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BY _____

Ms. Malia Cohen, President
San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

July 20, 2018

SUBJECT: REVIEW OF CEQA DETERMINATION FOR 430 MAIN STREET PROJECT

Dear President Cohen and Members of the Board of Supervisors;

Grassetti Environmental Consulting (GEC) has been retained by a group of concerned residents, property owners, and homeowners to conduct a peer review of the City of San Francisco's Exemption from Environmental Review, for the 430 Main Street Project. As GEC's principal, I have personally conducted this review. This review is based on my over 33 years of experience preparing, reviewing, and teaching courses in California Environmental Quality Act (CEQA) documents and processes. My qualifications are included as an attachment to this letter. I have also conducted a site visit and conducted a preliminary review of relevant portions of the 2005 Rincon Hill Plan Environmental Impact Report (EIR). This review focused on the appropriateness of the proposed exemption, technical deficiencies in the exemption analysis and applicability of the underlying RHP to the proposed project's potential environmental impacts. This letter presents the findings of my review.

Appropriateness of CEQA Exemption

The City is proposing to exempt the project from further CEQA review on the basis that it is consistent with the development density established by the Rincon Hill Plan (RHP), and that there would be no project-specific or cumulative impacts not previously anticipated and addressed in the 2005 Rincon Hill Plan EIR.

Specifically, the City is relying on a presumed exemption from further CEQA review provided for in CEQA Guidelines 15183. There are a number of problems with this approach, as follows:

1) CEQA Guidelines Section 15183 do not provide for an exemption. Said another way, there is no such thing as a "Community Plan Exemption" in CEQA. The word "exemption" nowhere appears in this section. Rather, Section 15183 reduces the need for redundant environmental analyses by tiering off of the Community Plan EIR, and limits the further analysis for projects in compliance with the Plan to items not adequately or specifically addressed in the Plan EIR. The correct process to conduct the review, per the Guidelines, is to complete the Initial Study checklist and then check the box under "Determination" on that form stating:

I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.

The Initial Study, including the Determination, would then be circulated for a 30-day period as required for non-exempt projects in the CEQA Guidelines. The City's use of an exemption in this case is improper.

The use of an exemption rather than a Mitigated Negative Declaration is substantive and not merely a technical error. An exemption does not require public or agency notification nor does it provide for formal review and comment. Responsible agencies, including, the Bay Area Air Quality Management Agency, also would have been provided the IS/MND for review, but apparently were not consulted or provided an opportunity to review and comment on the exemption.

2) Notwithstanding the Guidelines, the approval appears to be relying in the underlying CEQA Statutes Section 21081.2, which provides for exceptions to findings for infill housing, as well as section 21094, 21094.5, 21159.21, and 21159.24, which apply to infill housing exemptions.

Statutes section 21081.2 requires an EIR or IS to document site-specific impacts or new cumulative impacts not addressed in the Community Plan EIR. However, that statute, as well as section 21159.24, which more detail on "Special Review of Housing Projects", both specify that a Lead Agency can only use this exemption if the project application is "deemed complete within five years of the adoption of the community-level environmental review." (Statutes section 21159.24 (a) (4) and 21081.2). The Rincon Hill Plan EIR was prepared in 2004 and certified May 5, 2005. It is over 13 years old, and therefore cannot be used to support these exemptions.

3) Even if Statutes Section 21094 and 21094.5 were used in a vacuum, and not in the context of Section 21159.24, the City is under the affirmative obligation to conduct a review of the adequacy of the Community Plan EIR to current conditions, subject to Section 21166 (see Section 21094 (b)(3)). There is no evidence that the City has evaluated the applicability of the 13-year old EIR to current condition. Rather, the City's examination is only of the project's compliance with the EIR.

Failure to Consider Substantial Evidence

CEQA Guidelines section 15183(b) requires that a lead agency consider whether there could be any project-specific environmental effects that:

- 1) Are specific to the project site or project itself, and therefore not addressed in the Plan EIR;
- 2) Were not analyzed as significant effects in a prior EIR on the plan or zoning with which the project is consistent;
- 3) Are potentially significant off-site or cumulative impacts that were not discussed in the Plan EIR; or
- 4) Are previously identified significant effects which, as a result of substantial new information, were not known at the time of the Plan EIR, and are determined to now be more severe.

As discussed above, the City failed to consider whether or not there could be substantial new information (changes in traffic, air quality, development growth, etc.) in the 13 years since the adoption of the Rincon Hill Plan EIR. In these 13 years, the City has grown substantially in terms of development and traffic.

