

File No. 170812

Committee Item No. \_\_\_\_\_

Board Item No. 19

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: \_\_\_\_\_

Date: \_\_\_\_\_

Board of Supervisors Meeting

Date: September 5, 2017

#### Cmte Board

- Motion
- Resolution
- Ordinance
- Legislative Digest
- Budget and Legislative Analyst Report
- Youth Commission Report
- Introduction Form
- Department/Agency Cover Letter and/or Report
- MOU
- Grant Information Form
- Grant Budget
- Subcontract Budget
- Contract/Agreement
- Form 126 – Ethics Commission
- Award Letter
- Application
- Public Correspondence

#### OTHER

- Appeal Letter - July 17, 2017
- Planning Appeal Response - August 30, 2017
- Planning Appeal Response - August 28, 2017
- Appeal Brief - August 25, 2017
- Project Sponsor Letter - August 25, 2017
- One Oak Street Project DEIR - Link hosted on the sfbos.org  
Legislative Research Center
- One Oak Street Project DEIR - Responses to Comments - Link  
hosted on the sfbos.org Legislative Research Center
- Hearing Notice and Clerical Documents
- \_\_\_\_\_
- \_\_\_\_\_

Prepared by: Lisa Lew

Date: August 31, 2017

Prepared by: \_\_\_\_\_

Date: \_\_\_\_\_

July 17, 2017

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Angela Calvillo, Clerk of the Board  
San Francisco Board of Supervisors

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**RE: Appeal of the Certification of the Final Environmental Impact Report for One Oak Street (1500-1540 Market Street), Motion 19938, case 2009.0159E**

Dear Ms. Calvillo,

I appeal Planning Commission certification of the One Oak Final Environmental Impact Report on June 15, 2017. I am appealing as an individual. I authorize Sue Hestor to submit this appeal as my agent. I filed written comments regarding the inadequacy of the EIR on January 4, 2017. I provided public comment at the January 5, 2017 public hearing on the Draft EIR. I also submitted a letter to the Planning Commission on May 26, 2017. All letters are attached. I missed the June 15 hearing because I was out of town.

The EIR for the One Oak Project is inadequate. Among other issues, the One Oak EIR does not adequately analyze an alternative with onsite inclusionary housing at this transit rich location. It fails as an informational document and does not adequately analyze the following issues:

**Vehicle Miles Traveled & Traffic:** The EIR does not adequately analyze per capita daily vehicle miles travel (VMT) and localized impacts of VMT. The EIR's reliance on MTC's regional-scale threshold of significance for VMT results in inadequate analysis because the location provides unique transportation corridors that need to be thoroughly studied. Van Ness and Market is not a Bay Area suburb.

By using this metric to absolve further analysis, the EIR fails to adequately study impacts on transit, bicyclists and pedestrians. This is a part of San Francisco where the tolerance for more VMT is zero. Nine important Muni bus lines, five Muni light rail lines, and one Muni streetcar line traverse the corridor, carrying almost 14,000 passengers in the weekday am peak hour and 13,500 in the weekday pm peak hour (DEIR, Table 4.C.3.)<sup>1</sup>. Every weekday there are thousands of cyclists using Market Street, with 1,400 in the two-hour pm peak period alone (DEIR, 4.C.22).

The project sponsor proposes transportation demand management (TDM) to reduce per capita daily VMT, but no information is provided to benchmark VMT in the project. Since VMT is not adequately analyzed, understanding the success or failure of TDM is not possible.

Further, the LCW (2016) *One Oak Transportation Impact Study*, which is the basis for the EIR analysis, uses antiquated and inadequate methods for analysis of traffic impacts. Using 1990 data does not reflect two tech booms and the internet-based economy to the south of the City.

**Wind Impacts:** The EIR contains an extensive discussion of potential impacts of wind on pedestrians and public transit passengers waiting for buses at nearby bus stops, but it completely

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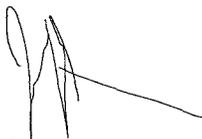
<sup>1</sup> peak am and pm ridership calculated by adding inbound and outbound ridership columns in table 4.C.3.

omits analysis of the impact of wind on the thousands of cyclists using Market Street and other nearby streets. Thus, the DEIR fails as an informational document. The One Oak Project EIR must be revised to include a thorough analysis of wind impacts on bicyclists.

**Loading Demand and Transportation Network Companies (TNCs):** The EIR analysis of loading demand is inadequate and does not reflect present-day trends in retail delivery and TNCs such as Uber and Lyft. It does not consider the localized swarming of TNC's that may occur at the One Oak site. TNC's are omitted from the city's transportation analysis despite upwards of 45,000 operating in the city on a daily basis. Lack of understanding of TNC impacts on cyclists, pedestrians, and transit means the EIR is inadequate in identifying impacts and necessary mitigation. The EIR must discuss stronger mitigation for loading impacts for residential online shopping and TNC passengers.

**Cumulative Impacts:** The proposed 10 Van Ness project (Notice of Preparation issued 7/12/17), is directly across Market Street from the One Oak Project. The cumulative impacts study in the One Oak EIR is inadequate because it does not include the VMT/ traffic, wind impacts on bicycles, and TNC/delivery impacts on pedestrians, bicyclists and transit that will occur with both projects cumulatively, especially with 518 parking spaces proposed at 10 Van Ness.

For the reasons above, the San Francisco Board of Supervisors should overturn the San Francisco Planning Commission certification of the EIR for One Oak and direct the city planning staff to conduct a more realistic analysis of impacts.

Sincerely, 

Jason Henderson  
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Attached: Motion 19938 - Planning Commission certification of One Oak EIR  
referenced letters on One Oak EIR and project

Cc: Lisa Gibson, Acting Environmental Review officer, San Francisco Planning Department



- B. The Department published the Draft Environmental Impact Report (hereinafter "DEIR") and provided public notice of the availability of the DEIR for public review and comment and of the date and time of the Planning Commission public hearing on the DEIR in a newspaper of general circulation on November 16, 2016. Notice was mailed to the Department's list of persons requesting such notice and to property owners and occupants within a 300-foot radius of the site on November 18, 2016.
  - C. The Department posted notices of availability of the DEIR and of the date and time of the public hearing near the project site by Department staff on November 18, 2016.
  - D. The Department mailed or otherwise delivered copies of the DEIR to a list of persons requesting it, to those noted on the distribution list in the DEIR, to adjacent property owners, and to government agencies, the latter both directly and through the State Clearinghouse on November 16, 2016.
  - E. The Department filed Notice of Completion with the State Secretary of Resources via the State Clearinghouse on November 17, 2016.
2. The Commission held a duly advertised public hearing on said DEIR on Thursday, January 5, 2017 at which opportunity for public comment was given, and public comment was received on the DEIR. The period for acceptance of written comments ended on January 10, 2017.
  3. The Department prepared responses to comments on environmental issues received at the public hearing and in writing during the 55-day public review period for the DEIR, prepared revisions to the text of the DEIR in response to comments received or based on additional information that became available during the public review period, and corrected errors in the DEIR. This material was presented in a Comments and Responses document, published on June 1, 2017, distributed to the Commission and all parties who commented on the DEIR, and made available to others upon request at the Department.
  4. The Department has prepared a Final Environmental Impact Report (hereinafter "FEIR") consisting of the DEIR, any consultations and comments received during the review process, any additional information that became available, and the Comments and Responses document all as required by law.
  5. The Department has made available project EIR files for review by the Commission and the public. These files are available for public review at the Department at 1650 Mission Street, Suite 400, and are part of the record before the Commission.
  6. On June 15, 2017, the Commission reviewed and considered the information contained in the FEIR and hereby does find that the contents of said report and the procedures through which the FEIR was prepared, publicized, and reviewed comply with the provisions of CEQA, the CEQA Guidelines, and Chapter 31 of the San Francisco Administrative Code.
  7. The project sponsor has indicated that the presently preferred alternative is the Revised Project, analyzed in Chapter 2 of the Comments and Responses document, and as further refined as described

in the various proposed approvals for the One Oak Street project, as detailed in revisions to the DEIR and other staff reports.

8. The Planning Commission hereby does find that the FEIR concerning File No. 2009.0159E reflects the independent judgment and analysis of the City and County of San Francisco, is adequate, accurate and objective, and that the Comments and Responses document contains no significant revisions to the DEIR, and hereby does CERTIFY THE COMPLETION of said FEIR in compliance with CEQA and the CEQA Guidelines.

The Commission, in certifying the completion of said FEIR, hereby does find that the project described in the EIR, in combination with past, present, and reasonably foreseeable future development in the project vicinity would contribute considerably to cumulative construction-related transportation impacts, denoted in the DEIR as Impact C-TR-7. Despite implementing Mitigation Measure M-C-TR-7 the project may not feasibly reduce effects to a less-than-significant level.

9. The Planning Commission reviewed and considered the information contained in the FEIR prior to approving the Project.

I hereby certify that the foregoing Motion was ADOPTED by the Planning Commission at its regular meeting of June 15, 2017.



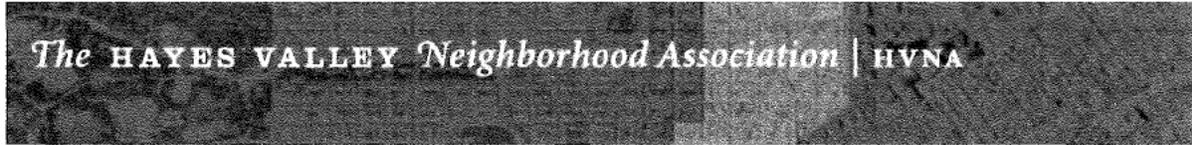
Jonas Ionin  
Commission Secretary

AYES: Commissioners Hillis, Johnson, Koppel, Melgar, Moore, Richards

NOES:

ABSENT: Commissioner Fong

ADOPTED: June 15, 2017



January 4<sup>th</sup>, 2017

Lisa Gibson  
Acting Environmental Review officer  
San Francisco Planning Department  
[Lisa.gibson@sfgov.org](mailto:Lisa.gibson@sfgov.org)

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2017 JUL 17 PM 2:39  
JUL 17 2017

**RE: Comments on the Adequacy of One Oak Street Project Draft Environmental Impact Report and Mitigations**

Dear Ms. Gibson

The Hayes Valley Neighborhood Association (HVNA), based on our longstanding support for the Market and Octavia Better Neighborhoods Plan, has the following concerns regarding the proposed One Oak Street Project, because the Draft Environmental Impact Report (DEIR) is inadequate. It fails as an informational document and does not adequately analyze the following issues (presented in order of Table S-1: *Summary of Impacts*):

**TR-1 (VMT & Traffic):** The DEIR does not adequately analyze per capita daily vehicle miles travel (VMT) and localized impacts of VMT. The transportation data used in the DEIR is uninformative about present day trip distribution and underestimates car commuting to the South Bay. The location of One Oak is a unique transportation corridor of citywide importance. It has exceptionally high transit, pedestrian, and bicycle traffic that will be negatively impacted by car circulation to and from One Oak. The relationship between VMT and local car circulation and impacts on pedestrians, bicycles, and transit must be thoroughly studied, understood, and mitigated. The DEIR proposes transportation demand management (TDM) to reduce per capita daily VMT, but no information is provided to benchmark VMT in the project. Since VMT is not adequately analyzed, understanding the success of failure of TDM is not possible.

**TR-4 (Bicycle Impacts):** The DEIR fails to adequately analyze impacts of One Oak on bicycling, especially on Market Street. It ignores hazards to bicycling from on-street loading and wind. New analysis is needed of loading and wind impacts on bicycling, with mitigations to ensure safe bicycling. Mitigation in the form of fully-separated, wide cycle tracks on Market Street and other bicycle infrastructure must be considered.

**TR-5 (Loading Demand):** The DEIR analysis of loading demand is inadequate and does not reflect present-day trends in retail delivery and transportation network companies (TNCs). The

DEIR must discuss stronger mitigation for loading impacts for residential online shopping and TNC passengers and re-orient all loading to the Oak Street side of the project.

**W-1 (Wind Impacts):** The DEIR wind analysis completely ignores bicycling. It also underestimates negative impacts of wind hazards on seniors, on adjacent buildings, and on how the proposed wind canopies will deflect winds. Without understanding wind impacts on bicycling, appropriate mitigation, such as wide, safe, separated cycle tracks, are omitted.

**S-1 (Shadows):** DEIR does not adequately analyze shadow impacts on Patricia’s Green and Koshland Park. The DEIR fails to consider that usage patterns are changing and that morning sun draws people to parks.

**Below Market Rate Housing and CEQA:** The DEIR omits discussion and analysis of the environmental impact of market rate housing on below market rate housing (BMR) and on gentrification and displacement. The DEIR also omits a discussion of the environmental impacts of the proposed off-site housing on Octavia Boulevard, which should be part of the analysis.

Below is a detailed elaboration of why the One Oak DEIR is inadequate:

### **TR-I and Chapter 4.C-1: VMT and Traffic Impacts**

The One Oak DEIR dismisses the very real traffic circulation and safety impacts of the project. The LCW (2016) *One Oak Transportation Impact Study*, which is the basis for the DEIR analysis, uses antiquated and inadequate methods for analysis of traffic impacts. The DEIR’s reliance on the regional-scale threshold of significance for VMT results in inadequate analysis because **the location provides a unique transportation corridor that needs to be thoroughly studied.**

Nine important Muni bus lines, five Muni light rail lines, and one Muni streetcar line traverse the corridor, carrying almost 14,000 passengers in the weekday am peak hour and 13,500 in the weekday pm peak hour (DEIR, Table 4.C.3.)<sup>1</sup>. Every weekday there are thousands of cyclists using Market Street, with 1,400 in the two- hour pm peak period alone (DEIR, 4.C.22).

Car and transit capacity is strained at this location. At the Market and Van Ness Intersection, 3,700 motor vehicles cross in every direction in the am peak hour, and almost 4,000 traverse the intersection in the pm peak hour (LCW, 2016, Figures 7a and 7b). At peak times cars frequently block crosswalks and also accelerate at yellow light phases. Transit capacity, as demonstrated in the capacity utilization metric exhibited in Table 4.C.3 in the DEIR, is at capacity or approaching capacity.

The Market and Van Ness intersection is a top “Vision Zero” location identified by the city as a priority to make safer for pedestrians and cyclists. The SFMTA plans to invest considerable resources in Van Ness Bus Rapid Transit well as the Mission 14 bus as part of

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<sup>1</sup> Figures for peak am and pm Muni ridership calculated by adding inbound and outbound ridership columns in table 4.C.3.

Muni Forward. Bicycle and pedestrian conditions are to be addressed in Vision Zero, the San Francisco Bicycle Plan, and Better Market Street Plans. All of these will involve reducing roadway capacity for automobiles and trucks, meaning less room to add additional cars from One Oak and other nearby new development. Most transportation demand from development like One Oak must be oriented towards walking and bicycling. The DEIR acknowledges none of this.

The DEIR lacks a detailed analysis of the site's circulation and traffic safety impacts, ostensibly because the site is located in TAZ 588 (see attachment 1), with daily per capita VMT (3.5 miles per day) that is lower than the regional per capita VMT threshold. TAZ 588 is a five city block triangle bounded by Oak Street to the North, Market Street to the South, Gough to the West, and Van Ness to the East. This TAZ, like the Market and Octavia Better Neighborhoods Plan, is characterized by mostly older, pre-automobile era buildings and rental housing, with low rates of car ownership and buildings with little to no parking. In the Market and Octavia Plan Area, per capita daily VMT is roughly 4 miles.<sup>2</sup>

The LCW transportation study shows that cars are still the biggest mode share of the project, adding 131 new car trips in the am peak, and 171 car trips in the pm weekday peak (LCW, 2016, Table 11, p. 53). This is despite being in a dense, transit rich location, suitable for utilitarian cycling, walkable, and near an array of urban services and jobs. It is a substantial increase in car trips over existing conditions, in a very congested part of the city with 1,400 cyclists on Market in the afternoon peak time and tens of thousands of transit passengers.

The analysis says nothing about how car trips generated by One Oak will circulate, nor how the excess parking (0.5:1 (155 spaces) is accentuating these car trips. Even if the car trips were at a per capita VMT of 3 or 4 miles per day, this would be a significant impact on the immediate area. **This is a part of the city where the tolerance for more VMT is zero, and this needs to be considered.**

The inadequacy of the analysis is aggravated by the trip distribution discussion (LCW, 2016, p.54). **Based on data from 1990**, LCW's transportation report downplays the volume of car traffic that would likely go to Silicon Valley using the nearby 101 Freeway. **Using 1990 data does not reflect two tech booms and the internet-based economy to the South of the City.** Based on existing patterns of development in this part of San Francisco, a substantial portion of the residents of One Oak will be employed in high-paying tech jobs in Silicon Valley. This means more commuting to Silicon Valley, with the largest mode share by car. **1990 data is inadequate for this analysis.**

The analysis fails to consider the negative impact on VMT by Transportation Network Companies (TNCs) like Uber or Lyft. It does not consider the localized swarming of TNC's that will occur the One Oak site, and TNC's are omitted from the city's transportation analysis despite upwards of 45,000 operating in the city on a daily basis. Lack of understanding of TNC

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<sup>2</sup> Foletta and Henderson (2016) Low Car(bon) Communities, pp. 64-65 (based on SFCTA SF-Champ model)

impacts on cyclists, pedestrians, and transit means the DEIR is inadequate in identifying impacts and necessary mitigation.

**The DEIR circulation and safety analysis is wholly inadequate and needs a thorough revision that includes more accurate, up-to-date data and methods, and that captures TNCs. The DEIR must include a fine-grained analysis of One Oak's VMT impacts on cyclists, pedestrians, and public transit in the immediate vicinity of the project.**

In addition, the way the city currently considers the VMT thresholds of significance is inappropriate. Right now the city defines the threshold of significance at 15 percent less than the regional per capita VMT (17.2 miles per day x 0.15 = 14.6 miles per day). Since the VMT in TAZ 588 is below the regional threshold (14.6 miles per day), it is assumed no significant impact and so no further analysis is required. This does not adequately reflect the impacts new car trips will have on the immediate area, or on the city, which will be significant.

**The DEIR should be using the new VMT metric in a more useful and beneficial way that acknowledges that car trips, even short local car trips, are a significant environmental impact.** Instead of a regionally defined threshold (14.6 miles per day), the significance threshold of daily per capita VMT should reflect the Market and Octavia neighborhoods (4 miles per day) in which this project is located.

It should be noted that the State's CEQA guidelines recommend but do not require the regional VMT as the benchmark. The city can use VMT analysis more robustly if it lowers the threshold to neighborhood-scale such as Market and Octavia.

**THE DEIR must analyze how parking impacts VMT. The DEIR must analyze One Oak with residential off-street parking alternatives of 0.25:1 and zero parking.**

Additionally, the DEIR does not discuss the VMT impacts of valet parking for residents. With excess parking above what is permitted (155 spaces instead of 73) and easy access to cars via Valet and two elevators, there could be much more driving because of the ease of access to cars by residents (*see valet parking discussion below*).

The DEIR TR-1 impact section also proposes a TDM mitigation focused on reducing VMT but does not ever state what the project's per capita daily VMT will be. The success or failure of the TDM cannot be evaluated because proper data about VMT is not provided by the DEIR. Without proper data, it is not possible to know how to mitigate and how to evaluate the TDM strategies, whatever they might be.

A project within a low per capita daily VMT TAZ can still have significant impacts locally. The DEIR needs to analyze the impacts of additional cars from the One Oak Project on this corridor and benchmarked against the per capita VMT in the Market Octavia Plan area. **Standards MUST be appropriate to the site.** Concomitantly a detailed transportation analysis

should be undertaken that analyzes an off-street residential parking scenario of zero parking, and compared with residential parking ratios of 0.25:1 (73 spaces) and 0.5:1 (155 spaces).

The DEIR needs finer-grained, higher resolution analysis of VMT and localized circulation impacts. **Mitigation in the form of wide, safe cycle tracks, wider and safer crosswalks and sidewalks, stronger transit lane separation or enforcement must be included in the study. Elimination of private automobiles and TNCs from Market Street between 10<sup>th</sup> Street and Franklin Street must also be analyzed and part of the DEIR mitigations.**

**If the off-street residential parking is permitted at One Oak, mitigation should include restricting the operation of the valet and elevators. Cars should not be allowed access or egress to One Oak on weekdays between 7am-9am peak hours and between 4pm and 7pm peak hours to limit the impacts of peak car trips on the surrounding area.**

### **Off-Street Parking Ratios**

The One Oak Project is in an area of the Market and Octavia Plan where the permitted parking is 0.25:1 but zero parking is also permitted. If the project follows the rules, it would have no more than 73 parking spaces. Yet the DEIR for One Oak includes a residential off-street parking ratio that is double what is permitted as of right (0.5:1, or 155 parking spaces).

The project sponsor has ignored repeated requests by the adjacent community to consider a building with zero parking. In January of 2015 HVNA explicitly objected to excess parking in a letter to Build, Inc. Two Initial Study letters, available from the planning department, asked for reduced parking, and the public comments at several “HUB” planning meetings included requests to develop One Oak with zero parking.

One Oak’s residential parking at 0.5:1 is excessive and no compelling reason has been given to justify allowing it to be doubled from 73 to 155 spaces. The One Oak DEIR discusses residential off-street parking without considering alternatives with less parking. There is considerable evidence, based on the groundbreaking work of Professor Donald Shoup, that parking generates car trips.<sup>3</sup> The SFMTA acknowledges this: <https://www.sfmta.com/about-sfmta/blog/growing-case-new-approach-sfs-parking-problem>. The Market and Octavia Better Neighborhood Plan acknowledges this and permits zero parking throughout the plan for that reason.

The project also proposes valet parking without analyzing how valet parking might increase VMT and other traffic impacts. **An analysis of valet parking must be part of the DEIR.** Residents might order their cars in advance and easily access them. Residents will also find it easy to drop their cars off and not have to worry about queues or waiting times. The LCW Transportation study suggests Oak Street loading zones will be used by Valets to store cars as residents come and go. New Apps and other methods will be used by residents to have easy

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<sup>3</sup> Shoup (2005) *The High Cost of Free Parking*

access to their cars. **The valet renders parking stackers and dependently-accessible parking a useless deterrent to driving.**

The DEIR must include analysis of transportation impacts with zero parking. The DEIR must include revised transportation analysis methods that are responsive to the sensitivity of parking provision (not the 2002 SF Planning approach, which ignores the impacts of off street parking in residential buildings). The analysis must also include the impacts of valet parking on VMT and trip generation.

The DEIR must also acknowledge that based on the planning department's own estimate, the current foreseeable projects in the "Hub" are estimated at ***1,682 parking spaces***. Like One Oak many of these future projects will be requesting a CU for more than the permitted parking. This geographically-small, transit rich, bicycle and pedestrian neighborhood will be overwhelmed with more cars. The DIER analysis must include cumulative impacts of all of this potential future parking on VMT, and on pedestrian, bicycle, and transit systems in the area.

The City is currently studying the Hub, but this DEIR shows One Oak does nothing the Hub promises, and is completely unlinked to that Hub study.

#### **TR-4 Hazardous Conditions for Bicyclists**

The DEIR fails to consider that the proposed on-street loading zone on Market Street and the impacts of winds will have a hazardous impact in bicycles. The impacts of the loading zones and winds are described below using the same sub headings of the DEIR summary table.

#### **TR-5: Loading Demand & Impact on Bicycles**

The DEIR for One Oak discusses a 130-foot recessed loading zone on westbound Market Street but **mischaracterizes the loading zone as an existing condition**. The loading zone has been inactive for at least a decade, with very few trucks using the zone. **On page 47 of the LCW transportation report it is noted that no trucks currently use the loading zone.** Meanwhile cycling has increased dramatically on Market Street, and notably, in a physical environment where this loading zone has been inactive. Today during weekday pm peak commute hours, 1,400 cyclists use this part of Market Street, and existing conditions are such that these 1,400 cyclists do NOT presently cross paths with delivery trucks or TNCs. **The activation of this loading zone will be a significant change to the physical environment and present hazards to cyclists. The DEIR needs to analyze this.**

The DEIR for One Oak underestimates the volume of daily deliveries to One Oak and the methodology for estimating deliveries must be updated to reflect change. The DEIR and LCW Report suggest One Oak's 700 residents will receive approximately 27 deliveries per day (based on the antiquated SF Transportation Guidelines of 2002) (see page 69, LCW Report). If there are 700 residents in One Oak, and each receives one delivery per month, on business days only (22 days), that amounts to almost 32 deliveries per day. This does not acknowledge the rapid proliferation of internet retail goods and household items, as well as food deliveries to residential buildings.

The Draft EIR needs to update the calculation of delivery to reflect present-day reality, and to reveal how many delivery trucks and vehicles will potentially **cross and impede** the Market Street bike lane. This includes analyzing deliveries at similar existing towers. This must also include a cumulative analysis of deliveries for 1554 Market, which is sharing the loading zone on Market Street.

The DEIR proposes removing bicycle-safety measures (flexible bollards or “safe-hit” posts) on Market Street in order to make truck deliveries and loading easier for trucks on Market Street. It fails to discuss the negative impact this will have on the 1,400 cyclists using Market during the weekday pm commute.

The 130-foot loading zone must be considered a new loading zone because it will go from inactive to active, and will be a very real change to the physical environment. The loading zone will present new hazards to incumbent cyclists on Market Street, and will further degrade conditions for cyclists if safe-hit posts are removed.

The Draft EIR should be revised to analyze an alternative with no loading on Market Street, and a shift of all loading to the Oak Street side of the project. It should also analyze more creative loading strategies, such as loading further off site (westward on Oak and on Franklin) and deploying the use of human-powered push carts and cargo bicycles to service One Oak.

The curb for the inactive loading zone must be repurposed to wider sidewalks and fully separated cycle tracks for pedestrian and bicycle safety, and this should be analyzed as mitigation for One Oak.

#### **W-1: Wind Impacts on Bicycles:**

The One Oak Project Draft EIR needs to be revised to include a thorough analysis of impacts on bicyclists. The DEIR contains an extensive discussion of potential impacts of wind on pedestrians and public transit passengers waiting for buses at nearby bus stops, but it completely omits analysis of the impact of wind on the thousands of cyclists using Market Street and other nearby streets. Thus, the DEIR fails as informational document.

