is illogical and unreasonable to assume that the lack of air conditioning in an adjacent building would somehow require a different assumption for the noise analysis, but this speculation and opinion from the Appellant is simply insufficient to second-guess the conclusions of a professionally prepared noise study included as part of the CPE.

² The courts have made clear that unsubstantiated opinion and speculation is not substantial evidence. “Substantial evidence includes facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts. [Citations.] It does not include ‘[a]rgument, speculation, **unsubstantiated opinion** or narrative, [or] evidence which is clearly inaccurate or erroneous. . . .’ [Citations.]” (emphasis added) (*North Coast Rivers Alliance v. Kawamura* (2015) 243 Cal.App.4th 647.) Moreover, “[c]omplaints, fears, and suspicions about a project’s potential environmental impact . . . do not constitute substantial evidence. [Citations.]” and “in the absence of a specific factual foundation in the record, dire predictions by nonexperts regarding the consequences of a project [also] do not constitute substantial evidence. [Citations.]” (1 Kostka & Zischke, Practice under the Cal. Environmental Quality Act (2d ed. 2015) § 6.42, pp. 6-47-6-48; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1417.)

³ See *Wal-Mart Stores, Inc. v. City of Turlock* (2006) 138 CA4th 273, overruled on other grounds in *Hernandez v. City of Hanford* (2007) 41 C4th 279; *Gentry v. City of Murrieta* at 1406 n24; *Citizens for Responsible Equitable Ent’l Dev. V. City of San Diego Redeve. Agency* (2005) 134 CA4th 598, 610.

Thus, the Appellant has not presented any substantial evidence to support overruling the CPE's determination regarding noise impacts.

2. Geotechnical Investigation.

The Appellant claims that the geotechnical investigation submitted by the Project Sponsor is inadequate because (1) site observations were done under drought conditions, and (2) there were inaccurate assumptions regarding the cut depths for construction of the garage. Again, these claims are illogical and unreasonable and, under the rationale proposed for adequacy, all geotechnical investigations prepared for any project over the past six (6) years, or during the drought, would be inadequate. Regarding the cut depths for construction of the garage, the Appellant has presented no substantial evidence as to how the assumptions were inaccurate. Appellant's speculation and opinion is simply insufficient to second-guess the conclusions of a professionally prepared geotechnical study included as part of the CPE.

Moreover, as noted in the CPE the Project is required to comply with the San Francisco Building Code and the Department of Building Inspection ("DBI") "may require additional site specific soils report(s) through the building permit application process, as needed." (CPE, Page 41.) Thus, even to the extent that further geotechnical investigation is required, the "DBI requirement for a geotechnical report and review of the building permit application pursuant to DBI's implementation of the Building Code would ensure that the proposed project would have no significant impacts related to soils, seismic or other geological hazards." (CPE, Page 41.)

Thus, the Appellant has not presented any substantial evidence to support overruling the CPE's determination regarding potential impacts from geotechnical hazards.

3. Construction Methodology

The Appellant argues that the Planning Department should analyze the potential impacts of pile driving as part of the CEQA analysis. The Appellant bases this argument on the speculative assumption that should the Project not enter into a shoring/underpinning construction agreement with the Appellants, then the Project would be required to use pile driving. Again, this assertion is unreasonable as on its face it implies that every development should analyze pile driving for "just in case" a shoring/underpinning agreement could not be reached. Not only is this not the standard under CEQA, but it simply unfounded based on the evidence presented.

Although the Project Sponsor has sought to negotiate a shoring/underpinning agreement with the Appellants, it is simply inaccurate and speculative to assume that if they are unable to come to such an agreement that pile driving will be required. In fact, other construction methods are available, and there is no plan to undertake pile driving as part of the construction of the Project.

Thus, the Appellant has not presented any substantial evidence to support a conclusion that pile driving should have been analyzed as part of the Project's CEQA analysis.

4. Transportation Impact Analysis.

The Appellant argues that the Transportation Impact Study ("TIS") is lacking in "thorough site level detail," but the only "evidence" that they point to in support of this assertion is that

development in the area has caused significant increases in traffic since the adoption of the 2008 PEIR. This claim is baseless for several reasons. First, the PEIR assumed that there would be growth within the Plan Area, and the Appellants have not pointed to or alleged that any of the development in the neighborhood or the project itself is inconsistent with the growth assumptions in the PEIR. In fact, none of the conditions that would require an amendment or update to the PEIR have occurred, including, but not limited to, changes to the underlying zoning. As a result, the PEIR remains current and legally adequate. Second, the TIS provided an assessment of current traffic conditions in the neighborhood, so the analysis did consider the impacts from development in the area when concluding that there would not be any site-specific significant impacts beyond what was disclosed as part of the PEIR.

Thus, the Appellant has not presented any substantial evidence to support overruling the CPE's determination regarding transportation impacts.

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In sum, the claims raised by the Appellant are without merit. The CPE issued by the Planning Department and relied upon by the Planning Commission in unanimously approving the Project was legally adequate, is supported by substantial evidence in the record and should be upheld. For these reasons, we respectfully request that you reject the appeal and uphold the CPE.

Very truly yours,



William M. Fleishhacker