Further, as detailed below, substantial evidence has been provided to the City that the proposed project would contribute in a cumulatively considerable manner to a significant cumulative health risk impact. This evidence

is provided in a peer review of the City's consultant's air quality/health risk assessment, prepared by Trinity Consultants for my clients¹. This evidence was NOT included in the City's environmental review of the project, nor was it provided to the Planning Commission for review at the time of its approval of the project. In fact, it is entirely missing from the environmental review documents on the project.

Additionally, as detailed below, evidence of a fair argument that the project may have significant view blockage and shadow impacts on nearby residences and publicly accessible open space was disregarded in the City's environmental review via argument, unsupported by substantial evidence.

Air Quality/Health Risk Issues

Trinity Consultants conducted an expert analysis of the adequacy of the Initial Study's Ramboll/Environ² evaluation of the project's air quality and health risk impacts to the residents and users of public open space at 201 Main Street. Both the Trinity and Ramboll analyses acknowledge that the project and adjacent existing residential buildings are within a City-designated Air Pollution Exposure Zone, where residents are already exposed to unacceptably high health risks from poor air quality.

The Ramboll study acknowledges that already unacceptably high PM_{2.5} levels would be worsened at two of the three outdoor courtyards at 201 Harrison Street, as a result of the proposed project. However, it fails to even consider health risk impacts to the residences at that building, the vast majority of whom rely on opening windows for their cool air. This is a substantial deficiency requiring additional assessment.

The Trinity study's peer review of the Ramboll Report found the following additional deficiencies in that study, which are carried through to the City's IS:

1) CEQA requires that public agencies analyze how environmental impacts from new constructions and developments might adversely affect nearby receptors and local air quality conditions. In this case, the Ramboll Report indicate the adjacent courtyards (i.e., neighboring offsite receptors) are located about 200 feet north of the elevated portion of I-80, known as the San Francisco-Oakland Bay Bridge, which generates an average traffic movement of 265,000 vehicle trips per day.⁷ Per Article 38, the action threshold for mitigation efforts for the Project is 0.2 µg/m³ of PM_{2.5}. The pre-project PM_{2.5} concentration in the neighboring courtyards is already significantly above the action threshold for project mitigation. Any additional impacts will deteriorate the local air quality further and pose additional health hazards for the local residents.

The Ramboll Report shows that there would be an increase in average annual PM_{2.5} concentration of 0.032 µ/m³ as a result of the Project. As displayed in Table 13 of the Ramboll Report, there is an increase in PM_{2.5} concentration for the center courtyard by 7%, and an increase by 14.5 % for the east courtyard. There is a decrease in PM_{2.5} concentration by 6 % for the west courtyard. The report compares the difference of the pre- and post-project concentrations with the average background concentration of 9.3 µg/m³.

The Ramboll Report concluded that the incremental increase of PM_{2.5} emissions from the Project is small in relative proportion of total post-project emissions. However, the cumulative PM_{2.5} emissions are substantially higher than levels considered reasonable for residential projects as per local codes. Given the Project is located in an area which is already classified as a health hazard based on the high concentrations of TACs and PM_{2.5},

¹ Trinity Consultants, *Review of Technical Report by Ramboll Environ dated October 2017*. January 18, 2018

² Ramboll/Environ, *Air Quality Analysis Technical Report, Proposed Building at 430 main/429 Beale Street, San Francisco, CA*. October 2017.

CEQA requires a higher standard of review. Even small increases in emissions could be cumulatively considerable contribution to an already unacceptable health risk in the proposed project location for residential activities (or other sensitive receptors). This should be more thoroughly assessed and mitigated as required by Article 38 and CEQA.

The mitigation measures from the Rincon Hill Plan EIR address only impacts on the residents of the new building, and would do nothing to mitigate health risk impacts to residents of 201 Harrison Street.

2.) The Ramboll Report states that California regulatory guidelines allow diesel particulate matter (DPM) to be used as a surrogate measure of exposure for the mixture of chemicals that make up diesel exhaust as a whole. Further, the Ramboll Report states that Cal/EPA advocates the surrogate approach to quantifying *cancer risks* associated with the diesel mixture in lieu of a component-based approach, which involves estimating health risks for each of the individual components of a mixture. The Ramboll Report then states that Cal/EPA has concluded that "potential cancer risk from inhalation exposure to whole diesel exhaust will outweigh the multi-pathway *cancer risk* from the speciated components (OEHHA 2003). Trinity concluded that, while the surrogate approach may be generally accepted guidance for estimating *cancer risks* from exposure to diesel exhaust, there are also non-cancer risk impacts which require consideration, including, non-cancer acute and chronic health hazards, that have not been adequately evaluated in the Ramboll report.