The existing conditions, especially in spring and summer afternoons, are both uncomfortable and hazardous to cyclists. The DEIR provides no acknowledgement of this. Nor does it elaborate on how One Oak wind impacts will make conditions more hazardous for cyclists. The EIR should find that the increased wind a significant impact. The One Oak DEIR needs to analyze the following:

- impacts of wind on bicycles, especially down-wash winds
- impact of One Oak downwash wind and wind canopies on bicyclists on Market Street and surrounding streets.

- impact of the proposed canopies deflecting wind directly into Market Street and into bike lanes on Market Street and Polk Street.
- adequate mitigations to make cycling safe and comfortable on Market Street, such as fully-separated cycle tracks and other infrastructure that make it less likely a cyclist collides with motor vehicles or buses when wind conditions are hazardous for bikes. Mitigation must include restricting private cars on Market between 10<sup>th</sup> Street and Franklin Street.

Market and Van Ness is probably one of the windiest intersection in the city. The City does not understand wind impacts on cycling, because the EIR does not even address these impacts. Consequently, the DEIR does not analyze how the increased wind might deter from other citywide goals seeking to increase bicycle mode share and make cycling safer. The Market and Octavia Better Neighborhoods Plan, the Better Market Street Plan, and the SFMTA's strategic plans all seek to increase cycling, especially on Market Street. This DEIR does not analyze how these citywide goals might be undermined by wind hazards from One Oak.

Failure to analyze the wind impacts and identify them as significant, means that the DEIR fails to even consider possible mitigation. The DEIR has no discussion of wind mitigation to cyclists. This is a major omission rendering this part of the DEIR inadequate. The EIR must include a thorough discussion of wind impacts on cyclists – especially on the busiest cycling corridor in the city.

The DEIR improperly turns the cumulative impacts analysis for wind on its head. The DEIR considers One Oak Project in the context of other future projects but then improperly subtracts out its impact. Since the cumulative impact of this and other buildings creates a significant impact for pedestrians and Muni passengers, the EIR must find the cumulative wind impacts significant and provide mitigation

There is precedent for revising an EIR based on an EIR ignoring safety impacts on cyclists. In Danville CA, bicycles were ignored in an EIR for the proposed Magee Ranch development. The EIR was appealed and a decision directed the town of Danville to analyze bicycle safety. The decision document is attached at the end of this comment letter.

**Mitigation for wind impacts on bicyclists must be considered. These must include substantially wider, fully separated cycle tracks on Market Street between 10<sup>th</sup> Street and Franklin to make room for error and sudden gusts pushing cyclists off-course. The mitigation must also consider restricting private cars and TNCs on Market Street between 10<sup>th</sup> Street and Franklin Street in order to reduce collisions in windy situations.**

### S-1: Shadows

The DEIR for One Oak discusses that there will be brief shadows in the early morning on Patricia's Green during March and September. It also discusses morning shadows on Koshland Park playground during Late June. The DIER suggests these are less than significant, based on historic uses of parks. However, with increased density and residential development in Hayes Valley, these parks are experiencing rapidly increasing use, and much of this also takes place in

the morning. For example, exercise and meditation are common in Koshland in summer mornings. The DEIR fails to consider that usage patterns are changing and that morning sun draws people to parks. The DEIRs analysis of shadows is inadequate.

**Impact of Market Rate Housing on demand for BMR Housing.**

**The DEIR must consider the impact that market rate housing has on demand for below market rate housing, and the related environmental impacts.**

The current proposal for One Oak has no onsite affordable housing and the DEIR points out that the project sponsor intends to pay an in-lieu fee, with no guarantee that any affordable housing gets built in the vicinity of the Market and Octavia Plan Area. The DEIR includes a vague expression by the project sponsor for a desire to direct the in-lieu fee to an “Octavia BMR Project” on former freeway parcels (between Haight and Oak) which would be overseen by MOH and built by a non-profit. But this is not guaranteed.

All of this raises important issues not addressed in the DEIR and making it inadequate. The following analysis must be part of the revised DEIR.

- The physical impact of new market rate development on local housing prices and housing affordability.
- demand for affordable housing created by market-rate housing, and environmental impacts
- The extent in which market rate housing cause gentrification and displacement, leading to increased longer-distance commuting by lower income households, specifically the impact of One Oak.
- Using the city’s nexus study, the true BMR impact of the market rate housing. The DEIR does not describe if the nexus is closer to the 12 percent/ 20 percent on site/off site requirements pre-Prop C (2015) or if the nexus is closer to the 25 percent/ 33 percent on-site/off site ratio established by Prop C.

The One Oak project's affordable housing proposal is coming in far short of the actual need that is created by the project, and this needs to be acknowledged and analyzed in the DEIR.

There is precedent in considering market rate housing impacts on BMR, including a November 2016 CEQA appeal of the 1515 South Van Ness project. The appeal asked what is the environmental impact of displacement in the Mission caused by market rate housing proposed by Lennar Corp.

The One Oak Project DEIR must consider the nexus of how many BMR are needed due to proliferation of market-rate housing, and then consider the environmental consequences of the BMR demand.

The DEIR must consider the environmental impact of zero parking on housing affordability, especially since parking adds considerable cost to housing production.

**The DEIR must include analysis of the proposal for the off-site BMR on Octavia.** There is much uncertainty about this scheme. The intent is to direct in lieu fee to Octavia BMR Project on parcels R, S, and U (between Haight and Oak) which would be overseen by MOH and built by a non-profit. The project sponsor claims this might bring up to 72 BMR units. Yet is the project sponsor expected to finance all of the units, or just a portion? How will the 72 units reflect the Market and Octavia unit size requirements? Will these 72 units be micro units? If so, that does not reflect the proper unit-mix required in the Market and Octavia Plan.

Jason Henderson  
Chair, Transportation and Planning Committee,  
Hayes Valley Neighborhood Association  
300 Buchanan Street, #503  
San Francisco, CA  
94102  
(415)-255-8136  
[Jhenders@sonic.net](mailto:Jhenders@sonic.net)

**Attachment 1: TAZ 588**



*The HAYES VALLEY Neighborhood Association | HVNA*

May 26<sup>th</sup>, 2017

Rich Hillis, President, San Francisco Planning Commission  
 Dennis Richards, Vice President, San Francisco Planning Commission  
 San Francisco Planning Department  
 1650 Mission Street, Suite 400  
 San Francisco, CA 94103

**RE: Comments on One Oak Street Proposal**

Cc: Tina Chang [tina.chang@sfgov.org](mailto:tina.chang@sfgov.org)

Dear President Hillis, Vice President Richards, and San Francisco Planning Commissioners,

The Hayes Valley Neighborhood Association (HVNA), based on our longstanding support for the Market and Octavia Better Neighborhoods Plan, endorses the concept of dense infill housing at the intersection of Market Street and Van Ness Avenue. Yet we have the following **four concerns** regarding the proposed One Oak Street Project.

- 1) **Parking:** We wholly object to the request for a CU for excess parking above the permitted 0.25:1. The proposed project must respect the Market and Octavia Plan, and the CU request disregards the plan.
- 2) **Plaza:** We welcome the proposed plaza, but urge that it include streetscape design elements and enforcement mechanisms to impede vehicles from stopping within the alignment of the plaza. It should also include creation of a drop-off zone to the west of the project on Oak Street. This should be a condition of the proposed in-kind agreement for the plaza.
- 3) **Wind impact on bicycles:** The project ignores wind impacts on cyclists on Market Street. This is a significant omission and needs remedy. We suggest mitigations including fully-separated, wide cycle tracks built on Market Street in conjunction with the project.
- 4) **Inclusionary Housing:** There is a proposal to direct the inclusionary housing required of One Oak to Octavia Parcels R, S, and U. This should be memorialized and synchronized with the construction of One Oak such that affordable housing is assured and available when One Oak is completed.

The remainder of this letter provides details on each of our four concerns.

## Parking

The One Oak Project is in an area of the Market and Octavia Plan where the permitted parking is 0.25:1 but zero parking is also permitted. If the project follows the rules, it would have no more than 73 parking spaces. Yet proposal for One Oak includes a residential off-street parking ratio that is almost double what is permitted as of right (0.45:1, or 136 parking spaces).

The project sponsor has ignored repeated requests by the adjacent community to consider a building that respects the Market and Octavia permitted parking of 0.25:1. In January 2015 HVNA objected to excess parking in a letter to Build, Inc. Two Initial Study letters, available from the planning department, asked for reduced parking, and the public comments at several “HUB” planning meetings included requests to develop One Oak with zero parking. HVNA’s comment letter in the DEIR (January 2017, see attached) also raised objections to excess parking. Lastly, the Market and Octavia Community Advisory Committee adopted a resolution (6/20/2016) asking the Planning Commission to deny all requests for CU’s for excess parking in the Hub area. The resolution is attached.

One Oak’s residential parking at 0.45:1 is excessive and no compelling reason has been offered to justify allowing it to be almost doubled from 73 to 136 spaces. This is a bad precedent for the area known as the “Hub” were an estimated ***1,682 parking spaces might be in the pipeline.*** Like One Oak many of these future projects will be requesting a CU for more than the permitted parking, and this geographically-small, transit rich, bicycle and pedestrian neighborhood will be overwhelmed with more cars. Nine important Muni bus lines, five Muni light rail lines, and one Muni streetcar line traverse the corridor, carrying almost 14,000 passengers in the weekday am peak hour and 13,500 in the weekday pm peak hour. Every weekday there are thousands of cyclists using Market Street, with 1,400 in the two- hour pm peak period alone. This project, if approved with excess parking, will degrade transit, walking, and cycling, and set bad precedent.

The project also proposes valet parking which will make it easier for residents to drive. Residents might order their cars in advance and easily access them. Residents will also find it easy to drop their cars off and not have to worry about queues or waiting times. The Transportation study suggests Oak Street loading zones will be used by valets to store cars as drivers come and go. New Apps and other methods will be used by residents to have easy access to their cars. **The valet renders parking stackers and dependently-accessible parking a useless deterrent to driving.**

HVNA would prefer that this project, like many others, have zero parking. This is a part of the city where the tolerance for more cars is zero. However the hard-fought compromises in the Market and Octavia Plan resulted in a 0.25:1 ratio. There is no public benefit to increasing the parking above the level of 0.25:1.

## Plaza

The One Oak proposal includes a new plaza at the intersection of Oak and Van Ness, and the project sponsor requests roughly \$2.3 million in in-kind donations to build parts of the plaza.

Such a plaza is a welcomed improvement, and we recognize the project sponsor's effort to garner public support. Yet as HVNA has pointed out in the comments on the DEIR for One Oak, TNCs may swarm the area, including the plaza. Moreover, the contemporary nature of commercial deliveries is not what it was even a few years ago, and multiple vehicles may stop and obstruct the plaza. If there are 700 residents in One Oak (estimated in DEIR), and each receives one delivery per month, on business days only (22 days), that amounts to almost 32 deliveries per day.

To make sure the plaza works as the project sponsor is marketing to the public, the following conditions must be obligated to One Oak:

- Incorporate streetscape designs that make it impossible to stop for drop-off or pick-up on any part of the plaza. HVNA suggests clear signage and enforcement mechanisms as well as creative designs to keep vehicles from stopping in the plaza. This must be a condition of the proposed in-kind agreement, which withdraws complete streets funds from other important Market and Octavia needs.
- Allocation of an adequate loading and unloading zone for both passengers and deliveries on Oak Street, west of the plaza. This requires removal of some curbside parking.
- Closing the plaza to vehicles regularly certain times of the day, for pop-up markets/amenities or events, and to accommodate thousands of peak hour pedestrians including Muni passengers.

### **Wind impacts on cyclists**

Market and Van Ness is probably one of the windiest intersection in the city. The existing conditions for thousands of daily cyclists at Market and Van Ness, especially in spring and summer afternoons, are both uncomfortable and hazardous. The DEIR for One Oak provided no acknowledgement of this. There is no understanding on how downwashed winds and the proposed canopies at One Oak will impact cyclists.

There must be adequate mitigations to make cycling safe and comfortable on Market Street, such as fully-separated cycle tracks and other infrastructure that make it less likely a cyclist collides with motor vehicles or buses when wind conditions are hazardous for bikes. Mitigation in the form of fully-separated, wide cycle tracks on Market Street and other bicycle infrastructure should be built in conjunction with the project. Elimination of private automobiles and TNCs from Market Street between 10<sup>th</sup> Street and Franklin Street would provide the best opportunity to create safe space for cyclists while also accommodating transit.

### **Inclusionary Housing**

The current proposal for One Oak has no onsite inclusionary affordable housing and the project sponsor intends to pay an in-lieu fee. There is no legally binding guarantee that any affordable housing gets built within the vicinity of the Market and Octavia Plan Area. There is an

expression by the project sponsor for a desire to direct the in-lieu fee to an “Octavia BMR Project” on former Central Freeway parcels R, S, and U (between Haight and Oak Streets), which would be overseen by MOH and built by a non-profit. This concept might be welcomed but needs a firm guarantee because too often inclusionary housing fees are spent elsewhere in the city and Market and Octavia becomes even more unaffordable.

HVNA asks that a binding agreement is memorialized between the developer and the city to guarantee that all inclusionary housing is built within the Market and Octavia Plan area, including but not limited to Parcels R, S, and T (we do welcome inclusionary housing within the actual One Oak project if feasible). We also ask the memorialization include that construction of the BMR units synchronize with the construction of One Oak such that affordable housing is assured and available when One Oak is completed.

In summary, HVNA welcomes new, dense infill to this site. However, this is a centrally located development where the city needs to be encouraging as little parking as possible (preferably zero) and as much affordable housing as possible. The site is adjacent to some of the best cycling and walking spaces on the west coast, and near an array of high capacity public transit. The proposed plaza is welcome but if funded with Market and Octavia community impact fees it should be designed to make vehicle loading and unloading impossible within the plaza. The project should also include adequate mitigation of the negative impact winds will have on cyclists on Market Street.

We urge you to make this an excellent development that truly reflects the city’s sustainable transportation and affordability goals.

Sincerely,



Jason Henderson  
 Chair, Transportation and Planning Committee,  
 Hayes Valley Neighborhood Association  
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**Market & Octavia Community Advisory Committee**

**RESOLUTION REQUESTING NO FURTHER GRANTING OF CONDITIONAL USE AUTHORIZATIONS FOR ACCESSORY OFF STREET PARKING WITHIN THE “HUB” AREA OF THE MARKET & OCTAVIA PLAN AREA**

WHEREAS, a primary goal of the Market & Octavia plan is to balance the needs of bicycles, mass transit, pedestrians and automobiles in the plan area and to lessen dependence on cars in the vicinity; and,

WHEREAS, the M & O Plan provides a schedule of maximum permitted off-street parking and conditionally permitted off-street parking in the several zoning districts contained within the Plan Area; and,

WHEREAS, the “Market Street Hub” is an area contained with the M & O Plan Area that includes roughly the blocks immediately to the northwest of Market Street from Larkin/9<sup>th</sup> St to Octavia Boulevard and the blocks to the southeast of Market Street extending to the Central Freeway, Howard Street, and Mission Street south of 10<sup>th</sup> Street.

WHEREAS, M & O plan area is located on multiple high-capacity mass transit lines, and studies indicate that car ownership rates in the neighborhood are well below the citywide average; and,

WHEREAS, The SFMTA plans to invest considerable resources in Van Ness transit improvements as well as the Mission 14 bus and bicycle facilities on Market Street,

WHEREAS, the best available current estimate is that 1,075 off-street parking spaces are proposed in the pipeline for the area known as the Hub.

WHEREAS these new parking spaces would add traffic to the Hub’s already congested streets thus reducing neighborhood safety and livability, undermining SFMTA investments; and,

WHEREAS, these parking spaces will dramatically increase the cost of housing in the Hub, further undermining city affordable housing goals,

WHEREAS, granting of the accessory off-street parking dishonors the spirit of the Market and Octavia Plan, and further, is not supportive of the current discussion about the Hub rezoning proposal led by the Planning Department

WHEREAS, despite these negative aspects of excess parking, the Planning Commission approved a CU for accessory parking for 1601 Mission in April 7<sup>th</sup> 2016, which allowed more parking than allowed by-right of 0.25:1. The permitted parking for this 210-unit development is 55 off-street spaces. The developer was granted a CU for 97 spaces at a ratio of 0.44: therefore

BE IT RESOLVED, that the M & O CAC requests that the Planning Commission no longer grant Conditional Use Authorizations for accessory parking for projects located within in the Hub area; and be it

BE IT FURTHER RESOLVED, that the M & O CAC asks for the Planning Department, Planning Commission, and Board of Supervisors to consider expediting a revision to the Planning Code that eliminates Conditional Use Authorizations for accessory off-street parking for zoning districts contained with the Hub area

BE IT FURTHER RESOLVED that the M & O CAC directs the M & O CAC Planning Staff to forward this resolution to appropriate City officials.

*Approved by the Market and Octavia CAC June 20<sup>th</sup> 2016*

*Yea – Henderson, Singa, Levitt, Olsson, Olsen, Soriano-Bilal*

*Nay - none*

*Abstaining – Vasquez*

*Absent – Marker, Wingard*

SUE C. HESTOR  
329 HIGHLAND AVE. (415) 824-1167  
SAN FRANCISCO, CA 94110

7127

11-4288/1210 4016  
0043241710

7/17/17 Date

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For ONE OAK FEEL APPEAL

*[Signature]*

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**SAN FRANCISCO  
PLANNING DEPARTMENT**

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SECTION 31.16(b)(5)  
(Note: Pursuant to California Government Code, Section  
65009(b)(2), information received at, or prior to, the public  
hearing will be included as part of the official file.)

**Appeal of EIR Certification  
One Oak Street (1500–1540 Market Street) Project**

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

Reception:  
415.558.6378

Fax:  
415.558.6409

Planning  
Information:  
415.558.6377

**DATE:** August 30, 2017  
**TO:** Angela Calvillo, Clerk of the Board of Supervisors  
**FROM:** Lisa Gibson, Environmental Review Officer – (415) 575-9034  
Diane Livia, Environmental Planner – (415) 575-8758  
Rick Cooper, Senior Environmental Planner – (415) 575-9027  
**RE:** File No. 170812, Planning Department Case No. 2009.0159E,  
Appeal of the Environmental Impact Report Certification for the  
One Oak Street (1500–1540 Market Street) Project, Block 0836,  
Lots: 001,002, 003, 004, and 005  
**PROJECT SPONSOR:** One Oak Owner, LLC  
**APPELLANT:** Jason Henderson  
**HEARING DATE:** September 5, 2017

**INTRODUCTION**

This memorandum updates the Planning Department’s previous memorandum, dated August 28, 2017, and submitted to the Board of Supervisors in response to the above-referenced appeal of an EIR certification. This current memorandum addresses the following two matters: 1. revisions to the design of the project that the project sponsor has recently initiated; and 2. Appellant’s supplemental submission to the Board of Supervisors, dated August 25, 2017, in support of the appeal. The revision to the project would not materially affect the conclusions regarding the physical, environmental effects of the revised project. The revisions to the project obviate the need for the legislative amendments to the height and bulk districts within the project site that were anticipated to be required as described in the certified EIR.

**REVISIONS TO THE PROJECT DESIGN**

**Background**

An environmental impact report for the project, case number 2005.0159E, was certified by the San Francisco Planning Commission on June 15, 2017 (“certified EIR”). The project described and analyzed in the certified EIR (“subject project”) consists of the demolition of existing buildings within the project site and removal of a parking lot on the project site at 1500-1540 Market Street and construction of a new 310-unit, 40-story residential tower (400-foot-tall, plus a 20-foot-tall perimeter parapet and 26-foot-tall mechanical penthouse) with ground-floor commercial space and one off-street loading space. The subject

project would also include a subsurface parking garage for residents. Bicycle parking for residents would be provided on a second-floor mezzanine; for visitors, bicycle parking would be provided in bicycle racks on adjacent sidewalks. The subject project would also include construction of a public plaza within the Oak Street right-of-way, construction of several wind canopies within the proposed plaza, construction of a freestanding MUNI elevator enclosure within the proposed Oak Plaza, and construction of one wind canopy within the sidewalk at the northeast corner of Market Street and Polk Street to reduce pedestrian-level winds.

The One Oak Street project's building site is comprised of Assessors Block 836, Lots 1, 2, 3, 4 and 5, from east to west. As described in the certified EIR on p. 3.5, the subject project would require a height and bulk district amendment to reclassify the 120/400-R-2 Height and Bulk designation, shifting it from a portion of the easternmost Lot 1 to a portion of the western half of Lot 5, designated 120-R-2. The subject project would require amendment of the *San Francisco General Plan* to revise Map 3 of the Market and Octavia Area Plan and Map 5 of the Downtown Area Plan, and amendment to the Height and Bulk Map HT07 in the San Francisco Planning Code to shift the 120/400-R-2 designation from a portion of Lot 1 to a portion of Lot 5 on Assessor's Block 0836 and reclassify the corresponding portion of Lot 1 to a height and bulk designation of 120-R-2.

#### Description of the Revised Project

Subsequent to the certification of the EIR, the subject project design was revised ("revised project") from that described and shown in the certified EIR<sup>1</sup>. As shown in **Figure 1: Revised Project Tower Shift Diagram** of this memorandum, the revised project would shift the tower element of the proposed building (floors 13-40) 3.25 feet northeastward within the building site, parallel to the Market Street property line. With this shift, the westernmost 2.5 feet of the tower element, which would have been within a 120-R-2 Height and Bulk District, would be shifted outside of that district into the existing 120/400-R-2 Height and Bulk District. Accordingly, the entire tower element under the revised project would then be within the existing 120/400-R-2 Height and Bulk District. The revised project would not require any legislative amendments to the height and bulk districts within the project site.<sup>2</sup>

The northeastward shift of the tower element would be accompanied by a corresponding northeastward elongation of podium floors 4-12 by 3.25 feet, resulting in an increase to these floorplate areas of about 292 sq. ft. at each of the nine podium floors 4-12 (or about 245 gross square feet ["gsf"] of residential use per floor, totaling 2,205 gsf under the revised project). The increased area would not affect the residential unit count or the bedroom unit mix studied in the EIR. Rather, it would increase the room sizes at the eastern perimeter of floors 4-12.

---

<sup>1</sup> EIR pp. 2.1–2.36, as revised on RTC pp. 5.8–5.27.

<sup>2</sup> Recommendation of an ordinance amending the Zoning Map to shift the Height and Bulk District 120/400-R-2 designation from Lot 001 to Lot 005 on Assessor's Block 0836 and reclassifying Lot 001 on Assessor's Block 0836 to 120-R-2. Recommendation of a General Plan amendment to revise Map 3 of the Market and Octavia Area Plan to shift the Height and Bulk District 120/400-R-2 designation from Lot 001 to Lot 005 on Assessor's Block 0836 and reclassify Lot 001 on Assessor's Block 0836 to 120-R-2.



FIGURE 1: REVISED PROJECT TOWER SHIFT DIAGRAM

Source: SCB/Sm@hetta (2017)

The design revisions would not call for any change to the dimensions and configuration of podium levels 1-3 nor would they require any changes to the proposed site plan. Rather, the cantilevered overhang above the triple-height window wall at the eastern “prow” of the proposed building would be extended further northeastward by an additional 3.25 feet to accommodate the elongation of podium floors 4-12.

The revised project would not include any changes to the number and mix of residential units; the size and location of ground-floor retail; the proposed ground-floor site plan; pedestrian and vehicular circulation within the project site; the design and configuration of the publicly accessible open space offered and developed under the subject project; and the description and duration of project construction. The project would remain substantially the same as described in the certified EIR on Draft EIR pp. 2.1-2.36, as revised on RTC pp. 5.18-5.27.

#### Analysis of Potential Environmental Effects of the Revised Project

San Francisco Administrative Code Section 31.19(c)(1) states that a modified project must be reevaluated and that, “If, on the basis of such reevaluation, the Environmental Review Officer determines, based on the requirements of CEQA, that no additional environmental review is necessary, this determination and the reasons therefore shall be noted in writing in the case record, and no further evaluation shall be required by this Chapter.”

CEQA Guidelines Section 15164 provides for the use of an memorandum to document the basis of a lead agency’s decision not to require a Subsequent or Supplemental EIR for a project that is already adequately covered in an existing certified EIR. The lead agency’s decision to use an memorandum must be supported by substantial evidence that the conditions that would trigger the preparation of a Subsequent EIR, as provided in CEQA Guidelines Section 15162, are not present.

#### Land Use and Land Use Planning

As noted above, the topic of Land Use and Land Use Planning was included in the EIR for informational purposes to contextualize for the reader the land use character of the project site and its surroundings.

The revised project consists of revisions that are limited to the configuration of the proposed building envelope above the third floor of the proposed One Oak building in order to bring the project into conformity with existing height and bulk limitations applicable to the project site. The revised project would not change the unit count or mix of residential units by number of bedrooms. It would not change the amount or location of ground-floor retail use, nor would it change the ground-level pedestrian, bicycle and vehicular circulation within the project site from that described and analyzed in the certified EIR.

For these reasons, the revised project would not cause any new significant impacts related to the EIR topic of Land Use and Land Use Planning that were not identified in the One Oak Street Project certified EIR. No new mitigation measures would be necessary to reduce significant impacts.

### Transportation and Circulation

The revised project consists of revisions that are limited to the configuration of the proposed building envelope above the third floor of the proposed One Oak building. The revised project would not change the unit count or mix of residential units by number of bedrooms, or the amount of residential parking spaces or bicycle parking spaces provided under the subject project. It would not change the amount or location of ground-floor retail use, nor would it change the ground-level pedestrian, bicycle and vehicular circulation within the project site from that described and analyzed in the certified EIR. The revised project would not call for any substantial changes to the timing, location, and character of construction activities described and analyzed in the certified EIR.

For these reasons, the revised project would not cause any new significant impacts related to the EIR topic of Transportation and Circulation that were not identified in One Oak Street Project certified EIR, nor would the revised project cause the significant unavoidable impact previously identified in the One Oak Street Project certified EIR (cumulative construction) to become substantially more severe. No new mitigation measures would be necessary to reduce significant impacts.

