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July 25, 2023

VIA E-MAIL

President Aaron Peskin and Supervisors
San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Re: 1151 Washington Street (2022-010833ENV)
CEQA Exemption Appeal Findings (Board File No. 230848)

Dear President Peskin and Supervisors:

Our office represents Alison and Todd Davis, owners of 1151 Washington Street. On June 27, 2023, the Board of Supervisors held a public hearing on an appeal of the categorical exemption that was issued for the construction of a four-story, ten-unit building at 1157 Washington Street. We just became aware that the Board is considering the adoption of findings to reverse the exemption at today's Board hearing.

We were not provided with any notice of the proposed findings or hearing, and therefore request that the Board continue the adoption of findings until the Project Sponsors have had a reasonable opportunity to review and comment on the proposed findings before adoption.

Moreover, the proposed findings do not establish that there are unusual circumstances applicable to the project. The findings concede that unusual circumstances have not been established, merely stating that there is evidence that "suggests" there are unusual circumstances. This suggestion is not legally adequate to support an unusual circumstance finding.

The only identified "unusual circumstance" is related to the slope of the site, both in the context of shadows to a neighboring park and to fire access. Courts have already rejected the argument that steep slopes in San Francisco are an unusual circumstance. (*See Protect Telegraph Hill v. San Francisco* (2017) 16 Cal.App.5th 261, 272.) Similarly, courts have also rejected the theory that "sunlight on a park or open space, even in a dense urban area, constitutes a 'rare or unique' resource for CEQA purposes. (*S. of Mkt. Cmty. Action Network v. San Francisco* (2019) 33 Cal.App.5th 321, 351.) The findings fail to identify an unusual circumstance.

Moreover, the findings fail to identify any environmental impacts that are caused by the steep slope. The findings purport to identify three potential impacts. First, the findings argue that the project will create a shadow on the neighboring park. As the City has conceded in its Housing Element Update, "the CEQA Guidelines *do not require an analysis*" of shadow. (Housing Element, Appendix C, p. 60.) As a result, Housing Element Policy 8.5.6 includes a commitment to revise the CEQA process to eliminate San Francisco specific CEQA review, including shadow

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impacts, that “goes beyond the CEQA statute.” Courts have similarly confirmed that the City’s “shadow limits were policy restrictions, not a CEQA threshold.” (*S. of Mkt. Cmty. Action Network v. San Francisco* (2019) 33 Cal.App.5th 321, 351.)

Second, the findings merely allude to the idea that there could be an environmental risk to park users from contaminated soil without identifying an actual potential impact. Courts have stated that “a suggestion to investigate further is not evidence, much less substantial evidence, of an adverse impact.” (*Parker Shattuck Neighbors v. Berkeley City Council* (2013) 222 Cal.App.4th 768, 786.)

Similarly, the findings state that the project may have environmental impacts related to safety and emergency access without identifying the actual impact *to the environment*. Besides the fact that there is no evidence that the project poses a safety risk, we note that the potential risk to future residents is not an environmental impact. CEQA only concerns significant effects of the project on the environment, “not the impact of the environment on the project.” (*City of Long Beach v. Los Angeles Unified School Dist.* (2009) 176 Cal.App.4th 889, 905.)

In short, the findings are inadequate to establish unusual circumstances and are completely devoid of any evidence that unusual circumstances may cause any significant effects.

Very truly yours,

PATTERSON & O’NEILL, PC



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