Fuel combustion releases at least forty (40) different toxic air contaminants. For non-cancer acute impacts, Appendix D of the 2015 OEHHA guidelines recommends an evaluation of the acute health effects may be warranted in case of a multistory apartment building. Since there is no acute risk exposure level that is currently associated with DPM, any potential acute health impacts (i.e., short term health hazards) from exposure to diesel exhaust were not determined by the Ramboll report. As a consequence, it is likely this surrogate approach likely underestimates the overall health impacts associated with individual toxics from diesel combustion, specifically, any potential acute health hazards. Simply stated, there is an increase in PM_{2.5} caused by the building design, therefore the proposed design would likely also cause an increase in other types of pollutants, the cumulative health risks of which warrants further study.

5) The traffic emissions model used in the Ramboll study is out of date and may understate project impacts from traffic emissions of air pollutants. Ramboll uses EMFAC2011 for estimated emission factors, however Trinity notes that there are two newer versions of EMFAC available: EMFAC2014 and EMFAC2017. Further, note that within the APEZ, additional emissions would adversely affect populations that are already at a higher risk which CEQA may demand a higher standard of review. Therefore, a more refined analysis of traffic emissions and impacts with the most recent accepted emission factors would be warranted.

3) The Ramboll report meteorological data may be inadequate. Ramboll states that for the current HRA, meteorological data for the year 2008 were used, which aligns with the San Francisco CRRP-HRA Methodology. BAAQMD Health Risk Assessment Guidelines rely on OEHHA 2015 Air Toxic Hot Spots Program Manual (2015 OEHHA Guidelines), which recommend that the latest five (5) years of *consecutive* meteorological data be used to represent long term averages (i.e., cancer and chronic impacts). In general, OEHHA guidelines specify that air dispersions models (and health risk assessments) require sufficient amount of years of meteorological data to ensure that the worst-case meteorological conditions are represented in the model results. For example, wind patterns and wind velocities can vary from year to year, which a single year of data would not capture. As a consequence, it is likely that using only 2008 meteorological data would not satisfy the 2015 OEHHA Guidelines.

In addition to the deficiencies identified in the Trinity Consulting report, our review of the IS indicates that there is no actual assessment of construction/demolition dust. The IS has conclusions based on no identified evidence.

Each of the above deficiencies could render the IS air quality/health risk study inadequate; all of them combined increase the likelihood that the IS's air quality and health risk assessments are not adequate. Under CEQA, when an Initial Study is conducted, a "fair argument" standard must be used for consideration of impact significance. This same standard also applies to exceptions to exemptions. Under this standard, the Trinity Consulting report constitutes a fair argument that: 1) the project may have a significant project and cumulative impact to air quality and health risk, and, 2) the air quality and health risk assessment relied upon by the IS may be substantially deficient. None of these impacts were previously analyzed in the Community Plan EIR. Therefore, additional analysis is required under CEQA, either in a revised IS or a subsequent EIR.

View Blockage and Shadows

The IS claims that the project aesthetics impacts cannot be considered significant because of its location as a residential infill project in a transit priority area. While the aesthetics of the building itself may be excluded from consideration, this exclusion may not apply to blockage of views and light, which may also have health effects on residents. This impact is akin to shadows, which the IS does address. Therefore, the IS should consider the project's blockage of existing views as potentially significant.

The Rincon Hill Plan EIR does not consider direct view blockage of nearly one hundred residences at 201 Harrison Street by the proposed new structure that would be located fewer than 10 feet in front of many of those residences' windows. Views that would be blocked would be mostly scenic vistas of the Bay. In addition, views of the Bay afforded to all residents of 201 Harrison Street from the common courtyard/plazas would be blocked by the new structure located at the property line. The complete and direct blockage of these views by a new structure would typically be considered a significant impact and certainly requires evaluation in a project-level CEQA document.

In the 2009 Staff Report for the project previously proposed at this site, City staff repeatedly assert that blockage of private views is "not considered a significant impact as defined by CEQA." (see, for example, October 13 Staff Report, p. 12). This assertion is unsupported by CEQA case law. Several CEQA court cases support the loss of views, including private views, as a significant impact. The *Ocean View Estates Homeowners Association v. Montecito Water District* (2004) decision flatly contradicts the applicant's assertion that CEQA does not apply to private views. That case specifically finds that CEQA does, in fact, apply to private views, and that the significance of the impact is determined by the specifics of the change in visual quality as well as the number of viewers affected. *The Pocket Protectors v. City of Sacramento* (2004) also affirms that private views are not exempt from CEQA significance determinations.