### Wind

The shift in the tower element's position 3.25 feet to the northeast and corresponding changes to elongate the podium by 3.25 feet to the northeast under the revised project would change the position and configuration of the building envelope. As such, the revised project has the potential to result in wind impacts that may differ from those reported in the certified EIR.

The EIR wind consultant, BMT Fluid Dynamics, conducted additional wind tunnel testing for the revised project configuration, using the same test point locations as for the certified EIR subject project, to compare the results reported in the certified EIR with those of the revised project (see Attachment A). The BMT revised project wind study yielded identical wind hazard criterion results as for the subject project studied in the certified EIR under both the project scenario and cumulative scenario. The wind hazard criterion of Planning Code Section 148 is the applicable significance threshold for evaluating wind impacts in San Francisco. BMT also studied wind comfort conditions under the revised project for informational purposes. The BMT revised project wind study yielded similar results with respect to wind comfort exceedances as under the project scenario (an increase of 1 mph at 5 test point locations and a decrease of 1 mph at 3 test point locations) as well as the project cumulative scenario (an increase of 1 mph at 5 test point locations and a decrease of 1 mph at 2 test point locations).

For these reasons, the revised project would not cause any new significant wind impact that was not identified in One Oak Street Project certified EIR. No new mitigation measures would be necessary to reduce significant impacts.

### Shadow

The shift in the tower element's position 3.25 feet to the northeast under the revised project would change the position of the tower with respect to the affected Recreation and Park Department properties studied

in the certified EIR. As such, the revised project has the potential to result in shadow impacts that may differ from those reported in the certified EIR.

The EIR shadow consultant, PreVision Design, conducted additional shadow analysis for the revised project configuration to compare the results reported in the certified EIR, for Patricia's Green, and Page and Laguna Minipark, with those of the revised project (see Attachment B). In its analysis, the shadow consultant noted that typically, the percentage of annual shadow is expressed to an accuracy of two decimal places (0.00%). However, the changes in shading resulting from the proposed tower shift were so small they required an additional decimal point of accuracy (0.000%) to demonstrate any change in percentage value.

For Patricia's Green, the additional shadow study for the revised project found that on an annual basis, the revised project would result in 1,419 square foot hours ("sfh") of additional shadow annually relative to the subject project studied in the certified EIR, equal to an increase of 0.003% of the 66,622,661 sfh of Theoretical Annual Available Sunlight ("TAAS"). The revised project would not alter the number, range of dates, or date of maximum project-generated shading for Patricia's Green, nor would the maximum and average daily duration of shading be altered.

For Page and Laguna Minipark, the additional shadow study for the revised project found that on an annual basis, the revised project would result in 105 sfh of additional shadow annually relative to the subject project studied in the certified EIR, equal to an increase of 0.001% of the 24,402,522 sfh of TAAS. The revised project would not alter the number, range of dates, or date of maximum project-generated shading for Page and Laguna Minipark, nor would the maximum and average daily duration of shading be altered.

The revised project would increase the annual shadow load on Patricia's Green and Page and Laguna Minipark, by 0.003% and 0.001% respectively. The revised project would not substantially alter the times, dates, and areas of shading of these parks throughout the day and year. These very small increases in annual shadow load on these spaces would not have a material impact on the use and enjoyment of these parks and would therefore not change any of the conclusions of the certified EIR.

For these reasons, the revised project would not cause any new significant shadow impact that was not identified in the One Oak Street Project certified EIR. No new mitigation measures would be necessary to reduce significant impacts.

## Conclusion

Based on the foregoing, the analyses conducted and the conclusions reached in the One Oak Street Project certified EIR certified on June 15, 2017 remain valid. The currently proposed revisions to the design of the building above the third floor would not cause any new significant impacts not identified in the One Oak Street Project certified EIR and would not cause the significant impact previously identified in the One Oak Street Project certified EIR to become substantially more severe. No new mitigation measures would be necessary to reduce significant impacts. No changes have occurred with respect to circumstances surrounding the project site that would result in significant environmental impacts to which the revised project would contribute considerably, and no new information has become available that shows that the

revised project would result in significant environmental impacts. Therefore, no supplemental environmental review is required beyond this memorandum.

## APPELLANT'S SUPPLEMENTAL SUBMISSION

On August 25, 2017, the Appellant Jason Henderson submitted a supplemental submission to his original appeal letter filed with the Board of Supervisors on July 17, 2017. Appellant's supplemental submission does not raise any new environmental issues that were not already thoroughly addressed in the Draft EIR, the Responses to Comments document, and/or the Planning Department's appeal response memorandum, dated August 28, 2017.

Nonetheless, the department has chosen to supply additional response in this memorandum to concerns raised in the Appellant's supplemental submission, and to clarify issues and emphasize points already addressed in the EIR record.

### Concerns Raised and Planning Department Responses

**Concern 1: The Appellant asserts that the EIR is inadequate because it does not analyze alternatives with 0.25 or zero parking ratios.**

**Response 1: An alternative that provides 0.25 or no parking is not required under CEQA, because the purpose of an alternative is to lessen or avoid significant impacts of the proposed project, and in this instance a reduced or no parking alternative would not lessen or avoid the one identified significant impact for the project.**

This concern is covered in the Responses to Comments Document beginning on page 4.48.

CEQA does not require analysis of every imaginable alternative. Rather, it mandates that agencies consider "a reasonable range of potentially feasible alternatives" that "would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen" any of its significant effects. (CEQA Guidelines, § 15126.6(a).) A lead agency may eliminate an alternative from detailed consideration in the EIR either because of its "inability to avoid significant environmental impacts", because it would not achieve most of the basic project objectives, or because it would be infeasible. (CEQA Guidelines, § 15126.6(c).)

As thoroughly described in EIR pp 4.C.87 and RTC pp 4.84, the Project would only result in one significant unavoidable impact: a cumulative construction-related traffic impact that would occur during the construction phase of the Project. (Impact C-TR-7). A reduced parking or no parking alternative would not avoid or mitigate this impact because construction activities would remain substantially the same, resulting in the same impact. Accordingly, a reduced parking or no parking alternative is not required as part of the EIR because such alternatives would not avoid or lessen the one identified significant adverse environmental impact of the proposed project.

**Concern 2: The Appellant asserts that the EIR does not adequately analyze loading demand because it does not reflect present day trends in retail delivery on transit, pedestrians, and bicyclists.**

**Response 2: The EIR includes an analysis of the various elements of on-site and on-street loading operations. The EIR used the best available information to assess the loading impacts of the project.**

As discussed in the RTC beginning on page 4.36, the SF Guidelines methodology for estimating truck and service vehicle loading demand assesses whether the peak loading demand could be accommodated within the proposed facilities, and considers the loading demand for the nine-hour period between 8 AM and 5 PM. As stated on EIR p. 4.C.56, the project loading demand of 28 delivery/service vehicle trips per day corresponds to a peak demand for two loading spaces, which would be accommodated within the proposed project's on-site loading supply. The proposed project and variant would not result in a significant loading impact, and therefore mitigation measures are not required. Appellant contends that this established methodology is flawed because it underestimates the number of e-commerce retail deliveries to the site. The City's loading demand methodology is based on the most recent and comprehensive information available, the 2002 *SF Guidelines* to assess the loading impacts of the project. Appellant provides no evidence to support its claim that the data is inaccurate. Accordingly, any increased loading demand could be accommodated within the loading spaces provided in the Project, as there would be available capacity outside the peak loading demand. Appellant's assertion also assumes that each delivery is delivered in a separate vehicle, whereas in buildings with multiple units, such as the proposed project, multiple residents are served with one delivery trip (e.g., UPS delivers multiple packages to one building address at one time).

The proposed project requires implementation of a Mitigation Monitoring and Reporting Program pursuant to Planning Code Section 309, Motion 19943. The project would be required to implement Improvement Measure I-TR-B: Loading Operations Plan. The Loading Operations Plan would include a set of guidelines related to the operation of the Oak Street driveways into the loading facilities, and large truck curbside access guidelines. It would specify driveway attendant responsibilities to ensure that truck queuing and/or substantial conflicts between project loading/unloading activities and pedestrians, bicyclists, transit and autos do not occur. Improvement Measure I-TR-B: Loading Operations Plan sets forth periodic review of loading operations by the SFMTA and the Planning Department to ensure that improvement measures are working.

**Concern 3: The Appellant asserts that transit capacity serving the site is constrained and that the EIR should have studied expansion of transit capacity.**

**Response 3: The EIR concluded that the project would have no impacts on transit capacity, either at the project-level or cumulatively. No mitigation measures are required.**

Appellant appears to be making a policy argument that the City should engage in a more comprehensive analysis of transit service and expansion. Such studies, analysis and comprehensive programs are conducted by the City on a regular basis. However, the purpose of CEQA is to analyze the impacts of the proposed project on the environment. The certified EIR fulfills CEQA's mandate by fully analyzing the potential impact of the proposed project on transit. Transit impacts of the proposed project are presented in the EIR in Impact TR-3, pp. 4.C.51- 4.C.54, for existing plus project conditions and in Impact C-TR-3, pp. 4.C.83-4.C.84, for 2040 cumulative conditions. This analysis concluded that the proposed project would not result in any significant transit impacts. Accordingly, no mitigation measures (such as expanding transit capacity) are required under CEQA.

**Concern 4: The Appellant asserts that the EIR does not adequately analyze the impacts of valet parking on VMT and transportation impacts.**

**Response 4: The EIR adequately analyzed the transportation and circulation impacts of 155 parking spaces, including valet queuing, and found that the project would result in no significant impacts.**

Appellant contends that the use of valet parking at the project will result in increased driving due to ease of access to cars by residents. Appellant provides no evidence to support this assertion. By contrast, the time delay associated with valet parking was addressed in the RTC at Page 4.19: “valet-assisted vehicle parking is included as part of the proposed project primarily due to the physical constraints of the project site, and not as a convenience for residents. Regardless of the method of vehicle parking and retrieval (i.e., valet-assisted or self-park), residents with parking spaces would have accessibility to their vehicle at all times. However, wait times for valet service, particularly during peak hours, would likely be inconvenient. This inconvenience may serve as a disincentive for residents to use private vehicles. Overall, the provision of valet-assisted parking is unlikely to have a significant effect on a resident’s decision to drive. Specifically, provision of valet-assisted parking at the project site is unlikely to result in more driving, because trip purpose and destination characteristics (i.e., distance, availability of parking, etc.), the key parameters affecting travel time and cost of the trip, would primarily determine the mode of travel for the resident. Providing valet-assisted parking at the destination, rather than within a residential building, would more likely affect residents’ decision to drive; however, this would not be affected whether the proposed project includes valet-assisted parking or not.”

Furthermore, the EIR adequately analyzed the transportation and circulation impacts of 155 parking spaces, including valet queuing (EIR pp. 4.C.42-4.C.45), passenger loading (EIR p. 4.C.57), and pedestrian safety (EIR pp. 4.C.51-4.C.54). This analysis did not provide any discounts for the use of valet parking, but rather analyzed the impact of each of the proposed parking spaces (155 spaces were studied in the Draft EIR, but the project sponsor has reduced the amount of parking to 136 spaces as currently proposed), assuming residents with parking spaces would have accessibility to their vehicle at all times. The EIR concluded that the Project’s proposed parking spaces would not result in any significant transportation or circulation impacts at pp 4.C.44. Accordingly, Appellant’s unsupported claims regarding the use of valet parking resulting in ease of access to cars or an increase in use of cars are not germane to the significant physical environmental impacts under CEQA.

**Concern 5: The Appellant claims the City used the VMT threshold of significance inappropriately.**

**Response 5: The City’s VMT methodology and threshold of significance are supported by substantial evidence, as thoroughly analyzed and discussed in the EIR and the RTC.**

Appellant expands on his objection to the City’s VMT methodology by claiming that the City should have adopted a different threshold of significance. Appellant cites *Mejia v. City of Los Angeles* (“*Mejia*”) (2005) 130 Cal.App.4th 322 and *East Sacramento Partnership for a Livable City v. City of Sacramento* (“*East Sacramento*”) (2016) 5 Cal.App.5th 281. *Mejia* is inapplicable because it involved a challenge to a Mitigated Negative Declaration—not an EIR. It is well-established law under CEQA that the “fair argument” test discussed in *Mejia* (and by Appellant) does not apply where the lead agency has prepared an EIR, as is the case here. Rather, it is a long-standing principle of CEQA law that the “substantial evidence” test is

applied to evaluate the lead agency's determinations. Here, the City has established that its adopted VMT methodology is supported by substantial evidence.

*East Sacramento* is also inapplicable. There, the court held that the City of Sacramento's threshold of significance based on "community values" reflected in the General Plan did not satisfy the CEQA requirement of substantial evidence. By contrast, in adopting its VMT methodology, the City carefully documented the studies and analysis supporting the VMT methodology and threshold of significance. As thoroughly explained in the EIR, RTC Response TR-2, and in the department's previous Appeal Response Letter, the San Francisco Planning Commission replaced automobile delay (vehicular level of service or LOS) with VMT criteria on March 3, 2016, pursuant to Resolution 19579, in compliance with California Senate Bill 743.

As explained on EIR pp. 4.C.34-4.C.35 and RTC pp. 4.17-4.18, the department relies on San Francisco Chained Activity Model Process ("SF-CHAMP") model runs prepared by the San Francisco County Transportation Authority to estimate VMT within different geographic locations (i.e., Traffic Analysis Zones, or "TAZ"s) throughout San Francisco. One rationale for using the SF-CHAMP maps to screen out projects, instead of a project-by-project detailed VMT analysis, is that most developments are not of a large enough scale and/or contain unique land uses to substantially alter the VMT estimates from SFCHAMP. As described on EIR p. 4.C.9, the existing average daily VMT per capita for the SF-CHAMP Traffic Analysis Zone in which the project site is located is 3.5, which is substantially less than the citywide average (7.9) and regional average (17.2) for the nine-county San Francisco Bay Area.

As noted by the court in *East Sacramento*, "CEQA grants agencies discretion to develop their own thresholds of significance (CEQA Guidelines, § 15064, subd. (d))." That discretion, however, is not unbounded, as the determination that the Project has no significant environmental impact must be supported by substantial evidence. (§ 21168.5)". *East Sacramento, supra*, 5 Cal.App.5th at 300 (citations omitted). As thoroughly discussed in the RTC and the EIR, substantial evidence supports the City's VMT methodology and threshold of significance. The cases Appellant cites simply have no bearing on this EIR or the VMT threshold of significance adopted by the City.

**Concern 6: Appellant claims the EIR is inadequate because it failed to analyze wind impacts on bicyclists.**

**Response 6: The EIR correctly analyzed wind impacts, using established City methodology. Appellant has not demonstrated that the City's methodology is incorrect or not supported by substantial evidence in the record.**

Appellant takes issue with the City's analysis of wind impacts. As discussed in the department's Response Letter, CEQA does not recommend the study of wind impacts in Appendix G. Rather, the City has elected to include such studies in its CEQA analyses. (See Admin. Code Section 31.10(a) [to analyze environmental impacts, the Planning department shall use the checklist from Appendix G of the CEQA Guidelines, and supplement with other environmental effects specific to the urban environment of San Francisco].) CEQA grants agencies discretion to develop their own thresholds of significance and an agency's choice of a significance threshold will be upheld if founded on substantial evidence. The Final EIR's use of a significance threshold consistent with established City standards is founded on substantial

evidence. The Appellant disagrees with the well-established methodology used in San Francisco EIRs to assess wind impacts, because it does not specifically study wind impacts on bicyclists. However, the Appellant does not offer an alternative methodology or evidence supporting a different methodology or threshold of significance, nor does the Appellant suggest that the studies relied upon by the City in support of Section 148 criteria are inaccurate or incorrect.

In response to similar comments on the Draft EIR regarding wind impacts on bicyclists, in preparing the Responses to Comments document, the Planning department inquired into how or whether other jurisdictions address the issue of wind impacts on bicyclists. As discussed on RTC p. 4.65, to date, there are no specific, widely accepted, industry standard criteria for the assessment of wind effects on bicyclists. There are, however, international criteria, known as the Lawson Criteria, used by government agencies in other parts of the world to establish a threshold wind speed at which cyclists would be expected to become destabilized. As noted in the department's previous Appeal Response Letter, the test points in the EIR's analysis are like those under a hypothetical analysis under the Lawson Criteria, except that the One Oak Street wind study also included test points in the crosswalks of the street. Overall, the Lawson Criteria are much less stringent than the City's Section 148 criteria. Consequently, the City's wind standard is far more protective of the public (including bicyclists) than the wind criterion employed elsewhere internationally.

## Conclusion

The Planning Department conducted an in-depth and thorough analysis of the potential physical environmental effects of the proposed One Oak Street Project, consistent with CEQA, the CEQA Guidelines, and Chapter 31 of the San Francisco Administrative Code. Appellant has not demonstrated that the certified EIR is insufficient as an informational document, or that the Commission's findings and conclusions are unsupported by substantial evidence. The department conducted necessary studies and analyses, and provided the Commission with necessary information and documents in accordance with the department's environmental checklist and standard procedures, and pursuant to CEQA and the CEQA Guidelines.

Substantial evidence supports the Commission's findings and conclusions. For the reasons provided in this appeal response, the department believes that the certified EIR complies with the requirements of CEQA, the CEQA Guidelines, and Chapter 31 of the San Francisco Administrative Code, and provides an adequate, accurate, and objective analysis of the potential environmental impacts of the project. Therefore, the department respectfully recommends that the Board uphold the Commission's certification of the EIR and reject Appellant's appeal.

## ATTACHMENTS:

**Attachment A:** BMT Fluid Mechanics, Letter, "One Oak Tower – Pedestrian Wind Microclimate," August 25, 2017

**Attachment B:** Prevision Design, Memo: "Effects of Tower Shift on Shading for One Oak Street Project." August 25, 2017



**ATTACHMENT A**  
**BMT Fluid Mechanics, Letter, “One Oak Tower –**  
**Pedestrian Wind Microclimate,” August 25, 2017**

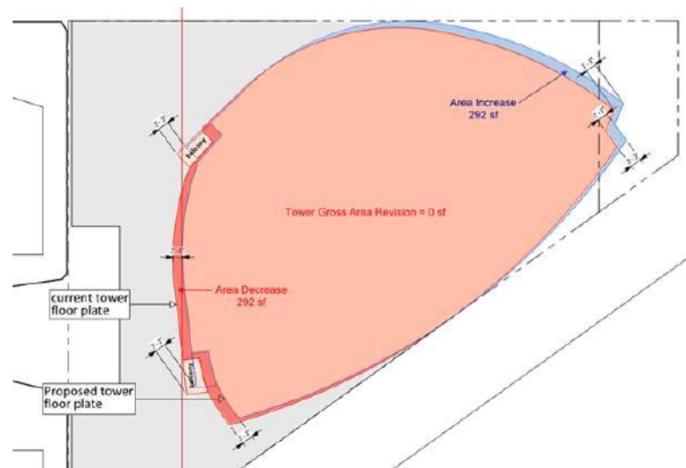
August 25<sup>th</sup>, 2017

Diane Livia  
Environmental Planner  
Planning Department, City and County of San Francisco  
1650 Mission Street, Suite 400, San Francisco, CA 94103

### One Oak Tower – Pedestrian Wind Microclimate

Dear Diane,

We are writing in connection with the recent notification received by BMT that confirms some minor changes to the position of the Tower. We understand that the key change, as indicated in the figure below, is the Tower shifts to the northeast by approximately 3'-3" along the Market Street property line axis, which results in an approximate 2'-6" shift to the east and 2'-1" shift to the north.



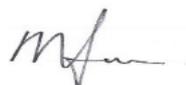
Wind tunnel testing was conducted comparing the original scenario and the shifted scenario in both project and cumulative surrounding conditions. The results are presented in the attached tables 1 and 2. The number and locations of wind hazard exceedances would be the same under the original and shifted scenarios for both the project conditions and the cumulative surrounding conditions.

Overall, from the perspective of the building's performance with respect to wind, the proposed changes to the position of the tower are minor and if made, the wind microclimate around the base of the tower would be materially the same. Therefore, the shifted tower design would not materially affect the results of the One Oak Wind Microclimate Study for the approved One Oak Project (Case No. 2009.0159E).

Yours sincerely,



**Dr. Reed Cummings**  
Project Engineer  
Wind Engineering



**Max Lee CEng MIMechE**  
Project Manager  
Wind Engineering  
1230

Table 1: Wind pedestrian comfort analysis results

Location No	Original One Oak Project in Existing Surrounds			Shifted One Oak Project in Existing Surrounds				Original One Oak Project in Cumulative Surrounds			Shifted One Oak Project in Cumulative Surrounds			
	Wind Speed exceeded 10% of time (mph)	Percentage of Time Wind Speed Exceeds 11 mph	Exceeds	Wind Speed exceeded 10% of time (mph)	Percentage of Time Wind Speed Exceeds 11 mph	Speed Change Relative to Original Project (mph)	Exceeds	Wind Speed exceeded 10% of time (mph)	Percentage of Time Wind Speed Exceeds 11 mph	Exceeds	Wind Speed exceeded 10% of time (mph)	Percentage of Time Wind Speed Exceeds 11 mph	Speed Change Relative to Original Project (mph)	Exceeds
1	23	52%	x	23	52%		x	21	49%	x	21	49%		x
2	17	34%	x	17	34%		x	16	29%	x	15	28%	-1	x
4	18	40%	x	18	40%		x	13	19%	x	13	19%		x
5	17	33%	x	16	32%	-1	x	13	20%	x	13	20%		x
6	16	32%	x	16	31%		x	18	41%	x	18	41%		x
7	10	6%		10	6%			11	9%		11	9%		
9	12	12%	x	11	10%	-1	x	13	18%	x	13	18%		x
10	11	9%		11	9%			10	7%		10	7%		
11	13	16%	x	13	16%		x	16	31%	x	16	31%		x
12	14	22%	x	14	23%		x	12	14%	x	12	14%		x
13	13	17%	x	13	17%		x	14	20%	x	14	20%		x
14	9	4%		9	4%			10	6%		10	7%		
15	12	15%	x	12	15%		x	11	10%	x	11	11%		x
16	14	21%	x	14	21%		x	12	15%	x	12	14%		x
17	8	2%		9	2%	+1		10	8%		10	8%		
18	16	32%	x	16	33%		x	12	13%	x	12	13%		x
19	12	13%	x	12	12%		x	13	19%	x	13	19%		x
20	9	5%		9	5%			11	10%		11	9%		
21	9	3%		9	3%			10	8%		11	8%	+1	
22	7	0%		8	2%	+1		9	3%		9	3%		
23	12	13%	x	12	13%		x	11	9%		11	9%		
24	9	4%		9	4%			11	10%	x	11	11%		x
25	15	25%	x	15	24%		x	13	20%	x	13	20%		x
26	10	6%		10	6%			11	11%	x	11	11%		x
27	15	25%	x	15	25%		x	17	34%	x	17	33%		x
28	15	29%	x	16	30%	+1	x	17	36%	x	17	35%		x
29	17	35%	x	17	34%		x	23	51%	x	23	51%		x
30	12	13%	x	12	13%		x	13	19%	x	13	20%		x
31	8	3%		8	3%			11	10%	x	11	10%		x
32	11	10%	x	11	10%		x	16	30%	x	16	31%		x
33	13	18%	x	13	19%		x	19	38%	x	19	38%		x
40	16	33%	x	16	32%		x	14	25%	x	14	26%		x

Table 1: Wind pedestrian comfort analysis results (con't)

Location No	Original One Oak Project in Existing Surrounds			Shifted One Oak Project in Existing Surrounds				Original One Oak Project in Cumulative Surrounds			Shifted One Oak Project in Cumulative Surrounds			
	Wind Speed exceeded 10% of time (mph)	Percentage of Time Wind Speed Exceeds 11 mph	Exceeds	Wind Speed exceeded 10% of time (mph)	Percentage of Time Wind Speed Exceeds 11 mph	Speed Change Relative to Original Project (mph)	Exceeds	Wind Speed exceeded 10% of time (mph)	Percentage of Time Wind Speed Exceeds 11 mph	Exceeds	Wind Speed exceeded 10% of time (mph)	Percentage of Time Wind Speed Exceeds 11 mph	Speed Change Relative to Original Project (mph)	Exceeds
43	15	29%	x	15	27%		x	14	24%	x	14	24%		x
50	14	25%	x	14	25%		x	14	23%	x	14	23%		x
52	13	20%	x	13	20%		x	12	14%	x	12	14%		x
53	14	25%	x	14	24%		x	14	25%	x	15	26%	+1	x
54	15	30%	x	15	29%		x	19	42%	x	19	41%		x
56	19	43%	x	18	42%	-1	x	14	22%	x	14	21%		x
57	16	31%	x	16	30%		x	14	24%	x	14	24%		x
58	17	35%	x	17	35%		x	20	46%	x	20	45%		x
61	15	26%	x	15	27%		x	14	24%	x	14	25%		x
70	11	11%	x	11	11%		x	8	1%		8	1%		
71	13	17%	x	13	17%		x	12	12%	x	12	12%		x
72	15	27%	x	15	26%		x	12	15%	x	13	16%	+1	x
85	15	28%	x	15	28%		x	13	17%	x	12	16%	-1	x
92	14	20%	x	14	20%		x	22	53%	x	22	53%		x
97	15	24%	x	15	24%		x	16	31%	x	16	30%		x
101	11	11%	x	11	11%		x	12	12%	x	12	13%		x
105	23	55%	x	23	55%		x	22	52%	x	22	51%		x
111	15	27%	x	16	31%	+1	x	16	30%	x	16	30%		x
112	18	37%	x	18	38%		x	16	33%	x	16	32%		x
113	15	28%	x	15	28%		x	14	25%	x	15	26%	+1	x
114	13	17%	x	13	16%		x	10	7%		10	7%		
115	10	5%		10	5%			9	5%		9	5%		
116	10	5%		10	5%			11	12%	x	11	11%		x
117	12	15%	x	12	14%		x	24	56%	x	24	56%		x
118	11	10%	x	12	14%	+1	x	12	16%	x	13	17%	+1	x
	<b>Average</b>	<b>Average</b>	<b>Sum</b>	<b>Average</b>	<b>Average</b>	<b>Change</b>	<b>Sum</b>	<b>Average</b>	<b>Average</b>	<b>Sum</b>	<b>Average</b>	<b>Average</b>	<b>Change</b>	<b>Sum</b>
	13.5	20.8%	45	13.6	20.7%	+0.1	45	13.9	22.2%	46	14.0	22.1%	+0.1	46

Table 2: Wind hazard analysis results

Location No	Original One Oak Project in Existing Surrounds			Shifted One Oak Project in Existing Surrounds				Original One Oak Project in Cumulative Surrounds			Shifted One Oak Project in Cumulative Surrounds			
	Wind Speed Exceeded 1 Hour per Year (mph)	Hours per Year Wind Speed Exceeds Hazard Criteria	Exceeds	Wind Speed Exceeded 1 Hour per Year (mph)	Hours per Year Wind Speed Exceeds Hazard Criteria	Hours Change Relative to Original Project	Exceeds	Wind Speed Exceeded 1 Hour per Year (mph)	Hours per Year Wind Speed Exceeds Hazard Criteria	Exceeds	Wind Speed Exceeded 1 Hour per Year (mph)	Hours per Year Wind Speed Exceeds Hazard Criteria	Hours Change Relative to Original Project	Exceeds
1	46	27	x	46	27		x	46	20	x	46	20		x
2	34	0		34	0			34	0		34	0		
4	39	3	x	39	3		x	25	0		26	0		
5	38	1	x	37	1		x	27	0		28	0		
6	31	0		31	0			36	1	x	36	1		x
7	17	0		16	0			16	0		16	0		
9	21	0		21	0			24	0		23	0		
10	22	0		22	0			22	0		21	0		
11	26	0		26	0			33	0		33	0		
12	26	0		26	0			26	0		25	0		
13	22	0		22	0			29	0		30	0		
14	16	0		16	0			20	0		19	0		
15	22	0		23	0			18	0		18	0		
16	30	0		30	0			26	0		25	0		
17	14	0		13	0			20	0		20	0		
18	28	0		28	0			16	0		16	0		
19	25	0		25	0			20	0		20	0		
20	21	0		21	0			17	0		17	0		
21	16	0		16	0			16	0		16	0		
22	13	0		12	0			13	0		13	0		
23	23	0		23	0			16	0		16	0		
24	14	0		14	0			26	0		25	0		
25	33	0		33	0			21	0		21	0		
26	20	0		19	0			21	0		21	0		
27	29	0		28	0			35	0		35	0		
28	24	0		25	0			34	0		34	0		
29	33	0		32	0			45	24	x	45	24		x
30	24	0		24	0			26	0		26	0		
31	19	0		18	0			19	0		18	0		
32	20	0		20	0			31	0		30	0		
33	25	0		26	0			47	22	x	47	22		x
40	33	0		33	0			26	0		26	0		

Table 2: Wind hazard analysis results (con't)

Location No	Original One Oak Project in Existing Surrounds			Shifted One Oak Project in Existing Surrounds				Original One Oak Project in Cumulative Surrounds			Shifted One Oak Project in Cumulative Surrounds			
	Wind Speed Exceeded 1 Hour per Year (mph)	Hours per Year Wind Speed Exceeds Hazard Criteria	Exceeds	Wind Speed Exceeded 1 Hour per Year (mph)	Hours per Year Wind Speed Exceeds Hazard Criteria	Hours Change Relative to Original Project	Exceeds	Wind Speed Exceeded 1 Hour per Year (mph)	Hours per Year Wind Speed Exceeds Hazard Criteria	Exceeds	Wind Speed Exceeded 1 Hour per Year (mph)	Hours per Year Wind Speed Exceeds Hazard Criteria	Hours Change Relative to Original Project	Exceeds
43	31	0		30	0			31	0		31	0		
50	29	0		29	0			31	0		31	0		
52	27	0		27	0			27	0		27	0		
53	25	0		25	0			29	0		29	0		
54	24	0		24	0			40	4	x	40	4		x
56	35	0		36	0			31	0		31	0		
57	38	1	x	38	1		x	34	0		33	0		
58	34	0		34	0			45	14	x	45	14		x
61	28	0		28	0			26	0		26	0		
70	20	0		20	0			12	0		12	0		
71	26	0		26	0			28	0		26	0		
72	33	0		33	0			27	0		29	0		
85	32	0		32	0			24	0		24	0		
92	32	0		31	0			51	45	x	51	45		x
97	37	1	x	37	1		x	39	2	x	39	2		x
101	20	0		20	0			21	0		22	0		
105	50	41	x	50	41		x	49	32	x	49	32		x
111	32	0		32	0			33	0		33	0		
112	41	6	x	42	6		x	35	0		35	0		
113	30	0		30	0			28	0		28	0		
114	24	0		24	0			18	0		18	0		
115	18	0		18	0			13	0		13	0		
116	20	0		20	0			15	0		15	0		
117	19	0		19	0			48	42	x	48	42		x
118	22	0		22	0			26	0		26	0		
	<b>Average</b>	<b>Sum</b>	<b>Sum</b>	<b>Average</b>	<b>Sum</b>	<b>Sum</b>	<b>Sum</b>	<b>Average</b>	<b>Sum</b>	<b>Sum</b>	<b>Average</b>	<b>Sum</b>	<b>Sum</b>	<b>Sum</b>
	26.9	80	7	26.8	80	0	7	27.9	206	10	27.8	206	0	10

**ATTACHMENT B**  
**Prevision Design, Memo: “Effects of Tower Shift on**  
**Shading for One Oak Street Project.” August 25, 2017**



Ms. Diane Livia, Environmental Planner  
Planning Department, City and County of San Francisco  
1650 Mission Street, Suite 400  
San Francisco, CA 94103

August 25, 2017

## **MEMO: Effects of Tower Shift Alternative on Shading cast by One Oak Street Project**

Dear Ms. Livia:

Per your request, PreVision Design has prepared a comparative study quantifying the shading effects that would be generated by shifting the One Oak Project's 9,000 sf tower floorplate to the northeast by approximately 3'-3" along the Market Street property line axis (an approximate 2'-6" shift to the east and 2'-1" shift to the north, see diagram on page 3) relative to the project as analyzed. This memo compares the quantitative and timing effects such this Tower Shift Alternative would have on PreVision Design's previous study of project-generated shading on Patricia's Green, the Page & Laguna Mini Park, and the 11<sup>th</sup>/Natoma Park site, originally published on 5/30/2017.

### Notes on Methodology:

1. Typically, the percentage of annual shadow is expressed to an accuracy of two decimal places (0.00%), however the changes in shading resulting from this tower shift are so small they require an additional decimal point of accuracy (0.000%) to demonstrate any change in percentage value.
2. Due to the graphical scale of the shadow diagrams relative to the small shift in size and location of new shadows, the difference between the graphics prepared for the project as previously analyzed and the Tower Shift Alternative's shading would not be easily perceptible. For this reason, updated shadow diagrams for the Tower Shift Alternative have not been generated.

### Patricia's Green

On an annual basis, the Tower Shift Alternative would result in 1,419 sfh of *additional* shadow relative to the project as currently proposed, equal to an increase of 0.003% of the 66,622,661 sfh of Theoretical Annual Available Sunlight (TAAS) for Patricia's Green. The change would not alter the number, range of dates, or date of maximum project-generated shading, nor would the maximum and average daily duration of shading be altered<sup>1</sup>. A detailed comparison of shading effects of the project as proposed vs. the Tower Shift Alternative on Patricia's Green is included on Page 4.

### Page & Laguna Mini Park

On an annual basis, the Tower Shift Alternative would result in 105 sfh of *additional* shadow relative to the project as currently proposed, equal to an increase of 0.001% of the 24,402,522 sfh of TAAS for Page & Laguna Mini Park. The change would not alter the number, range of dates, or date of maximum project-generated shading, nor would the maximum and average daily duration of shading be altered. A detailed comparison of shading effects of the project as proposed vs. the Tower Shift Alternative on the Page & Laguna Mini Park is included on Page 5.

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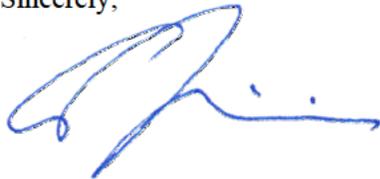
<sup>1</sup> Per city analysis standards, the study reflects samples taken every seven days and at 15 minute intervals on those dates, therefore it is possible that there exists some additional variance between the Project and the Tower Shift Alternative that falls within these interval tolerances.

11th/Natoma Park Site

On an annual basis, the Tower Shift Alternative would result in a 1,955 sfh *reduction* in shadow relative to the project as currently proposed, equal to a decrease of 0.003% of the 72,829,287 sfh of TAAS for the 11th/Natoma Park site. The change would also reduce the number of days affected by 14 days, alter the range of dates from Jun 9 - Jul 5 to Jun 16 - Jun 28, and reduce the average and maximum duration of shading by 1 minute. The date of maximum project-generated shading would remain the same, however the largest shadow on that date would be less than half as large (218 sf vs. 485 sf). A detailed comparison of shading effects of the project as proposed vs. the Tower Shift Alternative on the 11<sup>th</sup>/Natoma Park site is included on Page 6.

Please do not hesitate to contact me if there are any questions regarding this update memo, or if additional analysis is required.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Adam Phillips', with a stylized flourish at the end.

Adam Phillips  
Principal, PreVision Design

cc: Rick Cooper

Tower Shift Diagram



Patricia's Green

THEORETICAL ANNUAL AVAILABLE SUNLIGHT (TAAS)	PATRICIA'S GREEN
Area of Patricia's Green	0.41 acres (17,903 sf)
Hours of annual available sunlight	3721.4 hrs
TAAS for Patricia's Green	66,622,661 sfh

EXISTING (CURRENT) LEVELS OF SHADOW	PATRICIA'S GREEN
Existing annual total shading on park (sfh)	12,034,236 sfh
Existing shading as percentage of TAAS	18.063%

NEW SHADOW CAST BY THE PROPOSED ONE OAK STREET PROJECT	PATRICIA'S GREEN
Additional annual shading on Patricia's Green from Project	148,200 sfh
Additional annual shading from Project as percentage of TAAS	0.222%
Combined total annual shading existing + Project (sfh)	12,182,435 sfh
Combined total annual shading from existing + Project as percentage of TAAS	18.285%
Number of days when new shading from Project would occur	Approx. 96 days annually
Dates when new shadow from Project would be cast on Patricia's Green	Approx. 2/17 - 4/5 & 9/8 - 10/25
Annual range in duration of new Project shadow	Zero to approx. 47 min
Range in area of new Project shadow (sf)	Zero to 9,604 sf
Average daily duration of new Project shadow (when present)	Approx. 28 min.

MAXIMUM NEW SHADING BY THE PROPOSED PROJECT	PATRICIA'S GREEN
Dates of maximum new shading from proposed project (max sfh)	Mar 8 & Oct 4
Total new shading on date(s) of maximum shading (sfh)	3,561.35 sfh
Percentage new shadow on date(s) of maximum shading	2.066%
Longest duration of new shading (Date of maximum shading duration)	Approx. 39 min (Sep 20 & Mar 22)
Largest new shadow area at any time annually (Date & Time)	9,604.15 sf (Oct 4/Mar 8 at 8:30 AM)
Percentage of Patricia's Green covered by largest new shadow	53.647%

NEW SHADOW CAST BY THE PROPOSED TOWER SHIFT ALTERNATIVE	PATRICIA'S GREEN
Additional annual shading from Tower Shift Alternative only (sfh)	149,619 sfh
Additional annual shading from Tower Shift Alternative only as percentage of TAAS	0.225%
Combined total annual shading Existing + Tower Shift Alternative (sfh)	12,183,855 sfh
Combined shading from Existing + Tower Shift Alternative as percentage of TAAS	18.288%
Number of days when new shading from Tower Shift Alternative would occur	96 days annually
Dates when new shading from Tower Shift Alternative would occur	2/17 - 4/5 & 9/8 - 10/25
Annual range in duration of new Tower Shift Alternative shadow	Zero to approx. 47 min
Range in area of Tower Shift Alternative new shadows (sf)	Zero to 9,490 sf
Average daily duration of new Tower Shift Alternative shadow (when present)	Approx. 28 min.

PROPOSED TOWER SHIFT ALTERNATIVE MAX SHADING DAY(S)	PATRICIA'S GREEN
Dates of maximum Tower Shift Alternative new shading (max sfh)	Mar 8 & Oct 4
Total new shading on date(s) of maximum shading (sfh)	3,598.21 sfh
Percentage new shading on date(s) of maximum shading	2.087%
Longest duration of new shading (date of max shading duration)	Approx. 39 min (Sep 20 & Mar 22)
Largest new shadow area at any time annually (date & time)	9,490.21 sf (Oct 4/Mar 8 at 8:30 AM)
Percentage of Patricia's Green covered by largest new shadow	53.010%

Page & Laguna Mini Park

THEORETICAL ANNUAL AVAILABLE SUNLIGHT (TAAS)	PAGE AND LAGUNA MINI PARK
Area of Page and Laguna Mini Park	0.15 acres (6,557 sf)
Hours of annual available sunlight	3721.4 hrs
TAAS for Page and Laguna Mini Park	24,402,522 sfh

EXISTING (CURRENT) LEVELS OF SHADOW	PAGE AND LAGUNA MINI PARK
Existing annual total shading on park (sfh)	12,098,693 sfh
Existing shading as percentage of TAAS	49.580%

NEW SHADOW CAST BY THE PROPOSED ONE OAK STREET PROJECT	PAGE AND LAGUNA MINI PARK
Additional annual shading on Page and Laguna Mini Park from Project	9,576 sfh
Additional annual shading from Project as percentage of TAAS	0.039%
Combined total annual shading existing + Project (sfh)	12,108,269 sfh
Combined total annual shading from existing + Project as percentage of TAAS	49.619%
Number of days when new shading from Project would occur	Approx. 69 days annually
Dates when new shadow from Project would be cast on Page and Laguna Mini Park	Approx. May 19 - Jul 26
Annual range in duration of new Project shadow	Zero to approx. 28 min
Range in area of new Project shadow (sf)	Zero to 650 sf
Average daily duration of new Project shadow (when present)	Approx. 15 min.
MAXIMUM NEW SHADING BY THE PROPOSED PROJECT	PAGE AND LAGUNA MINI PARK
Dates of maximum new shading from proposed project (max sfh)	June 21
Total new shading on date(s) of maximum shading (sfh)	190.51 sfh
Percentage new shadow on date(s) of maximum shading	0.227%
Longest duration of new shading (Date of maximum shading duration)	Approx. 22 min (June 21)
Largest new shadow area at any time annually (Date & Time)	649.56 sf (Jul 5/ Jun 7 at 6:52 AM)
Percentage of Page and Laguna Mini Park covered by largest new shadow	9.906%

NEW SHADOW CAST BY THE PROPOSED TOWER SHIFT ALTERNATIVE	PAGE AND LAGUNA MINI PARK
Additional annual shading from Tower Shift Alternative only (sfh)	9,681 sfh
Additional annual shading from Tower Shift Alternative only as percentage of TAAS	0.040%
Combined total annual shading Existing + Tower Shift Alternative (sfh)	12,108,374 sfh
Combined shading from Existing + Tower Shift Alternative as percentage of TAAS	49.620%
Number of days when new shading from Tower Shift Alternative would occur	69 days annually
Dates when new shading from Tower Shift Alternative would occur	May 19 - Jul 26
Annual range in duration of new Tower Shift Alternative shadow	Zero to approx. 28 min
Range in area of Tower Shift Alternative new shadows (sf)	Zero to 779 sf
Average daily duration of new Tower Shift Alternative shadow (when present)	Approx. 15 min.
PROPOSED TOWER SHIFT ALTERNATIVE MAX SHADING DAY(S)	PAGE AND LAGUNA MINI PARK
Dates of maximum Tower Shift Alternative new shading (max sfh)	June 21
Total new shading on date(s) of maximum shading (sfh)	190.52 sfh
Percentage new shading on date(s) of maximum shading	0.227%
Longest duration of new shading (date of max shading duration)	Approx. 22 min (June 21)
Largest new shadow area at any time annually (date & time)	779.03 sf (Jul 5/ Jun 7 at 6:52 AM)
Percentage of Page and Laguna Mini Park covered by largest new shadow	11.880%

### 11th/Natoma Park Site

THEORETICAL ANNUAL AVAILABLE SUNLIGHT (TAAS)	11TH / NATOMA PARK SITE
Area of 11th / Natoma Park Site	0.45 acres (19,570 sf)
Hours of annual available sunlight	3721.4 hrs
TAAS for 11th / Natoma Park Site	72,829,287 sfh

EXISTING (CURRENT) LEVELS OF SHADOW	11TH / NATOMA PARK SITE
Existing annual total shading on park (sfh)	14,449,512 sfh
Existing shading as percentage of TAAS	19.840%

NEW SHADOW CAST BY THE PROPOSED ONE OAK STREET PROJECT	11TH / NATOMA PARK SITE
Additional annual shading on 11th / Natoma Park Site from Project	2,838 sfh
Additional annual shading from Project as percentage of TAAS	0.004%
Combined total annual shading existing + Project (sfh)	14,452,350 sfh
Combined total annual shading from existing + Project as percentage of TAAS	19.844%
Number of days when new shading from Project would occur	Approx. 27 days annually
Dates when new shadow from Project would be cast on 11th / Natoma Park Site	Approx. Jun 9 - Jul 5
Annual range in duration of new Project shadow	Zero to approx. 36 min
Range in area of new Project shadow (sf)	Zero to 485 sf
Average daily duration of new Project shadow (when present)	Approx. 18 min.

MAXIMUM NEW SHADING BY THE PROPOSED PROJECT	11TH / NATOMA PARK SITE
Dates of maximum new shading from proposed project (max sfh)	June 21
Total new shading on date(s) of maximum shading (sfh)	145.65 sfh
Percentage new shadow on date(s) of maximum shading	0.058%
Longest duration of new shading (Date of maximum shading duration)	Approx. 19 min (Jun 28 & Jun 14)
Largest new shadow area at any time annually (Date & Time)	485.49 sf (June 21 at 7:15 PM)
Percentage of 11th / Natoma Park Site covered by largest new shadow	2.481%

NEW SHADOW CAST BY THE PROPOSED TOWER SHIFT ALTERNATIVE	11TH / NATOMA PARK SITE
Additional annual shading from Tower Shift Alternative only (sfh)	883 sfh
Additional annual shading from Tower Shift Alternative only as percentage of TAAS	0.001%
Combined total annual shading Existing + Tower Shift Alternative (sfh)	14,450,394 sfh
Combined shading from Existing + Tower Shift Alternative as percentage of TAAS	19.841%
Number of days when new shading from Tower Shift Alternative would occur	13 days annually
Dates when new shading from Tower Shift Alternative would occur	Jun 16 - Jun 28
Annual range in duration of new Tower Shift Alternative shadow	Zero to approx. 35 min
Range in area of Tower Shift Alternative new shadows (sf)	Zero to 218 sf
Average daily duration of new Tower Shift Alternative shadow (when present)	Approx. 18 min.

PROPOSED TOWER SHIFT ALTERNATIVE MAX SHADING DAY(S)	11TH / NATOMA PARK SITE
Dates of maximum Tower Shift Alternative new shading (max sfh)	June 21
Total new shading on date(s) of maximum shading (sfh)	65.38 sfh
Percentage new shading on date(s) of maximum shading	0.026%
Longest duration of new shading (date of max shading duration)	Approx. 19 min (Jun 28 & Jun 14)
Largest new shadow area at any time annually (date & time)	217.94 sf (June 21 at 7:15 PM)
Percentage of 11th / Natoma Park Site covered by largest new shadow	1.114%



# SAN FRANCISCO PLANNING DEPARTMENT

**MEMO**

## Notice of Electronic Transmittal Response to Appeal Letter

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

Reception:  
415.558.6378

Fax:  
415.558.6409

Planning  
Information:  
415.558.6377

**DATE:** August 28, 2017  
**TO:** Angela Calvillo, Clerk of the Board of Supervisors  
**FROM:** Diane Livia, Environmental Planner  
Planning Department (415) 575-8758  
**RE:** One Oak, 1500-1540 Market Street  
Planning Case No. 2009.0159E

In compliance with San Francisco's Administrative Code Section 8.12.5 "Electronic Distribution of Multi-Page Documents," the Planning Department has submitted a multi-page Response to Appeal Letter for the One Oak, 1500-1540 Market Street project in digital format. One hard copy has been submitted to the Clerk of the Board for the file of the Clerk. Additional hard copies may be requested by contacting Diane Livia of the Planning Department at 415-575-8758.

The San Francisco Board of Supervisors will have before it for its consideration the appeal of the Planning Commission's certification of the EIR for this project.

cc: AnMarie Rodgers



# SAN FRANCISCO PLANNING DEPARTMENT

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## Appeal of EIR Certification

### One Oak Street (1500–1540 Market Street) Project

**DATE:** August 28, 2017

**TO:** Angela Calvillo, Clerk of the Board of Supervisors

**FROM:** Lisa Gibson, Environmental Review Officer – (415) 575-9034  
Diane Livia, Environmental Planner – (415) 575-8758  
Rick Cooper, Senior Planner – (415) 575-9027

**RE:** File No. 170812, Planning Department Case No. 2009.0159E,  
Appeal of the Environmental Impact Report Certification for the  
One Oak Street (1500–1540 Market St.) Project, Block 836,  
Lots: 001,002, 003, 004, and 005

**PROJECT SPONSOR:** One Oak Owner, LLC

**APPELLANT:** Jason Henderson

**HEARING DATE:** September 5, 2017

**ATTACHMENTS:** Letter, BMT Fluid Dynamics, May 31, 2017

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## INTRODUCTION

This memorandum and the attached documents are a response to the letter of appeal to the Board of Supervisors (“the Board”) regarding the issuance of a Final Environmental Impact Report (“Final EIR”) under the California Environmental Quality Act (“CEQA Determination”) for the One Oak (1500–1540 Market Street) Project (“the proposed project”). The Final EIR was certified by the Planning Commission (“the Commission”) on June 15, 2017. The appeal to the Board was filed on July 17, 2017 by Sue Hestor on behalf of Appellant Jason Henderson.

Appellant’s two-page appeal letter incorporates by reference and attaches two letters sent to the Planning Department from Appellant, in his capacity as Chair of the Hayes Valley Neighborhood Association Transportation and Planning Committee, as evidence in support of the appeal: a January 4, 2017 letter submitted to the department during the Draft EIR public comment period, and a May 26, 2017 letter submitted to the Planning Commission in advance of their June 15, 2017 hearing on Final EIR certification and project approvals. Note, however, that Appellant does not purport to represent the Hayes Valley Neighborhood Association in the current appeal.

The Final EIR, which consists of the Draft Environmental Impact Report (“Draft EIR”) and the Response to Comments (“RTC”) document, was provided to the Clerk of the Board on June 1, 2017.

The decision before the Board is whether to uphold the certification of the Final EIR by the Commission and deny the appeal, or to overturn the Commission’s decision to certify the Final EIR and return the project to the department for additional environmental review.

For the reasons set forth in this Appeal Response, the department believes that the Final EIR complies with the requirements of CEQA, the CEQA Guidelines, and Chapter 31 of the San Francisco Administrative Code, and provides an adequate, accurate, and objective analysis of the potential environmental impacts of the proposed project. Therefore, the department respectfully recommends that the Board uphold the Planning Commission’s certification of the Final EIR.

## SITE DESCRIPTION

The project site is located at 1500-1540 Market Street at the northwest corner of the intersection of Market Street, Oak Street, and Van Ness Avenue in the southwestern portion of San Francisco’s Downtown/Civic Center neighborhood. The project site is entirely within the following zoning districts: the C-3-G (Downtown Commercial, General) District, with an overlay of the Market Street Special Sign District (Planning Code Section 608.8), and the Van Ness and Market Downtown Residential Special Use District (SUD) (Planning Code Section 249.33). Most of the project site is within the 120/400 R 2 Height and Bulk District that establishes a 120-foot-tall limit for the height of the building’s podium base, and a 400-foot-tall height limit that could accommodate a tower. The westernmost portion of the project site is within the 120-R-2 Height and Bulk District. The project site is also within the Market and Octavia Area Plan area. The project site collectively includes both a “building site” component and a “right-of-way improvement area” component within surrounding public rights-of-way.

The project building site is made up of five contiguous, privately owned lots within Assessor’s Block 836 (Lots 1, 2, 3, 4, and 5), an 18,219-square-foot (“sq. ft.”) trapezoid, bounded by Oak Street to the north, Van Ness Avenue to the east, Market Street to the south, and the interior property line shared with the neighboring property to the west (1546-1564 Market Street). The easternmost portion of the building site, 1500 Market Street (Lot 1), is occupied by an existing three-story, 2,750-sq.-ft. commercial building, built in 1980. This building is partially occupied by a convenience retail use (All Star Café) on the ground floor and offices on the upper floors. The building also contains an elevator entrance to the Muni Van Ness station that opens onto Van Ness Avenue. Immediately west of the 1500 Market Street building is an existing valet-operated surface parking lot accommodating 47 vehicles (on Lots 2, 3, and 4). The parking lot is fenced along its Market Street and Oak Street frontages and is entered from Oak Street. The westernmost portion of the building site at 1540 Market Street (Lot 5) is occupied by a four-story, 48,225-sq.-ft. commercial office building, built in 1920.

In addition to the building site, the project site also includes surrounding areas within the adjacent public rights-of-way (collectively, the “right-of-way improvement area”) in which streetscape improvements would be constructed as part of the proposed project, including a segment of the Oak Street right-of-way (including roadway and sidewalks) along the Oak Street frontages of Lots 1-5. The project site’s right-of-way improvement area also includes the sidewalk areas along the Van Ness Avenue and Market Street

frontages of the building site component of the project site. Adjacent to the project site to the east, the existing Van Ness Avenue sidewalk is about 15 feet wide. The existing Market Street sidewalk is about 25 feet wide and narrows to 15 feet at the western end of the project site. The escalator and stairway entrance to the Van Ness Muni Metro station occupies a portion of the Market Street sidewalk, narrowing the walkway to 9 feet. The sidewalk along Market Street is paved in characteristic red brick and includes three of the 327 historic "Path of Gold" light standards that line Market Street (1-2470 Market Street, San Francisco Landmark #200).