The *Pocket Protectors* decision and at least two other decisions, *Oro Fino Mining Corp. v. County of El Dorado* (1990), and *Berkeley Keep Jets over The Bay v. Board of Port Commissioners* (2001) all set forth the principal that local citizens can be considered experts on subjective issues with which they have daily experience, such as noise and visual quality. In the case of the proposed project, numerous private residents' views would be entirely blocked and their units would be substantially darkened during daylight hours, and those residents have clearly stated that such blockage would be significant and adverse. Residents have informed the City of their concerns yet they have been ignored in the CEQA process. Neither the Rincon Hill Plan EIR nor any of the analyses in the Exemption or post-exemption staff reports address this potentially significant impact and no mitigation is proposed.

Similarly, the shadow analysis in the IS shows substantial shading of a publicly accessible open space. The IS attempts to avoid finding a significant impact by arguing that the publicly accessible courtyard is kind of hard to find for the public, and that it's technically not under City Parks and Recreation Department Management. CEQA does not care who manages the facility or how difficult it may be to find. Further the IS argues that, because there may be other open spaces nearby, shading of this open space is not potentially significant. Argument is not evidence. These are arbitrary criteria of significance not permitted under CEQA – if the City considers shadows that adversely affect public open spaces potentially significant, then the substantial shadow impacts of the project on the publicly accessible plazas at 201 Harrison are a significant impact to the residents and public users of 201 Harrison public and private open space.

Noise

Construction noise immediately adjacent to the windows of the south-facing 201 Harrison units could adversely affect residents of those units, especially those working at home and any small children living at the units. City limits on construction hours do not mitigate impacts to those stay-at-home residents. No actual evaluation of this impact was included in the Rincon Hill Plan EIR nor was it assessed in the Initial Study.

Conclusions regarding construction noise impacts in the Initial Study are unsupported by any evidence. The discussion in that document relies entirely on the City's noise ordinance as mitigation and fails to conduct any actual impact assessment on project residents, including children and people who work from home. In fact, the staff report states that impact tool noise of 80 decibels at 100 feet from the source is permissible; this extremely high noise level would be far greater at lesser distances, such as the 10-foot minimum distance from construction to existing residences. All of these noise levels would be far in excess of the 50-65 dBA considered "normally acceptable" for multi-family residences by the California Department of Health, Office of Noise Control. In addition, the project documentation fails to address long-term impacts to adjacent residents of the project's mechanical operations, which would be audible to occupants on the upper floors of the 201 Harrison residences.

The *Berkeley Keep Jets Over the Bay* decision explicitly states that compliance with a noise ordinance does not mitigate impacts to less than significant. That decision also found that intermittent noise can be significant. The aforementioned *Oro Fino* decision also found that temporary intermittent high noise levels can be considered significant. The City's "analyses" fail to either adequately characterize the noise impacts to nearby residences or accurately assess the significance of this impact.

Despite the potential site-specific impacts identified above, and the lack of any provision for exemptions in the CEQA Guidelines used by the City for this project, the City has chosen to exempt the project by relying on mitigation measures. These mitigation measures are enumerated on pp. 46-51 of the IS. Such reliance on mitigation measures in an exemption is clearly prohibited under the *Salmon Protection and Watershed Network v. County of Marin* (2004) decision, which specifies that "Reliance on mitigation measures (whether included in the application or later adopted) involves an evaluative process...and that process must be conducted under established CEQA processes for EIRs or negative declarations." That decision also forbids a lead agency from "making a premature and unauthorized environmental evaluation at the preliminary stage of considering eligibility for a[n] ... exemption." In light of this decision, the City appears to be doing an impermissible end-run around the required CEQA analyses.

Another consideration here is that project-specific noise and air quality impacts would clearly be "more significant than described in the prior environmental impact report" because they were not addressed at all in

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that prior report, whether or not they rise to the level of “significant”. This makes the project ineligible for exemption from further CEQA review under CEQA Statutes section 21083.

Conclusion

In light of the above deficiencies, it is my professional opinion that the proposed project does not meet the statutory or evidentiary standards for the proposed CEQA exemption. The appropriate CEQA review for the project would be an Initial Study leading to either a focused EIR or Mitigated Negative Declaration.

Please feel free to contact me at (510) 849-2354 if you have questions regarding this review.

Sincerely;

Richard Grassetti
Principal
Grassetti Environmental Consulting