## PROJECT DESCRIPTION

The proposed One Oak Street Project consists of the demolition of existing buildings within the project site, removal of a parking lot on the project site at 1500-1540 Market Street and construction of a new 310-unit, 40-story residential tower (400 feet tall, plus a 20 foot-tall parapet) with ground-floor commercial space and one off-street loading space. The proposed project would also include a subsurface parking garage for residents (155 spaces were studied in the Draft EIR, but the project sponsor has reduced the amount of parking to 136 spaces as currently proposed). Bicycle parking for residents would be provided on a second-floor mezzanine; for visitors, parking would be provided in bicycle racks on adjacent sidewalks. The proposed project would also include construction of a public plaza within the Oak Street right-of-way, construction of several wind canopies within the proposed plaza and construction of one wind canopy within the sidewalk at the northeast corner of Market Street and Polk Street to reduce pedestrian-level winds.

The EIR also studies a variant to the proposed project, an optional scheme that was available to the project sponsor or decision maker for later selection and approval. The variant would not relocate the Muni elevator offsite, and would not include a contraflow fire lane along Franklin Street, as described in the EIR. Since publication of the Draft EIR, the project sponsor has indicated that it selected this variant as the preferred project. Additionally, in its selection of the variant as the preferred project, the project sponsor provided updated details and design refinements for Oak Plaza, in conformity with the *Better Streets Plan* and in response to input from the Department of Public Works as described in the RTC document, pp. 2.1-2.7. The Planning Commission approved this variant, as modified and updated in the RTC document.

Subsequent to certification of the final EIR, the project sponsor proposed a revision to the project. The project revision consists of shifting the tower location 3'-3" northeast, along the diagonal Market Street property line axis. The revision shifts the tower 2'-1" to the north, and 2'-6" to the east. This modification eliminates the need for the General Plan Amendment and Zoning Map Amendment. The tower shift would not change the ground floor footprint, thereby retaining the pedestrian areas in the plaza. The shift would increase the size of the floorplates at the podium on levels 4 through 12 (9 floors) by 245 gross square feet each (total of 2,205 gross sq. ft.). As noted below on page 5 under "Environmental Review Process," the department will prepare an addendum to the EIR to document that the project revisions do not trigger the need to recirculate the EIR.

## ENVIRONMENTAL REVIEW PROCESS

On February 26, 2009, a previous project sponsor submitted an Environmental Evaluation Application to the department for the project site, and subsequently revised its Environmental Evaluation Application

on August 27, 2012. The project (a 37-story, 435-foot-tall, 258-unit residential tower with ground-floor retail and 69 parking spaces in two basement levels) would have occupied Lots 2, 3, 4, and 5 but would not have included the easternmost lot on the block (Lot 1) within the project site. The department published a Notice of Preparation for the previous iteration of the project on October 10, 2012. That proposal did not advance and the project was subsequently revised, as described below.

The current project sponsor, One Oak Owner, LLC, submitted updated information to the department for the currently proposed project under the same department case number as that assigned to the previous iteration of the project (Case No. 2009.0159E). To distinguish between the two iterations, a Notice of Preparation was published for the current proposal, which incorporated information from the prior NOP for the site, and described the revisions to the project.

The department prepared an Initial Study and published a Notice of Preparation of an EIR on June 17, 2015, announcing its intent to prepare and distribute a focused EIR. The NOP/IS found that the following environmental effects of the project, as fully analyzed in the NOP/IS, would be less than significant or less than significant with mitigation: Land Use and Land Use Planning; Population and Housing; Cultural and Paleontological Resources; Noise; Air Quality; Greenhouse Gas Emissions; Recreation; Utilities and Service Systems; Public Services; Biological Resources; Geology and Soils; Hydrology and Water Quality; Hazards and Hazardous Materials; Mineral and Energy Resources; and Agricultural and Forest Resources.

The NOP/IS determined that the proposed project could result in potentially significant environmental impacts, and that an analysis of the following environmental topics is required in an EIR: Transportation and Circulation; Wind; and Shadow.

Publication of the NOP/IS initiated a 30-day public review and comment period that ended on July 17, 2015. During the public review and comment period, the department received two comment letters from interested parties pertaining to the topics of traffic, aesthetics, urban design, wind, and shadow. The department considered the comments made by commenters in preparation of the Draft EIR for the proposed project.

On November 16, 2016, the department published a Draft EIR for the proposed project that included an analysis of the following environmental topics: Transportation and Circulation; Wind; and Shadow. The Draft EIR also included the topic of Land Use and Land Use Planning for informational purposes, although the NOP/IS determined that Land Use impacts would be less than significant.

On January 5, 2017, the Planning Commission held a duly noticed public hearing on the Draft EIR. The 56-day period for acceptance of written comments ended on January 10, 2017. The department then prepared a RTC document, published on June 1, 2017, to address environmental issues raised by written and oral comments received during the public comment period and at the public hearing for the Draft EIR. The RTC contained additional analysis and reports that verified, expanded upon, and clarified the Draft EIR contents, but did not change any of the Draft EIR's conclusions regarding the environmental impacts of the proposed project. The RTC included revisions to the text of the Draft EIR based on changes and clarifications to the proposed project initiated by the project sponsor, some in response to public comment, and corrected nonsubstantive errors in the Draft EIR.

The Final EIR consists of the Draft EIR together with the RTC document. On June 15, 2017, at a duly noticed public hearing, the San Francisco Planning Commission certified the Final EIR. This was based on the determination that the contents of the Final EIR and the procedures through which it was prepared, publicized, and reviewed complied with CEQA, the CEQA Guidelines, and Chapter 31 of the San Francisco Administrative Code. The Planning Commission found the Final EIR to be adequate, accurate and objective, that it reflects the independent analysis and judgment of the City, and that the RTC document contains no significant revisions to the Draft EIR. Planning Commission Motion No. 19938 (**Attachment B**) certified the Final EIR for the proposed project in compliance with CEQA, the CEQA Guidelines, and Chapter 31.

The department has reviewed the recent proposed revision to the project and will prepare an addendum to the EIR to document that the revised project does not result in new or substantially more severe significant environmental impacts as compared to those identified in the EIR. The department will provide the addendum in a supplemental appeal response to the Board prior to the EIR appeal hearing.

#### **STANDARDS OF ADEQUACY FOR CERTIFICATION OF AN EIR**

Under San Francisco Administrative Code Section 31.16(c)(3), the grounds for appeal of an EIR are limited to whether the EIR complies with CEQA, including whether “it is adequate, accurate and objective, sufficient as an informational document, correct in its conclusions, and reflects the independent judgment and analysis of the City and whether the Planning Commission certification findings are correct.” The Commission’s adoption of CEQA Findings (including associated mitigation measures) and a Statement of Overriding Considerations (e.g., rejecting alternatives on the basis of their financial infeasibility and inability to meet project objectives and the finding of overriding benefits of the project) is part of the Section 309 Authorization approval and Conditional Use Authorization approval of the project by the Planning Commission, and is therefore not within the scope of what is appealable to the Board of Supervisors as set forth in Administrative Code Section 31.16(c)(3). Rather, an appeal of a Section 309 Authorization approval and its associated CEQA Findings must be made to the Board of Appeals, while an appeal of the Conditional Use Authorization and the associated CEQA Findings can be made to the Board under certain circumstances. However, no such appeals were filed and all that is pending before the Board is the adequacy of the EIR as stated above.

The standards for adequacy of an EIR are set forth in CEQA Guidelines Section 15151, which states:

“An EIR should be prepared with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection, but for adequacy, completeness, and a good faith effort at full disclosure.”

San Francisco Administrative Code Section 31.16(b)(6) provides that in reviewing an appeal of a CEQA decision, the Board of Supervisors “shall conduct its own independent review of whether the CEQA decision adequately complies with the requirements of CEQA. The Board shall consider anew all facts,

evidence and issues related to the adequacy, accuracy and objectiveness of the CEQA decision, including, but not limited to, the sufficiency of the CEQA decision and the correctness of its conclusions.”

**CONCERNS RAISED AND PLANNING DEPARTMENT RESPONSES:**

The two-page July 17, 2017 appeal letter contains five general concerns as the basis for the appeal of the EIR certification for the proposed project. As noted under Introduction above, the appeal letter incorporated and attached two letters to the Planning Commission from the Hayes Valley Neighborhood Association, both signed by Appellant as Chair of the Transportation and Planning Committee of that Association, as well as a resolution by the Market & Octavia Advisory Committee regarding parking.

The five general concerns expressed in Appellant’s letter are listed below in the order in which they appear in the appeal letter and a corresponding response is provided below each concern.

The attached Hayes Valley Neighborhood Association letters to the Planning Commission do not raise any new environmental issues that were not already addressed either in the Draft EIR or in the Responses to Comments document. The letter dated January 4, 2017 is comments on the Draft EIR for the One Oak Street project, submitted prior to the Planning Commission’s January 5 public hearing on the Draft EIR. This letter is fully responded to in Section 4, Comments and Responses, of the RTC document. The letter dated May 26, 2017 is addressed to the President and Vice President of the Planning Commission, in advance of the Commission’s public hearing on the One Oak Street project on June 15. The one physical environmental issue raised in this letter – wind impacts on cyclists – is addressed in the RTC document in Response WI-2 on pp. 4.64-4.67. The other issues are related to the merits of the project.

**Concern 1: Appellant asserts that the EIR is inadequate because it does not analyze an alternative with on-site inclusionary housing.**

**Response 1: An alternative that provides on-site inclusionary housing is not required under CEQA. There is no substantial evidence in the record that an economic or social effect would result in effects to the physical environment.**

CEQA requires that “An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the *significant* effects of the project, and evaluate the comparative merits of the alternatives.” (CEQA Guidelines, Section 15126.6 (a), *emphasis added*)

Whether residential units of the project are market-rate or Below Market Rate (BMR) is not germane to the significance of physical environmental impacts under CEQA. Rather, the issue of inclusionary housing is a social and economic consideration. Section 15131(a) of the CEQA Guidelines states that “[e]conomic or social effects of a project shall not be treated as significant effects on the environment” unless those effects are part of a chain of cause and effect between the project and a physical change. Evidence of social or economic impacts (e.g., rising property values, increasing rents, changing neighborhood demographics, etc.) that do not contribute to, or are not caused by, physical impacts on the environment are not substantial evidence of a significant effect on the environment. CEQA prohibits the finding of significant impacts that are not based on substantial evidence of a proposed project’s adverse physical changes to the environment. The social and economic concerns related to affordable housing,

neighborhood gentrification and tenant displacement are being addressed through the City's rent control, planning and policy development processes. As analyzed in the EIR in the Notice of Preparation/Initial Study (EIR Appendix A, pp. 51-56) and on RTC pp. 4.77-4.81, there is no evidence that the proposed project would result in potential social and economic effects that would indirectly result in significant effects to the physical environment and are therefore beyond the scope of this EIR.

The presence or absence of affordable units in the proposed project does not result in any significant physical impacts or change the significance of impacts identified in the EIR (including vehicle miles traveled ("VMT") and other transportation impacts). Because alternatives are intended to avoid or substantially lessen a significant effect of the project, and because choosing to pay an in-lieu fee instead of constructing affordable units would not result in a significant physical environmental effect, presenting an alternative with on-site inclusionary housing in the EIR instead of paying the fee would not fulfill the requirements of alternatives in an EIR. Therefore, no such alternative is required.

As noted on EIR p. 2.12 and RTC p. 4.80, the project sponsors would be required to pay an in-lieu fee to meet its affordable housing requirements under the City's Inclusionary Affordable Housing Program. The Mayor's Office of Housing, ("MOHCD"), has indicated that, subject to the satisfaction of certain conditions, it intends to direct in-lieu fees from the proposed project to develop 72 BMR units on former Central Freeway Parcels R, S and U, within 0.3 mile of the project site. Residential development projects on these Central Freeway Parcel sites were considered reasonably foreseeable projects for purposes of analysis of cumulative impacts in the EIR (EIR pp. 4.A.6-4.A.7). However, these future residential projects are separate from and independent of the proposed project and would be subject to their own independent review of environmental impacts under CEQA. The socioeconomic status of residents of these future projects would be immaterial to the future analysis of physical environmental consequences of those projects under CEQA.

In recent discussions between the project Sponsor and the MOHCD, the project sponsor has proposed to fund up to an additional 30 BMR units (up to 102 units in total, including 30 units for transitional aged youth) on Parcels R, S and U using additional directed fees from the one Oak's affordable housing obligations under the Market-Octavia and Van Ness & Market SUD, as well as a Child Care Center and a Community Center to be partially funded by One Oak's Infrastructure Fees allocated for such uses.

In addition to complying with the Inclusionary Affordable Housing Program, the project would be subject to the Market-Octavia Affordable Housing Fees and Van Ness & Market SUD Affordable Housing Fees.

There is no substantial evidence in the record of any significant adverse physical environmental change that would result from the project sponsor's election to satisfy its requirement under Planning Code Section 415 and other Planning Code affordable housing requirements by paying an in lieu fee rather than providing the required BMR units on-site, and Appellants present none in their appeal. In the absence of any such significant effect, no alternative that provides on-site BMR units is required.

**Concern 2: Appellant asserts that the EIR inadequately analyzed transportation impacts, particularly regarding its analysis of vehicle miles traveled impacts.**

**Response 2: The EIR fully addressed transportation impacts, including VMT. The department's approach in assessing VMT impacts in CEQA documents is consistent with adopted Planning Commission policy and the methodology uses state-of-the art activity based modeling.**

As indicated on EIR p. 4.C.26, California Senate Bill 743 requires the California Office of Planning and Research (OPR) to establish criteria for determining the significance of transportation impacts that shall promote the reduction of greenhouse gas emissions, the development of multimodal transportation networks, and a diversity of land uses. The bill further calls for OPR, in developing the criteria, to recommend potential metrics to measure transportation impacts, including VMT. VMT is a measure of the amount and distance that a project causes potential residents, tenants, employees, and visitors to drive, including the number of passengers within a vehicle. In January 2016, OPR published for public review and comment a *Revised Proposal on Updates to the CEQA Guidelines on Evaluating Transportation Impacts in CEQA*<sup>1</sup> (proposed transportation impact guidelines) recommending that lead agencies measure transportation impacts for projects using a VMT metric. OPR's proposed transportation impact analysis guidelines provide substantial evidence for the use of the VMT metric and setting VMT thresholds of significance. For land use projects, OPR recommended using a VMT efficiency (e.g., per capita) threshold set at 15 percent below the existing regional average, as this threshold is "both reasonably ambitious and generally achievable."

The San Francisco Planning Commission adopted VMT as a significance criterion via Resolution 19579 on March 3, 2016.<sup>2</sup> Resolution 19579 incorporated by reference OPR's proposed and forthcoming required changes to the CEQA Guidelines. The EIR (pp. 4.C.26 and 4.C.34-4.C.36) discusses the resolution in more detail. Attachment F of the March 3, 2016 Planning Commission staff report supporting this resolution provides the department's methodology, analysis, and recommendations for the VMT analysis.

Appellant states that the use of a VMT threshold of significance set at 15 percent below regional average is inadequate and instead the department should use a much lower VMT threshold of significance, including the possibility of zero VMT. Appellant states that a much lower VMT threshold of significance is needed at the One Oak project site because of its proximity to an already congested street and subway network of people traveling by various modes (e.g., walking, bicycling, transit). Appellant also states that the regional threshold of significance does not adequately capture the VMT impacts on those various modes of travel. Appellant is incorrect regarding the first point and is misunderstanding the approach the department uses to analyze localized impacts.

The thresholds of significance that the department uses for VMT analysis meet the criteria of Senate Bill 743: they demonstrate whether a development is in a transportation-efficient location within the region, with safe and adequate access to a multi-modal transportation system and key destinations, and whether the development will help the city, region, and state reach their greenhouse gas reduction targets. By stating that automobile capacity is already constrained near the site and that the VMT threshold should be zero, Appellant is essentially arguing for an automobile capacity metric (e.g., vehicular level of service

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<sup>1</sup> This document is available online at: [https://www.opr.ca.gov/s\\_sb743.php](https://www.opr.ca.gov/s_sb743.php).

<sup>2</sup> San Francisco Planning Department, Executive Summary, Resolution Modifying Transportation Impact Analysis, Hearing date: March 3, 2016.

[LOS]), the former metric that the City used and subsequently abandoned in favor of the VMT metric after passage of SB 743 and Planning Commission Resolution 19579.

As documented in the March 3, 2016 Planning Commission staff report, vehicular LOS criteria encourage harmful sprawl development. Sprawl development adds a substantial amount of vehicles and greater distances of vehicle travel onto the overall regional transportation system, but has little to no vehicular LOS impacts. Conversely, infill development, such as the One Oak project, adds a substantially lower amount of vehicles and shorter distance of vehicular travel onto the overall regional transportation system than sprawl development, but could have numerous vehicular LOS impacts. This was one among many reasons that the Planning Commission removed automobile delay as a significance criterion in CEQA through Planning Commission Resolution 19579, and full implementation of Senate Bill 743 will require all jurisdictions to do the same. If the department were to adopt a zero VMT threshold, it may indirectly discourage development occurring in precisely the locations Senate Bill 743 is encouraging. This is because all developments, regardless of the amount of on-site vehicular parking provided, would still generate some VMT. Although there currently is not sufficient data available to accurately quantify the relationship between parking and VMT, the department acknowledges that providing no on-site vehicular parking may result in less VMT than providing on-site vehicular parking. However, even in such a case, some limited number of people in the development may still park off-site, rent cars occasionally, etc. Given this, all developments in San Francisco would require an EIR because the threshold is unachievable. In addition, as the RTC notes on p. 4.17, the threshold the department uses is set at a level that acknowledges that a development site cannot feasibly result in zero VMT per capita without substantial changes in variables that are largely outside the control of a developer (e.g., large-scale transportation infrastructure changes, social and economic movements, etc.).

Furthermore, the EIR did assess the localized impacts on various ways of travel. The EIR presents impacts of the proposed project on transit in Impact TR-2, pp. 4.C.45-4.C.51, on pedestrians in Impact TR-3, pp. 4.C.51-4.C.54, and on bicyclists in Impact TR-5, pp. 4.C.54-4.C.55. The EIR includes an assessment of the impact of project-generated vehicle trips on the adjacent sidewalk and roadway network, as well as the impact of project's transportation features, to assess the interaction between vehicles entering and exiting the site and pedestrians, bicyclists and transit operations. Project-generated vehicles would not result in conflicts or vehicle delays that would substantially affect the operations of the adjacent and nearby Muni routes and bicycle facilities, and garage and loading operations would not substantially constrain pedestrians on the adjacent sidewalk or within the shared street. The impacts of the proposed project on transit, pedestrians and bicyclists were determined to be less than significant. Therefore, if the number of parking spaces were reduced, it would not materially affect the impact conclusions in the EIR.

Appellant also states that the EIR needs to benchmark VMT for this site in order to assess the effectiveness of transportation demand management ("TDM") measures from the project. The EIR did benchmark VMT for the site and Appellant is incorrect regarding the need to quantitatively assess the TDM measures.

As explained on EIR pp. 4.C.34-4.C.35 and RTC pp. 4.17-4.18, the Department relies on San Francisco Chained Activity Model Process ("SF-CHAMP") model runs prepared by the San Francisco County Transportation Authority to estimate VMT within different geographic locations (i.e., Traffic Analysis Zones, or "TAZ"s) throughout San Francisco. One rationale for using the SF-CHAMP maps to screen out

projects, instead of a project-by-project detailed VMT analysis, is because most developments are not of a large enough scale and/or contain unique land uses to substantially alter the VMT estimates from SF-CHAMP. As described on EIR p. 4.C.9, the existing average daily VMT per capita for the SF-CHAMP Traffic Analysis Zone in which the project site is located is 3.5, which is less than the citywide average (7.9) and regional average (17.2) for the nine-county San Francisco Bay Area.

Implementation of a TDM Plan was included in the EIR as an improvement measure (Improvement Measure I-TR-A: Travel Demand Management Plan), and not as a mitigation measure, because no significant project-related operational transportation impacts were identified and therefore mitigation measures were not necessary. Therefore, assessment of the impact and effectiveness of TDM measures is not required. Improvement Measure I-TR-A: TDM Plan, EIR pp. 4.C.44-4.C.45, outlines the types of measures that could be included in the TDM Plan. The measure follows the outline of the City's TDM Ordinance, which, at the time of publication of the *One Oak Street Project Draft EIR*, was recommended for approval by the Planning Commission and was being forwarded for legislative action to the Board of Supervisors. On February 7, 2017, the Board of Supervisors approved legislation for the TDM Ordinance, and the proposed project will be subject to its requirements. Because the Draft EIR for the project was published in November 2016 prior to approval of the TDM Ordinance, Improvement Measure I-TR-A did not include details about the plan. Instead, the improvement measure stated on EIR p. 4.C.44 that if the Planning Code amendments are legislated by the Board of Supervisors, the proposed project would be subject to the requirements of the TDM program as set forth in the ordinance. The TDM Ordinance is now law, and thus the proposed project is required to conform to the adopted requirements. As described in the department's *Standards for the Travel Demand Management Program*<sup>3</sup> (updated February 2017), the measures included in the City's TDM Program are intended to reduce VMT from new development.

Appellant also states that the department is using outdated data for the transportation analysis (i.e., the year 1990). Appellant is incorrect. The department is currently using the best available information to assess the transportation effects from a development in CEQA documents.

The EIR did not use 1990 data to estimate VMT per capita. As explained above, the department relies on SF-CHAMP model runs. The SF-CHAMP model is currently validated to the California Household Travel Survey 2010-2012 for determining travel mode and origin-destination of residents in San Francisco and the Bay Area. This survey is the most currently available household survey for the San Francisco Bay Area, and therefore reflects any changes in employment patterns due to growth in employment in both San Francisco and the region. The SF-CHAMP model is updated periodically as new data becomes available.

The EIR used 1990 census data for one portion of the transportation assessment of localized effects of the residential uses on the transportation network, as described below. Project travel demand, including the number of project-generated vehicle trips, was estimated based on the methodology requirements in the San Francisco *Transportation Impact Analysis Guidelines for Environmental Review (SF Guidelines)*. Consistent

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<sup>3</sup> Available online at: [http://default.sfplanning.org/plans-and-programs/emerging\\_issues/tsp/TDM\\_Program\\_Standards\\_02-17-2017.pdf](http://default.sfplanning.org/plans-and-programs/emerging_issues/tsp/TDM_Program_Standards_02-17-2017.pdf)

with the *SF Guidelines*, the mode split information for the new residential uses was based on the 2008-2013 American Community Survey data for census tract 168.02 in which the project site is located, while mode split information for the restaurant/retail uses was based on information contained in the *SF Guidelines* for employee and visitor trips to the C-3 district. Only the trip distribution data (i.e., where people go to and come from) for the residential uses was based on the 1990 Census, while the trip distribution information for the restaurant/retail uses was based on the *SF Guidelines*. The 1990 census data was used because the more recent American Community Survey data used for determining travel mode to work does not include information on job location (the job location information is available from the 1990 census and is the most recent data available for that parameter). The assessment of traffic safety hazards and impacts on pedestrians, bicyclists, and transit operations, however, considered the impact of all project-generated vehicle trips and accounts for the large number of transit routes on the Van Ness Avenue and Market Street corridors in the project vicinity. Thus, even if Appellant's speculative assertion were valid, i.e., that more residents may hypothetically drive to the South Bay, as opposed to other parts of San Francisco, the East Bay, or the South Bay, that would not affect the transit, pedestrian, or bicycle assessment, as the impact of all project-generated vehicles was considered, regardless of their destination.

**Concern 3: Appellant asserts that the EIR is inadequate because it omits analysis of the impact of wind on bicyclists.**

**Response 3: The EIR adequately analyzes the wind impacts of the proposed project. It also presents substantial evidence that the Planning Department's methodology and significance threshold for wind impacts address impacts on bicyclists in addition to pedestrians. There is no substantial evidence in the record that that the proposed project would cause a significant wind impact under CEQA or that supports the adoption of a new and separate San Francisco significance threshold for wind impacts on bicyclists.**

Unlike other jurisdictions in California, which do not study wind impacts because such study is not required under CEQA, the City and County of San Francisco addresses the topic of wind impacts in its CEQA documents. CEQA grants lead agencies wide discretion to develop their own thresholds of significance. An agency's choice of a significance threshold is entitled to considerable deference and will be upheld if founded on substantial evidence. While the City and County of San Francisco has not formally adopted a significance threshold for wind impacts, the department uses the wind hazard criterion that is defined in Planning Code Section 148 as a significance threshold to assess wind impacts throughout San Francisco in evaluating wind in CEQA documents. As discussed on RTC p. 4.65, the Planning Code Section 148 criteria were derived from studies<sup>4</sup> that analyzed the effect of wind on pedestrians.

Appellant appears to disagree with the established methodology used in San Francisco EIRs to assess wind impacts because it does not specifically study wind impacts on bicyclists. However, Appellant does not offer an alternative methodology or evidence supporting a different methodology or threshold of significance, nor does Appellant suggest that the studies relied upon by the City in support of Section 148

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4 See page 4.65 of "Responses to Comments on DEIR" One Oak Street Project, 1500-1540 Market Street (Case file No. 2009.0159E). Published June 15, 2017. Available for review at the San Francisco Planning Department, 1650 Mission Street, Suite 400.

criteria are inaccurate or incorrect. Furthermore, Appellant does not provide evidence that analysis of wind impacts on bicyclists is required under CEQA.

In response to similar comments on the Draft EIR regarding wind impacts on bicyclists, and in preparing the Responses to Comments document, the department inquired into how or whether other jurisdictions specifically address the issue of wind impacts on bicyclists. As discussed on RTC p. 4.65, to date, there are no specific, widely accepted, industry standard criteria for the assessment of wind effects on bicyclists. There are, however, international criteria, known as the Lawson Criteria, used by government agencies in other parts of the world to establish a threshold wind speed at which cyclists would be expected to become destabilized.<sup>5</sup>

Consistent with San Francisco's methodology for selection of wind test points under Planning Code Section 148, when conducting Lawson Criteria wind studies, test points are commonly positioned in key areas of substantial pedestrian use and activity, such as on public sidewalks, building main entrances, bus stops and drop-off areas, benches in outdoor parks, outdoor dining areas, etc. Thus, the selection of test points for Lawson Criteria wind studies is similar to the methodology for selecting the test points analyzed in the One Oak Street wind study, except that the One Oak Street wind study also included test points in street crosswalks. As such, using the City's CEQA wind testing protocols established under Planning Code Section 148, some of the sidewalk pedestrian test points, as well as test points within the crosswalks, that were studied for the EIR may serve as proxies to inform the degree of impacts on cyclists in the Market Street bike lane near these points.

As discussed on RTC p. 4.65, under the Lawson Criteria, pedestrian safety is determined for the 'able-bodied' and for the 'general public' (including the elderly, cyclists and children). The safety criteria are based on the exceedance of threshold wind speeds, either the mean-hourly value or the equivalent wind speed (which takes into account the turbulence intensity) – whichever is greater – occurring once per year:

- A wind speed greater than 15 meters-per-second occurring once a year is classified as having the potential to destabilize the less able members of the public such as the elderly and children, as well as cyclists. This wind speed threshold equates to a mean-hourly wind speed of 33.5 mph.
- Able-bodied users are those determined to experience distress when the wind speed exceeds 20 meters-per-second once per year. This wind speed threshold equates to a mean-hourly wind speed of 44.7 mph.

In the absence of standalone criteria for wind hazards specific to bicyclists, the Lawson Criteria could serve as a useful reference point of comparison for considering the impact of wind on bicyclists. By comparison, San Francisco's Section 148 hazard criterion for impacts on the general population (26 miles per hour averaged over one hour) is lower, and therefore more conservative and protective, than the Lawson threshold applicable to bicyclists.

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<sup>5</sup> BMT Fluid Dynamics, *One Oak Street Project – Wind Microclimate Studies*, May 31, 2017 (attached to this Memorandum).

As discussed above, the City of San Francisco has not formally adopted any specific CEQA criteria for wind impacts. However, the department believes, based on substantial evidence, that the current methodology and threshold that it uses to evaluate the significance of wind impacts under CEQA adequately and reasonably covers wind impacts on all users of public sidewalks, crosswalks, and other outdoor areas, whether pedestrians, bicyclists, skateboarders or other. There is no substantial evidence in the record that the proposed project would cause a significant wind impact under CEQA. Further, there is no substantial evidence in the record to support the adoption of a new and separate San Francisco significance threshold for wind impacts on bicyclists. No further study is required.

**Concern 4: Appellant asserts that the EIR does not adequately analyze loading demand because it does not reflect present day trends in retail delivery, and the impact of transportation network companies (TNCs) on transit, pedestrians, and bicyclists and passenger loading.**

**Response 4: The EIR includes an analysis of the various elements of on-site and on-street loading operations. The EIR used the best available information to assess the transportation effects of the proposed project.**

#### Loading Demand

The impact of the proposed project on loading is presented in Impact TR-5, on EIR pp. 4.C.55-4.C.57, and includes discussion of truck and service vehicle loading demand, accommodation of commercial loading demand, move-in and move-out activities, and passenger loading/unloading activities. The analysis determined that the proposed project would adequately accommodate both commercial vehicle and passenger loading demand, within on-site facilities and on-street loading zones, and loading impacts would be less than significant. Loading issues are also discussed in the Responses to Comments document in Comment and Response TR-6 on pp. 4.34-4.37, where some of the same concerns were raised and addressed.

The *SF Guidelines* methodology for estimating truck and service vehicle loading demand assesses whether the peak loading demand could be accommodated within the proposed facilities, and considers the loading demand for the nine-hour period between 8 AM and 5 PM. The analysis of loading demand calculates the peak number of loading spaces needed to accommodate the estimated demand during the nine-hour period which overlaps with the morning and evening commute periods. For example, the loading demand does not take into account delivery trips that occur during the early morning (i.e., trash removal, store food deliveries) or in the evening (e.g., restaurant food deliveries). These types of delivery trips are typically not accommodated on-site and generally occur outside of the peak commute periods when the number of pedestrians, bicyclists, transit and other vehicles is lowest. (See below discussion regarding loading demand and impacts from TNC vehicles.) The effects of various vehicles (delivery, private, for-hire, etc.) were considered in the assessment of impacts on bicyclists, pedestrians, and transit in the EIR, as described above.

As described in the EIR, the proposed project includes on-site loading spaces with access from Oak Street to accommodate the freight deliveries and service vehicle demand, residential move-in and move-out activities, as well as a passenger loading/unloading zone (white zone) adjacent to the project site on Oak Street to accommodate taxis and TNC vehicles. If the passenger loading spaces adjacent to the site were

occupied, passenger drop-offs and pick-ups could also be conducted adjacent to the project driveway, within the planned two-space on-street commercial loading zone (yellow zone) directly west of the project site, or within the existing four passenger loading/unloading spaces on the north side of Oak Street. Passenger drop-offs and pick-ups could also be accommodated within the shared street. The 20-foot width of the shared street would allow one-way westbound through traffic to bypass vehicles that are stopped briefly behind the proposed white zone to load or unload passengers. As noted on EIR p. 4.C.58 and revised in the RTC document in Response TR-5 on pp. 4.32-4.34, the proposed project would include a loading operations plan (as Improvement Measure I-TR-B, agreed to by the project sponsor and included as a condition of approval) which would manage loading operations on-site and on-street adjacent to the project site.

### Transportation Network Companies

In recent years, TNCs as a mode of transportation has grown substantially. According to the *SFMTA 2017 Travel Decisions Survey Summary Report*,<sup>6</sup> TNC use has approximately doubled in San Francisco since 2015. However, many details regarding how these companies fit into the larger transportation picture in San Francisco remain unclear due to lack of data, mainly because Uber and Lyft, both private companies, generally choose not to disclose specifics of their business models unless compelled to do so by an agreement to operate in a given city (e.g., Boston, New York City). At this time TNCs are only required to provide driver contact information to the City and County of San Francisco; however, the City is investigating ways to receive driving and business practice information. Thus, there is limited information as to how the introduction/adoption of TNCs affects travel behavior, including whether people using these services are making trips they would not otherwise make, or substituting a TNC ride for a trip they would make by a single-occupant vehicle, taxi or another mode. The Census Bureau and other government sources do not include TNC vehicles as a separate travel mode category when conducting survey/data collection (e.g., American Community Survey, Decennial Census, etc.). Thus, little can be determined from these standard transportation industry travel behavior data sources.

Section 15384 of the CEQA Guidelines prohibits a lead agency from using speculation to substantiate its findings or conclusions. Because the City currently lacks sufficient data to analyze the influence of TNCs on overall travel conditions in the City (including, for example, data regarding mode-splits), the effects of TNCs on transportation are considered speculative, and pursuant to the CEQA Guidelines, should not be considered in making an impact determination. Accordingly, under CEQA's mandate to avoid engaging in speculation or using speculation to substantiate its conclusions, the City's approach to the issue is correct.

SF-CHAMP, the City's travel demand model, is used to estimate VMT from private automobiles and taxis, the latter of which is a type of for-hire vehicle, like TNCs. The observed data within SF-CHAMP is from the years with the latest data available, 2010-2012, prior to the substantial increase in TNC use in San Francisco. SF-CHAMP estimates the probability of driving based on auto ownership, household income, and other variables. To the extent that people previously would have traveled in another

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<sup>6</sup> Corey, Canapary, & Ganalis Research, *San Francisco Municipal Transportation Agency (SFMTA) Travel Decisions Survey 2017 Summary Report*, No Date. A copy of this document is available for public review at the San Francisco Planning Department, 1650 Mission Street, Suite 400, as part of Case File No. 2009.0159E.

personal or for-hire vehicle (i.e., taxi), but now travel using a TNC service, this would be accounted for in previous household travel surveys and thus would be accounted for in VMT estimates from SF-CHAMP.

The *TNCs Today* report<sup>7</sup> released by the San Francisco County Transportation Authority (“SFCTA”) in June 2017 provides some idea of TNC trip volumes, frequencies, and geographic coverage in San Francisco, although the study only looked at intra-SF trips (i.e., those that both started and ended in the City limits). The report, which compiled six weeks of pick-up and drop-off data for intra-SF trips from mid-November to mid-December 2016, excluding dates around the Thanksgiving holiday, is an important first step in understanding how many TNC trips are taking place in San Francisco, where and when the trips are taking place, and how much VMT these trips generate. The report found that the highest concentration of TNC pick-ups and drop-offs occurs in San Francisco’s downtown and northeastern core, including the North Beach, Financial District, and South of Market neighborhoods. However, in addition to omitting regional TNC trips to or from the City, this study does not attempt to quantify mode shift or induced travel demand. For these reasons, the VMT estimates in the study, which only account for travel within the City, cannot be compared to the VMT results from the SF CHAMP model used for the EIR, which account for travel into, within, and out of the City. The report notes that the SFMTA and SFCTA will attempt to collect more data to study issues such as safety, congestion, and mode shift impacts of TNCs. At this time, however, it is unknown if sufficient data will be available to quantitatively document how TNC operations influence overall travel demand and conditions in San Francisco or elsewhere, including the loading demand or VMT impacts of the project. CEQA discourages public agencies to engage in speculation. Therefore, the EIR used the best information reasonably available to analyze the transportation effects from the proposed project. CEQA Guidelines, Section 15151, provide that, “An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in light of what is reasonably feasible... The courts have looked not for perfection but for adequacy, completeness, and good faith effort at full disclosure.”

Although the effects TNCs would have on the VMT estimates from SF-CHAMP are unknown at this time, it is unlikely that the VMT estimates would increase to a level such that the project’s VMT impacts would be significant. As stated above, existing average daily VMT per capita is 3.5 for the Traffic Analysis Zone the project site is located in. Thus, the average daily VMT per capita for the project site is approximately 80 percent below the existing regional average daily VMT per capita of 17.2, and approximately 76 percent below the existing regional average daily VMT per capita minus VMT threshold of 14.6. Therefore, at this location, TNCs would need to increase per capita VMT by more than 400 percent in order for this location to exceed the VMT threshold. In other words, the proliferation of TNCs would need to be four times stronger than all other variables (e.g., density, diversity of land uses, proximity to transit, etc.) affecting VMT at this location. This is unlikely.

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<sup>7</sup> San Francisco County Transportation Authority, *TNC Today A Profile of San Francisco Transportation Network Company Activity*, June 2017. Available on line at [http://www.sfcta.org/sites/default/files/content/Planning/TNCs/TNCs\\_Today\\_061317.pdf](http://www.sfcta.org/sites/default/files/content/Planning/TNCs/TNCs_Today_061317.pdf). Accessed July 27, 2017.

**Concern 5: Appellant asserts that the EIR is inadequate because the cumulative analyses for Wind and Transportation do not include the 10 South Van Ness Avenue Mixed-Use Project, as currently described in the recent Notice of Preparation, dated July 12, 2017.**

**Response 5: The EIR has an appropriately thorough analysis of cumulative impacts that accounts for development on the 10 South Van Ness Avenue site as well as multiple other reasonably foreseeable development projects in the vicinity of the One Oak Street site. There is no substantial evidence in the record that new information about the 10 South Van Ness Mixed-Use Project would change any of the conclusions in the EIR.**

The EIR includes the project at 10 South Van Ness Avenue in the cumulative conditions scenario for the proposed project (see EIR pp. 4.A.6-4.A.9). Based on information available at publication of the Draft EIR (November 16, 2016), the EIR anticipated that a reasonably foreseeable project at the 10 South Van Ness Avenue site would be a 41-story, 400-foot-tall building with 767 residential units over ground floor retail. Recently, on July 12, 2017, over four weeks after the One Oak Street Final EIR was certified by the Planning Commission, the department published a Notice of Preparation of an Environmental Impact Report and Scoping Meeting for the 10 South Van Ness Avenue Mixed-Use Project. That notice described the 10 South Van Ness Project with 948 residential units and 518 vehicle parking spaces in two 41-story, 400-foot-tall towers (420 feet at the top of the elevator penthouse). That Notice of Preparation also describes a “single tower project variant” that is also currently under consideration. The use program of this variant is roughly comparable to the use program of the two-tower, 41-story scheme. However, building uses would be housed in a single 55-story, 590-foot-tall tower (610 feet at the top of the elevator penthouse). Thus, the proposal has evolved recently from the original description available when the Draft EIR for the One Oak Street Project was published.

The cumulative analysis in the EIR employs information and assumptions about the anticipated 10 South Van Ness development project that were reasonably available at the time of publication of the Draft EIR. The 10 South Van Ness Avenue project is currently at the beginning of its environmental review process, with a future Draft EIR many months away. The department anticipates that the 10 South Van Ness Mixed-Use project will continue to be subject to further modification as it proceeds through the CEQA review process. Indeed, such changes to a project are consistent with the intent of CEQA, as potential project-specific significant impacts may be identified during the analyses and in some cases could then be reduced or eliminated by revisions to the proposal. Thus, the 10 South Van Ness Mixed-Use Project design remains somewhat speculative. CEQA Guidelines Section 15130(b) provides that the analysis of cumulative impacts should be guided by the standards of practicality and reasonableness. The cumulative analyses prepared for the EIR are based on a reasonable projection of likely development in the vicinity, including the information available at the time of analysis about the 10 South Van Ness Mixed-Use Project. Further, there is no substantial evidence in the record that the proposed project at One Oak Street would make a cumulatively considerable contribution to a new significant cumulative impact that was not addressed in the EIR, when the proposed project is considered in light of the recent changes currently considered for the 10 South Van Ness Avenue Mixed-Use Project.

#### Cumulative Wind

The EIR on pp. 4.D.24-4.D.25 and the RTC on pp. 4.59-4.60 discuss the results of wind tunnel tests of cumulative scenarios that included the proposed project together with reasonably foreseeable projects in the vicinity that could potentially affect ground-level winds. As noted in the EIR (p. 4.D.5) and RTC (p. 4.59), the reasonably foreseeable project at 10 South Van Ness Avenue (as well as 30 Van Ness Avenue) was conceptual at the time wind tunnel tests were conducted because no project plans were available at that time, so the modeling was based on a preliminary massing scheme allowable under existing height and bulk controls. The EIR also notes that actual building designs for these sites would differ from those modeled for the cumulative analysis for the EIR. The cumulative wind analysis used a reasonable and practical approach to identifying and modeling these foreseeable development projects.

The 10 South Van Ness Mixed-Use Project and all other reasonably foreseeable cumulative projects within the C-3 District must each comply with Planning Code Section 148, which prohibits a project from creating a net new number of locations with wind speeds that exceed the adopted hazard criterion. Under Section 148, no exception may be granted for buildings that result in increases in the total number of test point locations that exceed the wind hazard criterion and result in an increase of wind hazard hours compared to existing conditions at the time of testing. Section 148 is a rigorous performance standard, the future adherence to which is mandatory under the Planning Code for each proposed new building. At the time that each future project is seeking approval, a model of its then-current design will be submitted for wind analysis and will be modeled in the context of the then-existing baseline setting of buildings, including newer buildings that have already complied with Section 148. By contrast, the City's cumulative wind methodology does not model only reasonably foreseeable future buildings that have been determined to each meet the Section 148 performance standard. As such, the cumulative impact analysis in the EIR represents a conservative disclosure of cumulative impacts (i.e., one that may overstate, rather than understate, the magnitude of cumulative wind impacts), as the models of the projects included in the cumulative wind tunnel tests may not themselves comply with Section 148 and their designs would need to be revised to comply at some future point prior to their approval.

The project-level and cumulative impacts of the 10 South Van Ness Mixed-Use Project are somewhat speculative at this time. The impacts will depend on the ultimate design of that project or project variant (whichever is selected), as well as future physical conditions in the area (including the future construction of the proposed One Oak Street Project and other projects under review or recently approved). However, compliance with Planning Code Section 148 would serve to ensure that no significant project wind impact would occur as a result of the 10 South Van Ness Project. There is no substantial evidence in the record that the proposed project would make a cumulatively considerable contribution of a significant cumulative wind impact.

#### Cumulative Transportation

Cumulative impact analyses in San Francisco generally employ both a list-based approach and a projections approach, depending on which approach best suits the individual resource topic being analyzed. For topics such as wind and shadow, the analysis typically considers large, individual projects that are anticipated in the project vicinity. By comparison, and as described below, the cumulative transportation impact analysis relies on a citywide growth projection model that also encompasses individual projects anticipated in the project vicinity.

Pursuant to the requirements in the *San Francisco Guidelines*, the analysis of the transportation impacts was conducted for existing and 2040 cumulative conditions. Year 2040 was selected as the future analysis year because 2040 is the latest year for which travel demand forecasts were available from the SFCTA SF-CHAMP travel demand forecasting model, and 2040 provides a 25-year horizon year for the impact analysis. The model starts with regional population data (described below) and predicts person travel for a full day based on assumptions of growth in population, housing units, and employment, which are then allocated to different periods throughout the day, using time of day sub-models. As described on EIR pp. 4.C.73-4.C.74, future 2040 cumulative transit ridership and traffic volumes were estimated based on cumulative development and growth identified by the SF-CHAMP travel demand model, using model outputs that represent existing conditions and model output for 2040 cumulative conditions. The model is validated and updated regularly with new projects and transportation network changes, and the 2040 cumulative forecasts include the additional trips generated by the proposed project.

The SFCTA model divides San Francisco into approximately 981 geographic areas, known as Traffic Analysis Zones (TAZs). The SF-CHAMP model also includes zones outside of San Francisco for which data is obtained through the current Metropolitan Transportation Commission Model. For each TAZ, the SF-CHAMP model estimates the travel demand based on TAZ population and employment growth assumptions developed by the Association of Bay Area Governments (“ABAG”) for year 2040 using the Sustainable Communities Strategy Preferred Scenario Projections.

While the transportation analysis is based on a summary of projections approach, the projections are validated and refined to reflect known major projects. Within San Francisco, the department is responsible for allocating ABAG’s countywide growth forecast to each SF-CHAMP model TAZ, based upon existing zoning and approved plans, using an area’s potential zoning capacity, and the anticipated extent of redevelopment of existing uses. The SF-CHAMP land use inputs developed by the department for the 2040 cumulative analysis account for major projects in the vicinity, such as the 10 South Van Ness Avenue project noted in the comment, as well as development throughout San Francisco. Therefore, the 2040 cumulative analysis provided in the EIR reasonably represents the future cumulative conditions in the project vicinity, given the economic forecasts for San Francisco and the Bay Area. Similarly, the Population and Housing analysis is based on ABAG’s regional growth projections as well as growth projections assumed under the City’s General Plan, both of which are based on policy assumptions that include more infill and transit-oriented development within areas designated for compact development, investment in infrastructure, and new housing and population growth. The EIR discusses the proposed project’s contribution to potential cumulative impacts on traffic, transit, bicycle travel and pedestrians on pp. 4.C.77-4.C.86. While cumulative impacts could be somewhat different with the new information about the proposal at 10 South Van Ness Avenue, the One Oak Street Project’s contribution to any cumulative transportation impacts would not be greater than described in the EIR on pp. 4.C.77-4.C.89. The EIR identifies one significant cumulative transportation impact – on cumulative construction-related transportation – to which the proposed One Oak Street project would contribute considerably, and presents a mitigation measure that would reduce but not eliminate the significant cumulative impact related to conflicts between construction activities and pedestrians, bicyclists, and transit. The EIR for the 10 South Van Ness Avenue project will need to examine that project’s contribution to cumulative transportation impacts and will present that contribution in terms of the project as proposed when that Draft EIR is circulated for public review.

**CONCLUSION:**

The department conducted an in-depth and thorough analysis of the potential physical environmental effects of the proposed One Oak Street Project, consistent with CEQA, the CEQA Guidelines, and Chapter 31 of the San Francisco Administrative Code. Appellant has not demonstrated that the Final EIR is insufficient as an informational document, or that the Commission's findings and conclusions are unsupported by substantial evidence. The department conducted necessary studies and analyses, and provided the Commission with necessary information and documents in accordance with the department's environmental checklist and standard procedures, and pursuant to CEQA and the CEQA Guidelines.

Substantial evidence supports the Commission's findings and conclusions. For the reasons provided in this appeal response, the department believes that the Final EIR complies with the requirements of CEQA, the CEQA Guidelines, and Chapter 31 of the San Francisco Administrative Code, and provides an adequate, accurate, and objective analysis of the potential environmental impacts of the proposed project. Therefore, the department respectfully recommends that the Board uphold the Commission's certification of the Final EIR and reject Appellant's appeal.

ATTACHMENT

Letter, BMT Fluid Dynamics, May 31, 2017

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May 31<sup>st</sup>, 2017  
Case No. 2009.0159E  
Correspondence Reference: 431906/RC/070

### One Oak Street Project – Wind Microclimate Studies

Dear Barbara,

Further to the submission of BMT's Wind Microclimate Study Report dated November 7<sup>th</sup>, 2016 for the One Oak Street Project it is understood that the canopy design has undergone a minor change. The purpose of this letter is to comment on this change and any potential impact the change may have on the wind microclimate at publicly accessible points in the project vicinity.

The proposed project includes improvement of a public amenity within the Oak Street right-of-way to the north of the proposed building and construction of 75% porous wind canopies within the proposed plaza to provide protection to the public from hazardous wind conditions. The canopies would be freestanding trellis-like structures with cantilevered segments, supported by vertical columns. The grouping of canopies would measure approximately 125 feet long from east to west and 40 feet from north to south, and would be up to approximately 20 to 30 feet high.

For the purposes of the comparison, it is understood that the new canopy design is as per drawing information issued to BMT by SWCA | Turnstone Consulting as detailed in the table below:

Drawing	Date
1OAK Proposed Art Canopy Area Diagrams_17 05 18.pdf	May 19 <sup>th</sup> 2017
1OAK CEQA Site Plan_17 05 18.pdf	May 19 <sup>th</sup> 2017

On the basis of BMT's examination of the drawing package, the change in the canopy that would have potential to materially alter the wind microclimate within the vicinity of proposed project are as follows:

- Change in the canopy coverage area;
- Increase in the canopy height;
- Change in the canopy material.

Noting the above, BMT conclude that the impact of the canopy re-design - in comparison with that previously assessed – to the wind effects within the study area is immaterial. Correspondingly, the canopy re-design is expected to provide similar protection to the public within and around the plaza from hazardous wind conditions as the canopies previously tested. Therefore, it is expected that wind conditions, in terms of the total numbers of hazard exceedance locations and hours per year, near the proposed project will not materially deteriorate as a result of the canopy design change.

In closing, based on the assessment of the canopy design change and the results of the wind tunnel tests conducted in 2016, wind conditions in the vicinity of the proposed project would remain suitable for the pedestrian environment in accordance with the hazard criterion specified in Section 148 of the San Francisco Planning Code.

Best regards,



Dr. Reed Cummings

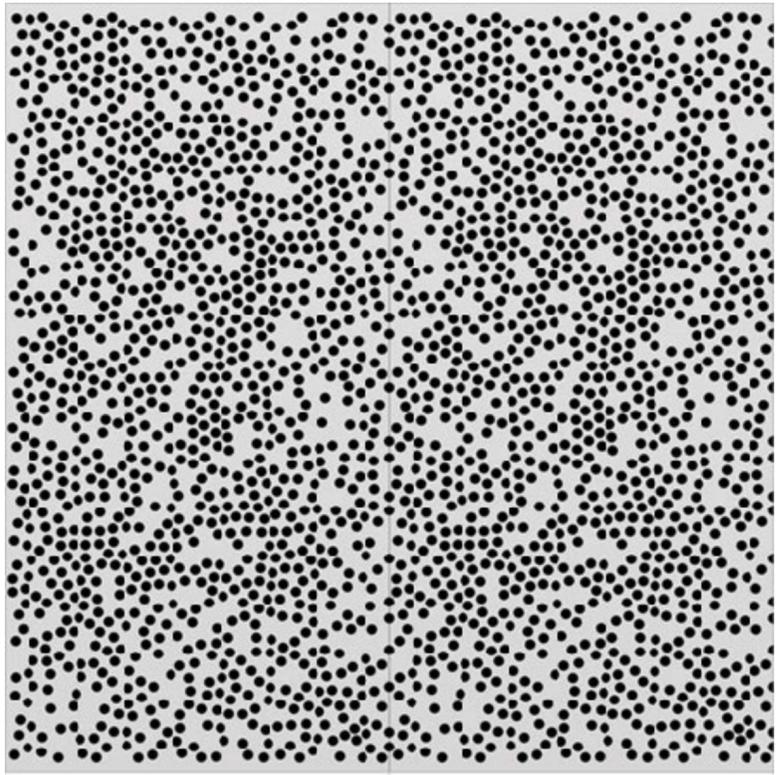
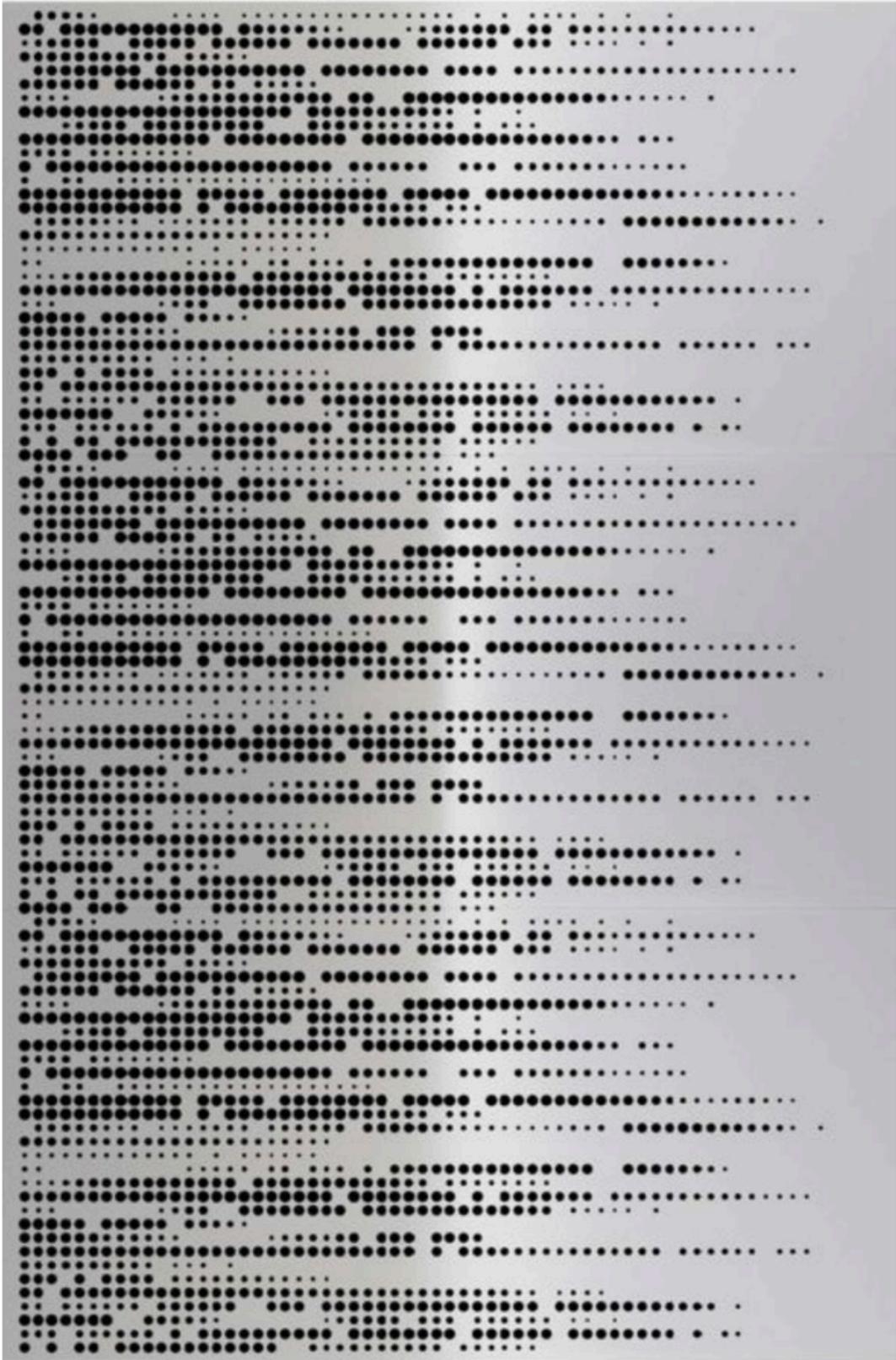
Project Engineer  
BMT Fluid Mechanics Ltd

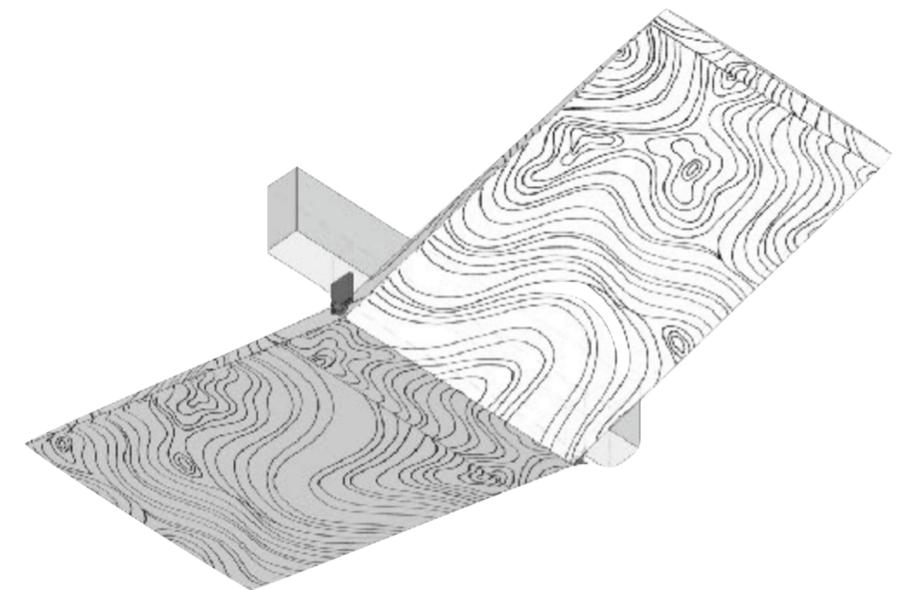
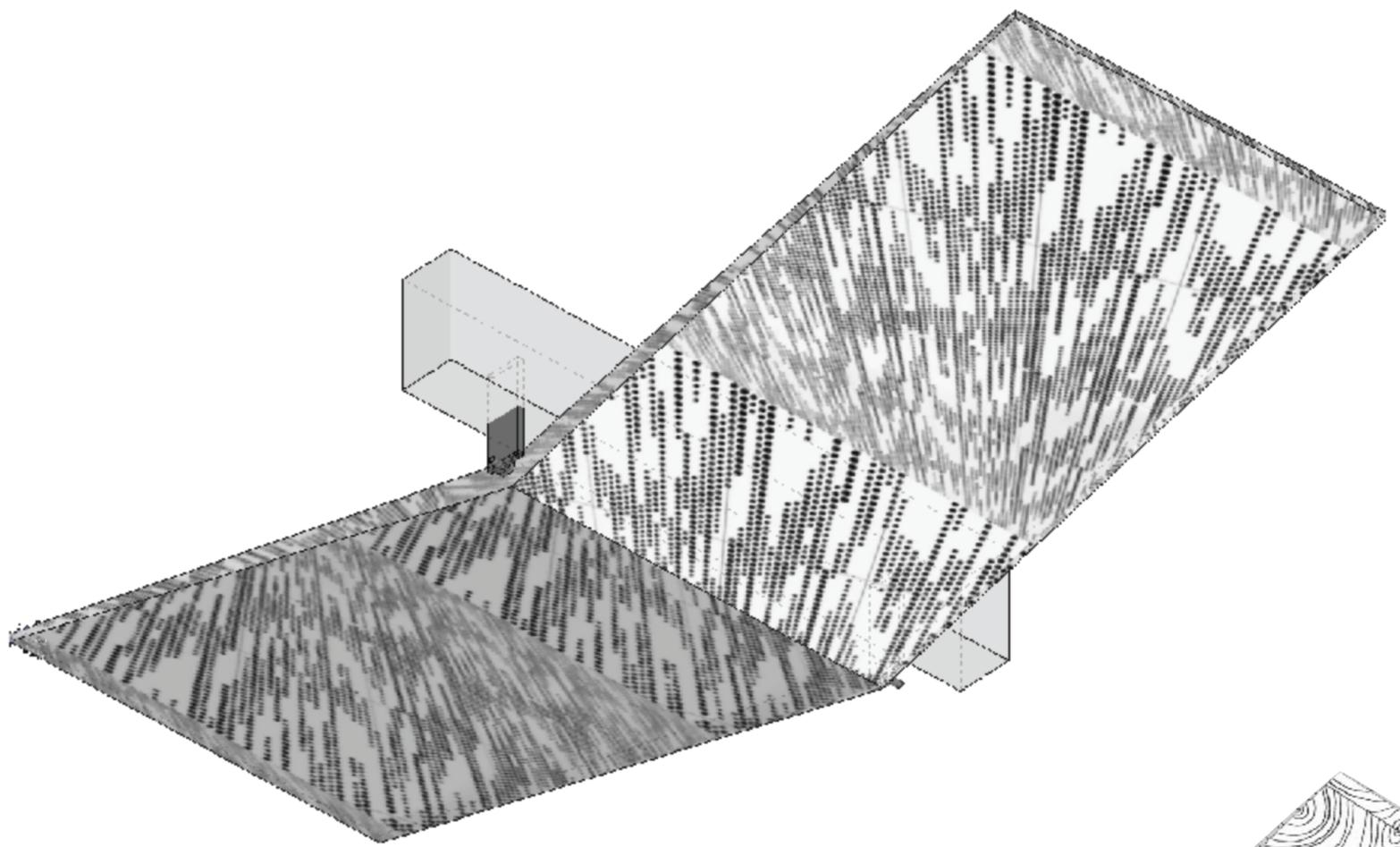
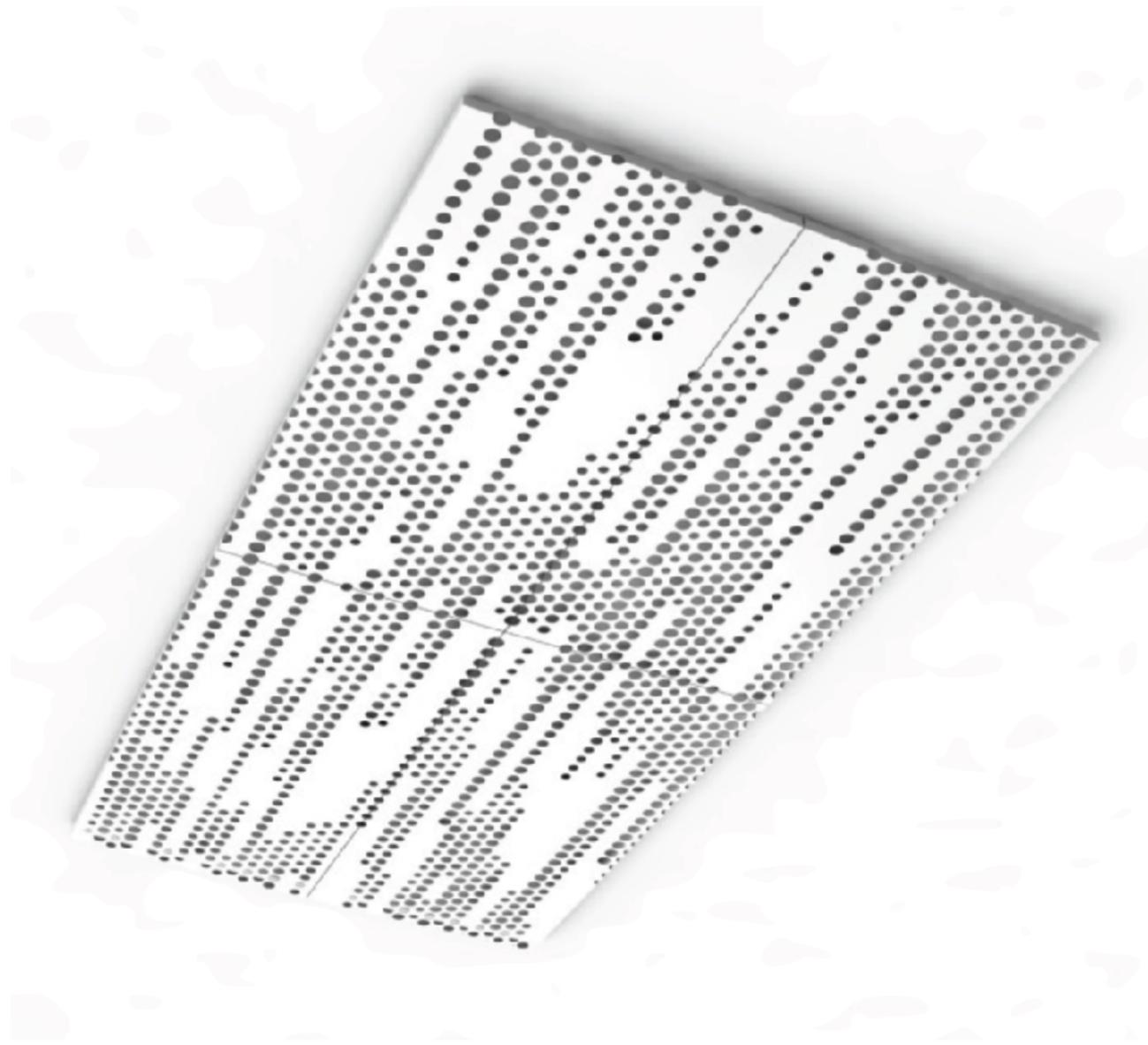


Max Lee CEng MIMechE

Project Manager  
BMT Fluid Mechanics Ltd

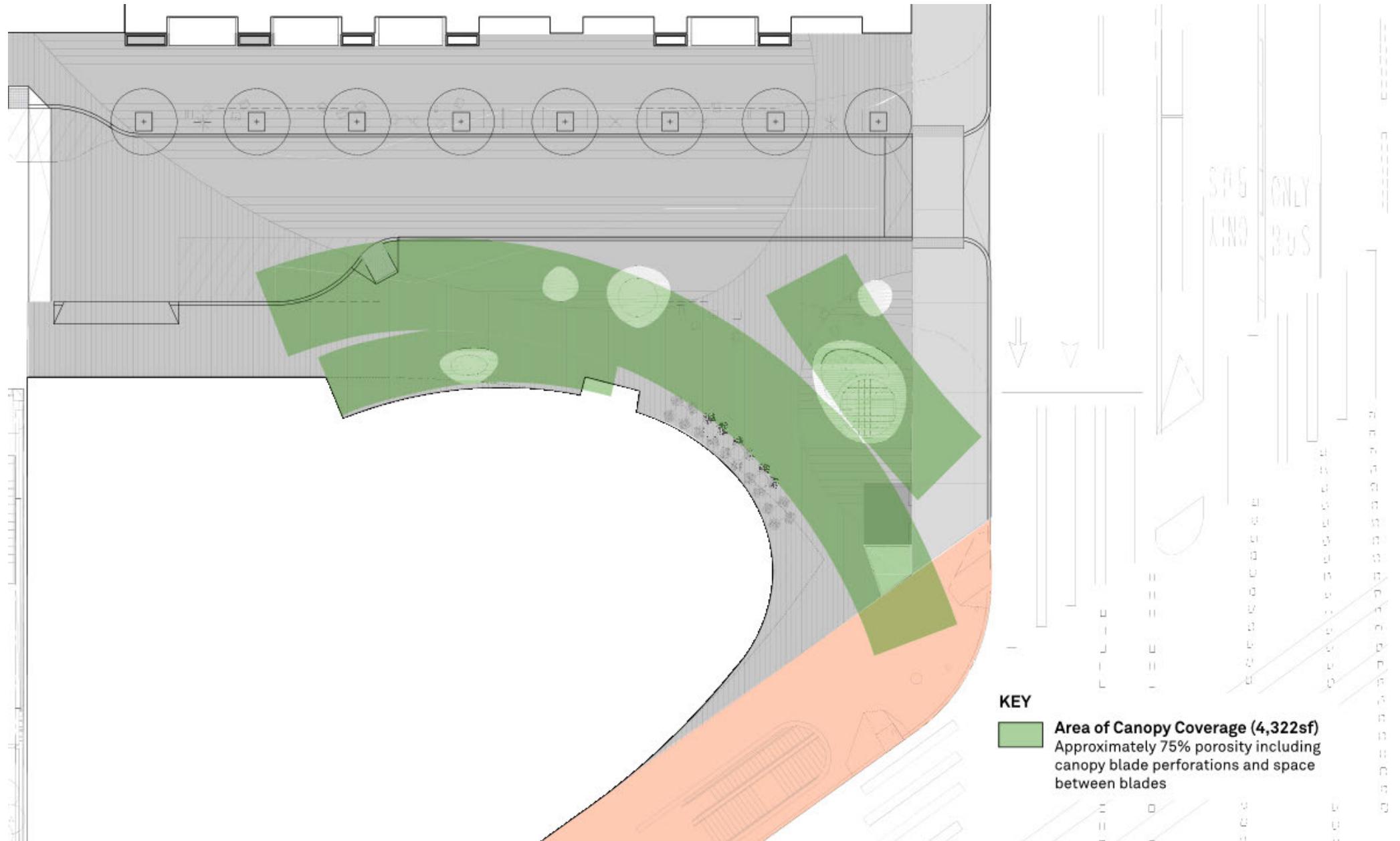


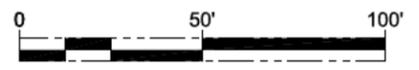
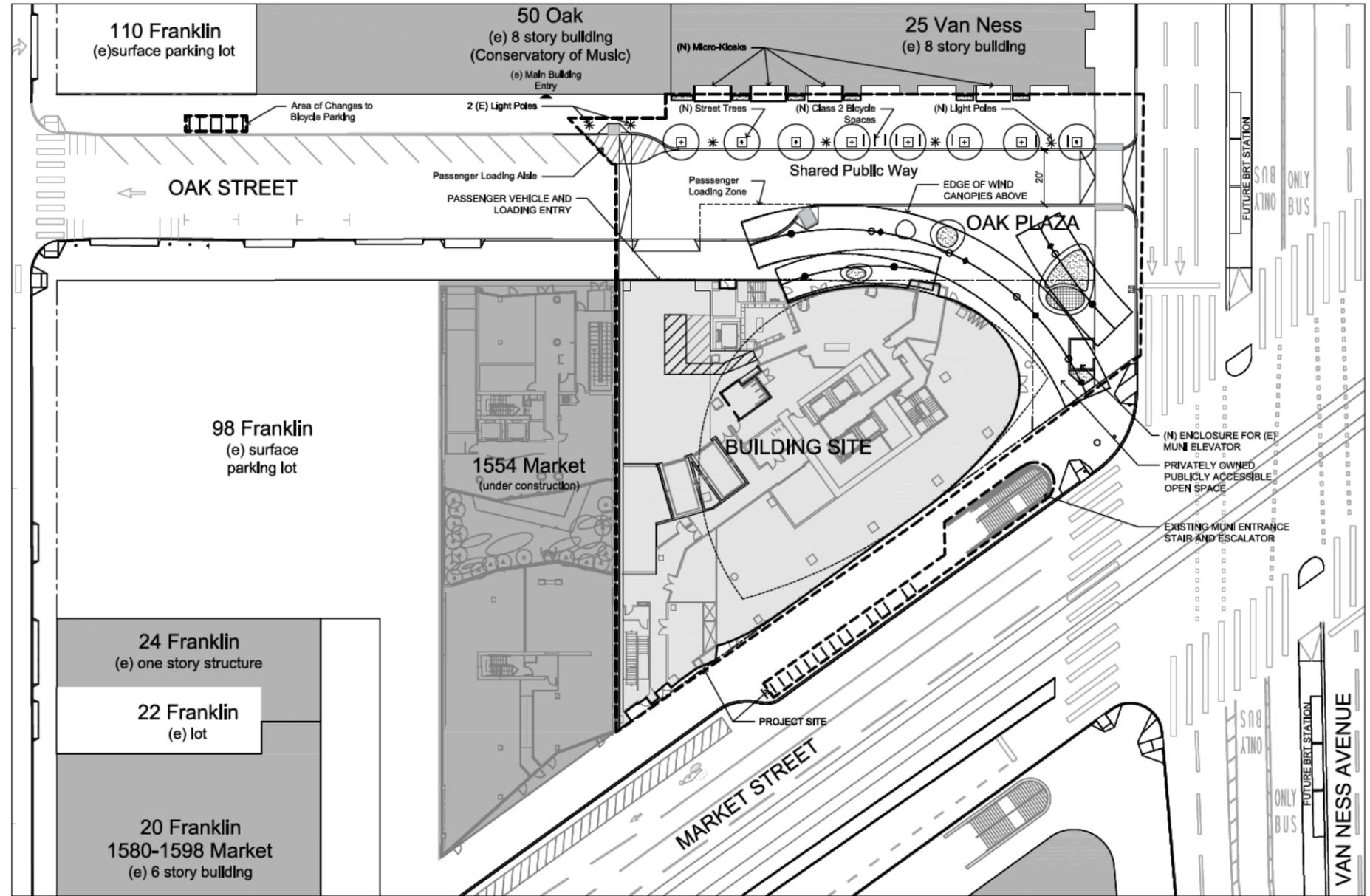




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# Art Canopy Porosity Diagram





## **Certification of Final Environmental Impact Report ONE OAK STREET (1500-1540 MARKET STREET)**

2009.0159

**Build Inc. proposes to build 40-story tower with 304 market-rate condominiums and 136 underground valet parking spaces at the northwest corner of Van Ness and Market. The Market and Octavia Better Neighborhoods Plan permits 73 parking spaces at the site. Planning approved a near-doubling of parking to 136 spaces. The entrance and exit are on Oak Street.**

The area around Van Ness and Market is the jugular for citywide circulation.

- Nine important **Muni** bus lines, six Muni light rail lines, and one Muni streetcar line traverse the corridor, carrying almost 14,000 passengers in the weekday am peak hour and 13,500 in the weekday pm peak hour. One Oak DEIR, Table 4.C.3.
- Key Muni lines serving Districts 2, 3, 4, 5, 6, 7, 8, 9, 10 & 11 converge in this area. Based on the SFCTA Communities of Concern map the Board adopted this year, these Muni lines serve tens of thousands of low-income people of color in almost every District in the city. Exhibit 1a & 1b.
- Vehicle and transit capacity is strained at this location. At Van Ness/Market 3,700 motor vehicles cross in every direction in the am peak hour. Almost 4,000 traverse the intersection in the pm peak hour. Exhibit 2a & 2b. **Transit is at capacity** or is approaching capacity, as demonstrated in *One Oak DEIR*, capacity utilization metric Table 4.C.3.
- Every weekday thousands of **cyclists** use Market Street, with 1,400 in the two-hour pm peak period alone. One Oak DEIR, 4.C.22. These cyclists commute from Districts 1, 4, 5, 6, 8, 9, 10 & 11.
- The Van Ness/Market area is hazardous to cyclists, with a mix of traffic and strong winds accelerated by tall buildings.
- The intersection of Van Ness/Market/South Van Ness is critical to **pedestrians** including passengers on Muni surface lines and Muni Metro. At peak times vehicles frequently block crosswalks as well as accelerate at yellow light phases, undermining **Vision Zero** goals.
- Over the past decade massive amounts of commercial development has shifted to mid-Market with development of millions of square feet of commercial space, including **tech**

**industry offices** and hotels. Thousands of units of **new housing**, predominantly market rate condos, have been built or are proposed along or near the length of Van Ness.

- In the Van Ness/Market area, now deemed **The Hub**, the most recent pipeline reporting shows almost 6,300 existing or entitled new units, and 8,300 proposed. Exhibits 3 & 4. Planning Department estimates **5,469 parking spaces**, bringing a massive influx of more cars into this already congested area.
- Traffic has shifted as the **Central Freeway came down in 2003**, routing vehicles onto Mission and north onto Van Ness, US 101.
- Dozens of **private buses to Silicon Valley tech campuses** carry reverse commute passengers to housing in San Francisco pouring additional traffic onto Van Ness.
- On-demand vehicles such as **Uber**, which has its headquarters at 11th/Market, and Lyft, have flooded the Van Ness/Market area. Uber and Lyft use Van Ness to circulate between the northern part of the city and the Mission/ Upper Market. Exhibit 5.
- The Van Ness/Market intersection is a top **Vision Zero** location identified by the city as a priority to make safer for pedestrians and cyclists.
- The SFMTA is investing millions of dollars in **Van Ness Bus Rapid Transit**, as well Mission 14 and Haight 6 & 7 busses as part of **Muni Forward**. Bicycle and pedestrian conditions are addressed in Vision Zero, the San Francisco Bicycle Plan, and the forthcoming Better Market Street Plan.
- These plans involve reducing roadway capacity for automobiles and trucks. There will be less room to add additional cars from One Oak and other nearby new developments.

### **Faulty analysis > significant impacts not identified > no mitigation required**

The EIR for the One Oak proposal is inadequate and ignores all of the above concerns. It relies on antiquated data, and does not adequately analyze traffic and impacts on pedestrians, cyclists, and Muni. Specifically:

- The primary method for transportation analysis is 15-years old. It does not consider or lead to mitigation of the conditions described above.
- The analysis of commuting patterns is **37-years old**.
- Based on data from 1990 & 2002, *One Oak EIR* misses the volume of traffic that would likely go to and from Silicon Valley using the nearby 101 Freeway. Using 1990 data does not reflect two tech booms and the internet-based economy to the South of the City.
- The EIR does not adequately study traffic for One Oak. It does not study traffic impacts on pedestrians, bicyclists, and transit because it relies on inappropriate use of a thresholds

of significance. It does not consider reasonable alternatives to the proposed excess parking for the project.

- Despite the capacity constraints, the EIR did not study how to expand Muni capacity.
- Despite evidence of hazardous winds in this area, the EIR does not include a study of impacts on bicycles and mitigations to make cycling safe.
- Despite evidence of the proliferation of Uber and Lyft vehicles in this area, the EIR ignores their swarming in this area and does not consider mitigation.
- Despite evidence of new e-commerce delivery vehicle patterns, the EIR uses old data to underestimate deliveries, and does not mitigate.

If One Oak moves forward in the current form, it will increase congestion and crowding, frustrating people using Muni. Low-income Muni riders will be burdened with longer commutes, and wealthier passengers may shift to driving or Uber/Lyft, further contributing to an inequitable downward spiral.

Bicycling and walking will become more hazardous and discouraging, conflicting with citywide goals.

## **Specific Inadequacy of One Oak EIR**

### ***Traffic Impact on Pedestrians, Bicyclists, and Transit***

The EIR does not adequately study traffic. It does not study traffic impacts on pedestrians, bicyclists, and transit because it relies on antiquated data, it relies on inappropriate use of thresholds of significance, and it does not consider reasonable alternatives to the proposed parking ratio.

The City acknowledges it uses outdated data that needs to be updated. Exhibit 6.

The basis for the EIR analysis uses antiquated data for analysis of traffic impacts. Based on **1990** trip distribution data in LCW Consulting's *2016 One Oak Transportation Impact Study*, the volume of car traffic that would likely go to and from Silicon Valley using the nearby 101 Freeway is underestimated. Using 1990 data does not reflect two tech booms and the internet-based economy to the South of the City.

Based on existing patterns of development in this part of San Francisco, a substantial portion of the residents of One Oak will be employed in high-paying tech jobs in Silicon Valley. This means more commuting to Silicon Valley, with a large share by car.

The LCW transportation study also shows that **cars are still the largest mode share** of the project, adding 131 new car trips in the am peak, and 171 car trips in the pm weekday peak. Exhibit 7. Yet by using old trip distribution data (from 1990) this begs the question: Where do these cars go in the am peak and where do they come from in the pm peak? **1990 trip distribution estimates are not adequate to answer that.**

The planning department states intent to update the trip distribution approach used for traffic analysis. Response to Comments on One Oak DEIR 4.19-4.20. Planning acknowledges using old data. Exhibit 6. The department is just getting around to upgrading how transportation is studied. **This admission is damning.**

It suggests that updates will occur sometime after 2018, but the city needs to know impacts in order to adequately mitigate One Oak.

Consider that since **1990**:

- The Central Freeway was removed in 2003
- Private commuter buses have proliferated since 2005
- Uber and Lyft have proliferated since 2011
- The City has adopted a new Bicycle Plan in 2009
- The City adopted Vision Zero goals in 2014
- New patterns of e-commerce delivery have emerged instead of storefront retail
- Mid-Market and Market and Octavia have added housing for thousands of new residents
- 5,469 new parking spaces have been, or might be built in the Hub

With respect to the transportation impacts of One Oak, Planning is punting on due diligence.

### ***Inappropriate Use of a Threshold of Significance***

Central to transportation analysis in the One Oak EIR is use of regional number of vehicle miles traveled (VMT) per day per person. San Francisco is part of a 9-County Bay Region which has regional per capita daily VMT of 17.2 miles. San Francisco adjusts this and considers 14.6 miles/day as the norm for the City.

The city is broken-down into specific areas known as transportation analysis zones (TAZ). Detailed transportation analyses are only required for an EIR when a project is located in an area with more than 14.6 VMT. **If an area currently has less than 14.6, no transportation study is done.**

One Oak is located in the 5-block triangle bounded by Oak, Market, Gough, and Van Ness. Up until 2015 this TAZ, like the Market and Octavia Better Neighborhoods Plan area, has been characterized by mostly older, pre-automobile era buildings and rental housing. There are very low rates of car ownership and buildings with little to no parking. In this part of the Market and Octavia Plan Area, per capita daily VMT is roughly 4 miles.

**The Citywide standard of 14.6 would be a substantial increase in traffic.**

The Van Ness/Market area is a huge regional and city corridor. It carries traffic for (and intersects with):

- MUNI and regional transit public buses
- Trucks and cars, including those using surface US route 101 to/from the freeway
- Private buses, including to/from Silicon Valley
- Uber and Lyft

Several planning commissioners and members of the public stated concern over the usefulness of the threshold of significance and asked for deeper analysis. Response to Comments 4.10-4.15. Instead of providing that information the EIR hid behind the technicality of VMT for this site.

Reliance on VMT has been misapplied in the One Oak EIR. In doing so the One Oak EIR violated CEQA. A public agency cannot apply a threshold of significance or regulatory standard in a way that forecloses the consideration of any other substantial evidence showing there may be a significant effect. Exhibit 8 *Mejia v. City of Los Angeles*, 130 Cal.App.4th 322 (2005)

California courts also remind us that the fact that a particular environmental effect meets a particular threshold cannot be used as an automatic determinant that the effect is or is not significant. Exhibit 9: In *East Sacramento Partnership for a Livable City v. City of Sacramento*, 5 Cal.App.5th 281 (2016)

This appeal does not challenging the threshold per se. Using the VMT threshold of significance is in itself inappropriate for studying One Oak because it is set too high and fails to capture significant effects. **The standards are not appropriate to the site.**

**This is a part of the city where the tolerance for more VMT is zero.**

Because of roadway and transit capacity constraint, most transportation demand from development like One Oak must be oriented towards walking and bicycling. The *One Oak EIR* acknowledges none of this.

Planning acknowledges that different levels of parking lead to different levels of VMT. Response to Comments 4.17. They further admit that more parking leads to more VMT. There is considerable evidence, based on the research of Professor Donald Shoup in his *High Cost of Free Parking*, that parking generates car trips. The SFMTA acknowledges this in Exhibit 10. The Market and Octavia Better Neighborhood Plan acknowledges this and permits zero parking throughout the plan *for that reason*.

The One Oak Project is in an area of the Market and Octavia Plan where the permitted parking is 0.25:1 Zero parking is permitted. If the project complies with the planning code, it would have no more than 73 parking spaces. Instead Planning gave the development **MORE** parking – allowing 136 spaces.

Planning also claims they are absolved from studying different parking ratios for One Oak. Studying different parking ratios would have provided deeper analysis.

**The *One Oak EIR* must analyze how parking impacts VMT, traffic, and the impacts on pedestrians, cyclists, and transit, and must consider reasonable alternatives which would be zero parking and a 0.25:1 parking ratios.**

Additionally, the One Oak EIR does not discuss the VMT **impacts of valet parking** for residents. With excess parking above what is permitted (136 spaces instead of 73), and easy access to cars via Valet and two elevators, there could be much more driving because of the ease of access to cars by residents. Residents might order their cars in advance and easily access them. Residents will also find it easy to drop their cars off and not have to worry about queues or waiting times.

The *LCW One Oak Transportation Impact Study* suggests Oak Street loading zones will be used by Valets to store cars as residents come and go. New Apps and other methods will be used by residents to have easy access to their cars. The valet renders parking stackers and dependently-accessible parking a useless deterrent to driving.

### ***Wind Impacts on Bicyclists***

Market and Van Ness is one of the windiest intersections in the City. The existing conditions, especially in spring and summer afternoons, are hazardous to cyclists. The 40-story One Oak tower will make it more hazardous. The issue of wind was raised in the Jan 5 public comment on winds. Response to Comments 4.6-4.64.

Planning's response to the wind/bicycle issue is that the methodology "does not explicitly include any criteria that is specifically applicable to cyclists." Response to Comments 4.65.

**Wind impacts on cyclists are dealt with in a cavalier manner by Planning.**

*One Oak EIR* contains an extensive discussion of potential impacts of wind on pedestrians and public transit passengers waiting for buses at nearby bus stops. It completely omits analysis of the impact of wind on the thousands of cyclists using Market and other nearby streets. Because the EIR does not study wind impacts on bicycling, appropriate mitigation is omitted.

Consequently, *One Oak EIR* does not analyze how the increased wind might affect other citywide goals seeking to increase bicycle mode share and make cycling safer such as the 2009 Bicycle Plan, the Market and Octavia Better Neighborhoods Plan, or the forthcoming Better Market Street Plan.

The SFMTA's strategic plans *all* seek to increase cycling, especially on Market Street. This EIR does not analyze how these citywide goals might be undermined by the wind hazards from One Oak.

Since the *One Oak EIR* only discusses pedestrian impacts of winds it only proposes mitigation of canopies that disperse the wind away from sidewalks– but disperse where? Into the street? Into bicycle lanes on Market?

In the January 5 hearing on the *One Oak DEIR* several planning commissioners requested more thorough analysis of wind impacts. Response to Comments 4.6. In the Response to Comments the EIR admits to having no understanding of wind impacts on cyclists. Response to Comments 4.65.

**There is no idea of impacts. There is no idea how to mitigate impacts on cyclists.**

Planning suggests that the community must offer a methodology to study wind impacts on bicycles, stating “none of the comments offer an alternative methodology or scientific studies supporting a different methodology or threshold of significance.” Response to Comments 4.65. This is tantamount to the City of Richmond telling neighbors of the Chevron refinery that the burden is on *them* to come up with a methodology to measure air pollution from the refinery, and not the city or air district.

The One Oak EIR needs to study the following:

- Impacts of wind on bicycles, especially downwash winds.
- Impact of One Oak downwash wind and wind canopies on bicyclists on Market and surrounding streets.
- Impact of the proposed canopies deflecting wind directly into Market and into bike lanes on Market and Polk.
- Adequate mitigations to make cycling safe and comfortable on Market, such as fully-separated cycle tracks and other infrastructure that make it less likely a cyclist collides with motor vehicles or buses when wind conditions are hazardous for bikes.

### ***On-demand Car Service (TNCs) & Deliveries***

The EIR does not include present-day trends of on-demand for hire car service such as Uber and Lyft (aka Transportation Network Companies, TNCs). It also omits new e-commerce retail delivery patterns.

The EIR does not consider the localized swarming of Uber & Lyft that already occurs in this area. Uber & Lyft are omitted from the city’s transportation analysis despite upwards of 45,000 vehicles operating in the city every day. The EIR admits there are more on-demand car services and that the **City does not know how to study them**. “It is difficult if not impossible to know the TNC impacts.” Response to Comments 4.18.

**No understanding of impacts means they cannot mitigate.** The Board should do more.

The One Oak EIR underestimates the volume of daily deliveries to 304 condominiums at this site. The explosion of e-commerce deliveries is missing in the EIR.

The methodology for estimating daily e-commerce deliveries to 304 condos must be updated to reflect change. Based on **2002** transportation guidelines, One Oak's **700 residents** will receive **13 truck deliveries per day**. Exhibit 11. This is an underestimate.

The One Oak EIR must study and discuss stronger mitigation of loading impacts for residential e-commerce

At the January 5, 2017 DEIR hearing, a Planning Commissioner raised concerns about e-commerce and residential deliveries and the new "retail landscape." Response to Comments 4.34.

This included concerns about the city's lack of understanding of loading after 5pm. Planning response was that the methodology only analyzes deliveries between 8am-5pm because *pizzas* are delivered after 5pm. Response to Comments 4.36. **Today much more than pizza is delivered after 5pm.**

Planning also states that studying deliveries after 5pm is not necessary because it is outside of commute times. This is inaccurate. In the Van Ness/Market area weekday commute traffic occurs after 5pm, and often well past 7pm.

Concern was also expressed regarding the new role of TNCs in deliveries. Response to Comments 4.36. These kinds of deliveries occur after 5pm on weekdays.

Plaza renderings for One Oak are always shown with people milling about, with no cars, or at most one car. This is not reality. On-demand car services and e-commerce deliveries are not adequately studied and not mitigated.

### ***Cumulative Impacts***

The Board and the City must have an understanding of cumulative impacts. The proposed 10 Van Ness project is directly across Market from One Oak. The cumulative impacts study in the One Oak EIR does not include the traffic, wind impacts on bicycles, and TNC/delivery impacts on pedestrians, bicyclists and transit that will occur with **both projects** cumulatively, especially with over 500 parking spaces proposed at 10 Van Ness. Exhibit 12.

The One Oak EIR must also acknowledge that based on the planning department's own estimate, the current foreseeable projects in the "Hub" are estimated at 5,469 parking spaces. Like One Oak many of these future projects will be requesting a CU for more than the permitted parking.

This geographically-small, transit rich, bicycle and pedestrian neighborhood will be overwhelmed with more cars. One Oak EIR must include cumulative impacts of all of this potential future parking on VMT, and on pedestrian, bicycle, and transit systems in the area.

Moreover, the cumulative impacts must include all past, present, and future buildings in the HUB.

### **Requested Board Action on September 5**

The EIR for the One Oak is inadequate. It fails as an informational document.

There is pressure on this Board to approve the One Oak EIR and the development. This appeal does not intend to set this project back while a new EIR is written.

The Board should still address serious concerns raised in this appeal.

The Board of Supervisors must approve a **General Plan amendment** before One Oak can move forward. **The Board should make two immediate changes to that amendment to reduce impacts from development of One Oak:**

- Set the parking ratio of One Oak to 0.25:1 as required by Planning Code, Market and Octavia Better Neighborhoods Plan.
- Discourage condominium residents from driving to work - and adding traffic - during Muni peak hours by restricting parking valet operation on weekdays from 7am-10am and 4pm-7pm.

Van Ness/Market/South Van Ness are crucial to citywide MUNI route operations. Supervisors from Districts throughout the city must make decisions with the best information available. Information is missing from the One Oak EIR.

In addition to changing the General Plan Amendment, the Board should direct Planning to:

- Study traffic impacts of current e-commerce delivery patterns and the shift from retail storefront to truck delivery to residence.
- Study the explosion of TNCs like Uber and Lyft. Update traffic analysis to understand potential mitigations such as regulating curb and off-site loading zones.
- Study the traffic impacts of private commuter buses, such as "Google buses" travelling on Van Ness and nearby streets.
- Conduct deeper traffic and transportation impacts analysis in the Hub regardless of the adopted threshold of significance for VMT.
- Study wind impacts on cyclists in all future environmental impact analysis in San Francisco including how sudden gusts might push cyclists into traffic.

**On September 5 the Board should introduce legislation to adopt interim controls to limit parking in all developments in the Hub to 0.25:1 maximum with no Conditional Use allowed for excess parking.**

The evidence is clear that parking generates car trips. Most of issues raised in this appeal relate to traffic impacts and car trips. Developments of thousands of condos are coming to the Hub. The **Hub** planning process is scheduled to conclude in **2019** but most projects will likely already be approved or at some stage of planning.

Finally the Board should contract an independent study of the relationship between providing parking, housing affordability, and the feasibility of new housing in the urban core of San Francisco.

The area around Van Ness and Market Street is the jugular for citywide circulation. The Board of Supervisors should keep Van Ness and Market area - traffic and Muni operations - from being overwhelmed and further congested. The General Plan Amendment required for One Oak is an unprecedented opportunity to get One Oak right, and to initiate truly sustainable infill development for the Hub and the rest of the City.

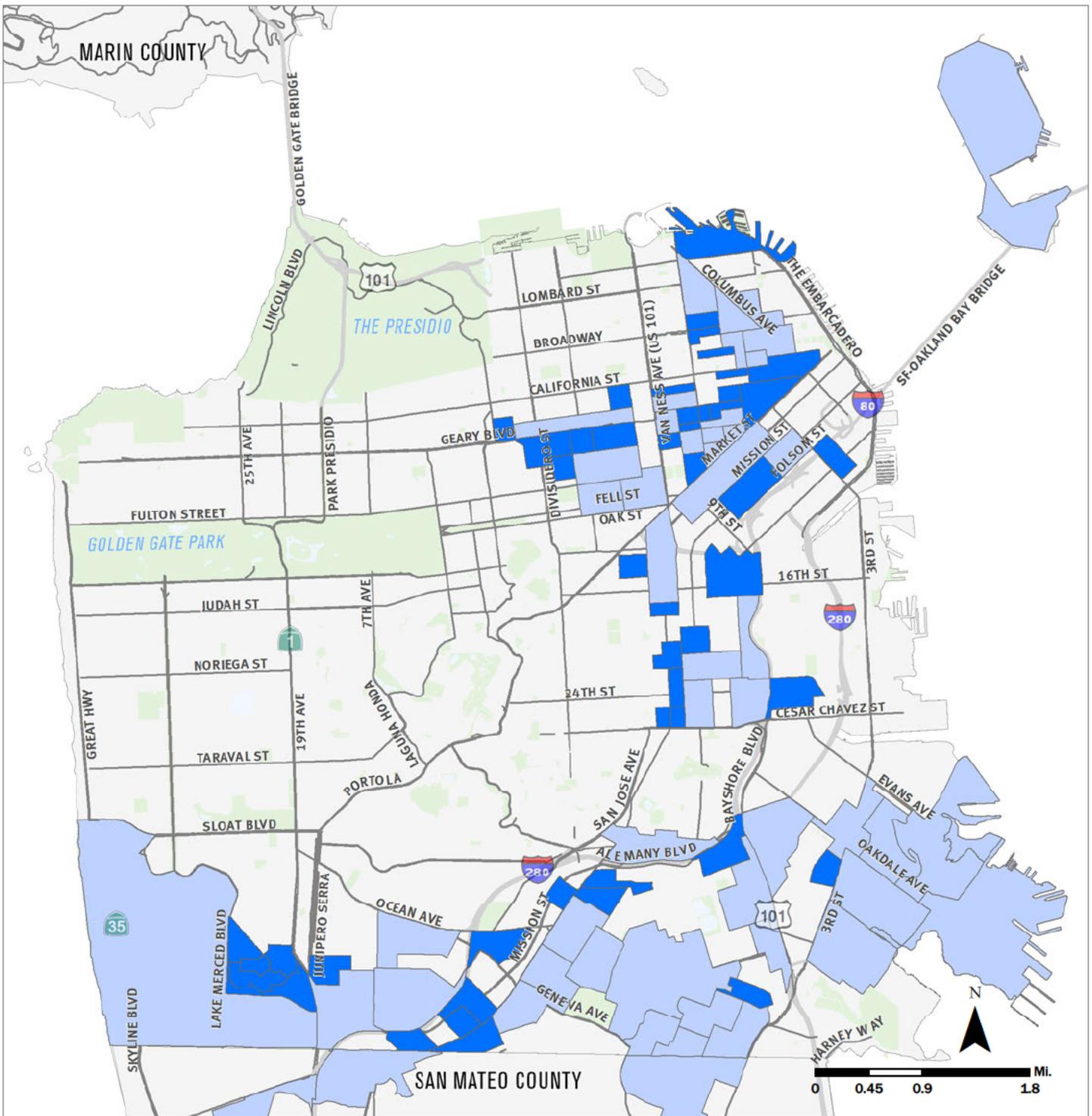
The Board should not miss this opportunity.

*Jason Henderson*

Jason Henderson  
Professor, Geography and Environment  
San Francisco State University  
Chair, Market & Octavia Community Advisory Committee  
Chair, Hayes Valley Neighborhood Association, Transportation & Planning Committee  
Member, HVNA Board of Directors  
Member, San Francisco Bicycle Coalition

## Index of Exhibits

- Exhibit 1a SFCTA Map Proposed SF Communities of Concern 2017
- Exhibit 1b SFCTA Map Proposed SF Communities of Concern 2017 (Amended by author showing main Muni corridors converging on Van Ness/Market area)
- Exhibit 2a LCW Consulting Existing Traffic Volumes –Weekday Am Peak Hour
- Exhibit 2b LCW Consulting Existing Traffic Volumes –Weekday Pm Peak Hour
- Exhibit 3 Proposed HUB area - Parking & Housing Pipeline in the Hub, 8/22/17
- Exhibit 4 Proposed HUB area - Soft Sites & Sites in Play, 6/7/16
- Exhibit 5 SFCTA TNC Study, Profile of SF Transportation Network Company Activity, June 2017
- Exhibit 6 Planning Department, Transportation Impact Analysis Guidelines for Environmental Review -Update <http://sf-planning.org/transportation-impact-analysis-guidelines-environmental-review-update>
- Exhibit 7 LCW Consulting Proposed Project Trip Generation by Mode
- Exhibit 8 Mejia v City of Los Angeles, 130 Cal.App.4th 322 (2005)
- Exhibit 9 East Sacramento Partnership for a Livable City v City of Sacramento, 209 Cal.Rptr 3d 774 (2016)
- Exhibit 10 SFMTA, Moving SF, The Growing Case for a New Approach to SF's Parking Problem, 4/26/16 <https://www.sfmta.com/about-sfmta/blog/growing-case-new-approach-sfs-parking-problem>
- Exhibit 11 LCW Consulting Proposed Project Delivery/Service Vehicle-Trips and Loading Space Demand
- Exhibit 12 10 South Van Ness, Availability of Notice of Preparation of EIR & Public Scoping Meeting, 7/12/17



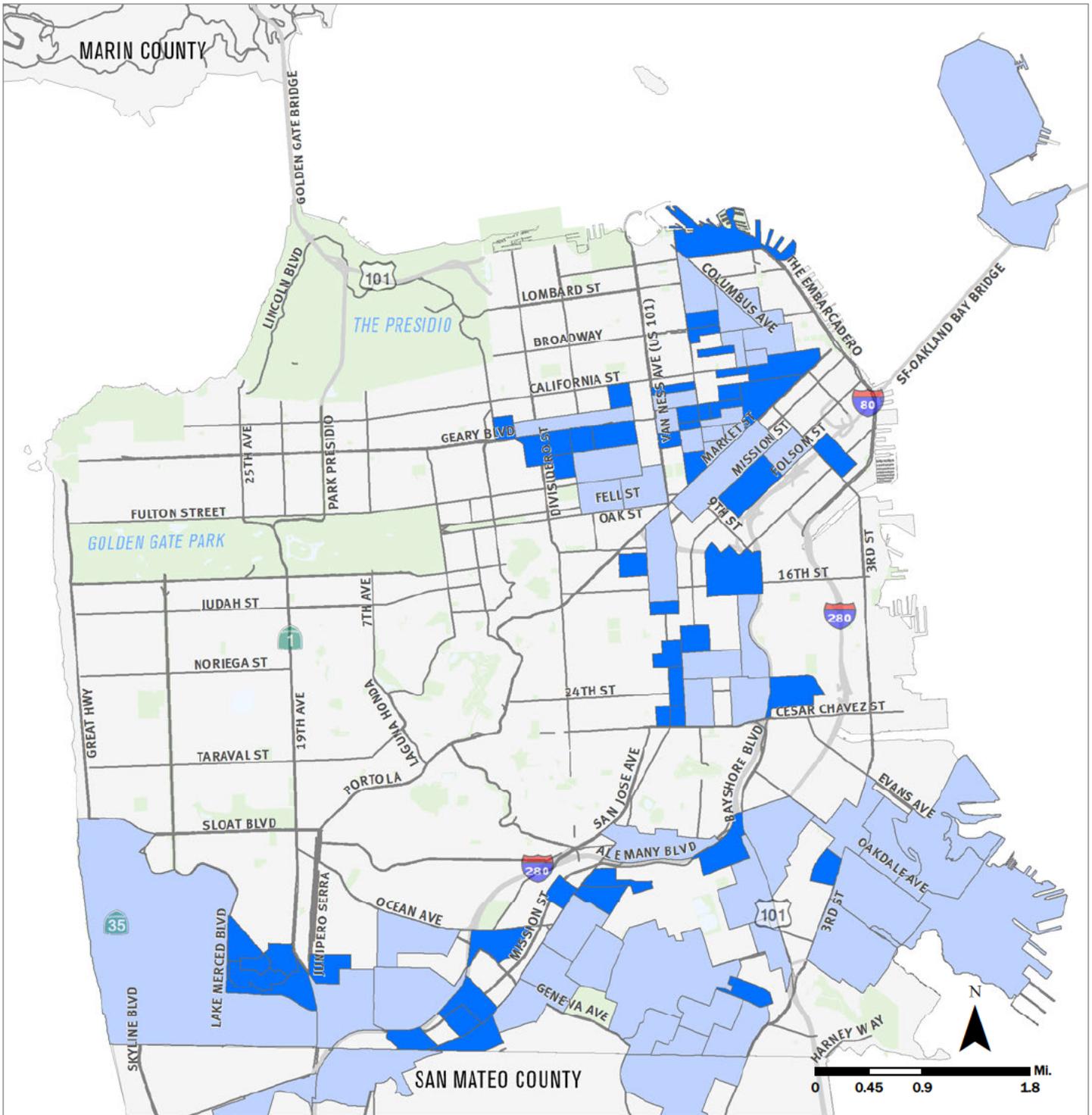
# Proposed San Francisco Communities of Concern 2017

- SFCTA 2017 supplemental Communities of Concern Boundaries
- MTC 2017 Communities of Concern (Modified)
- Parks and Open Space



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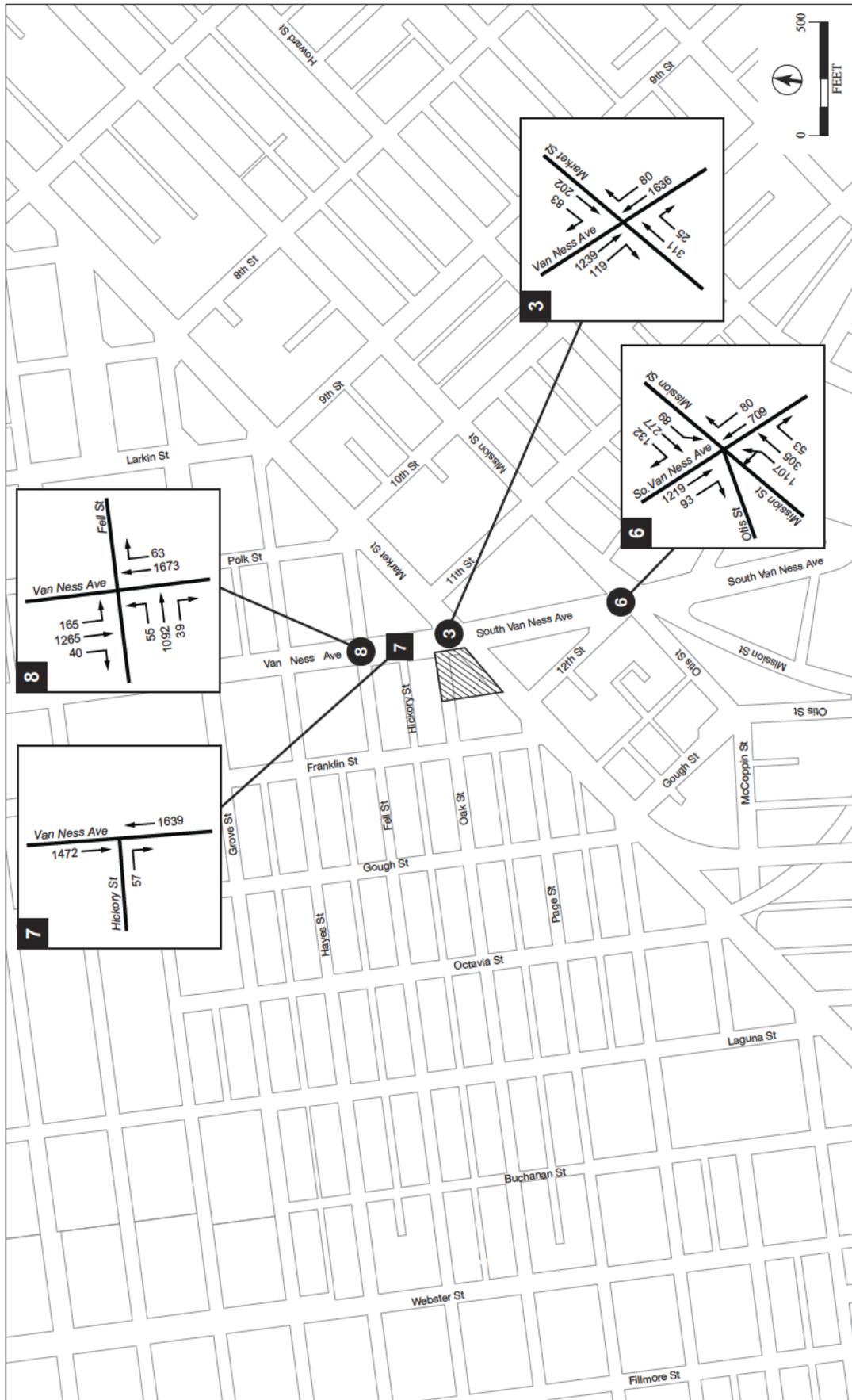
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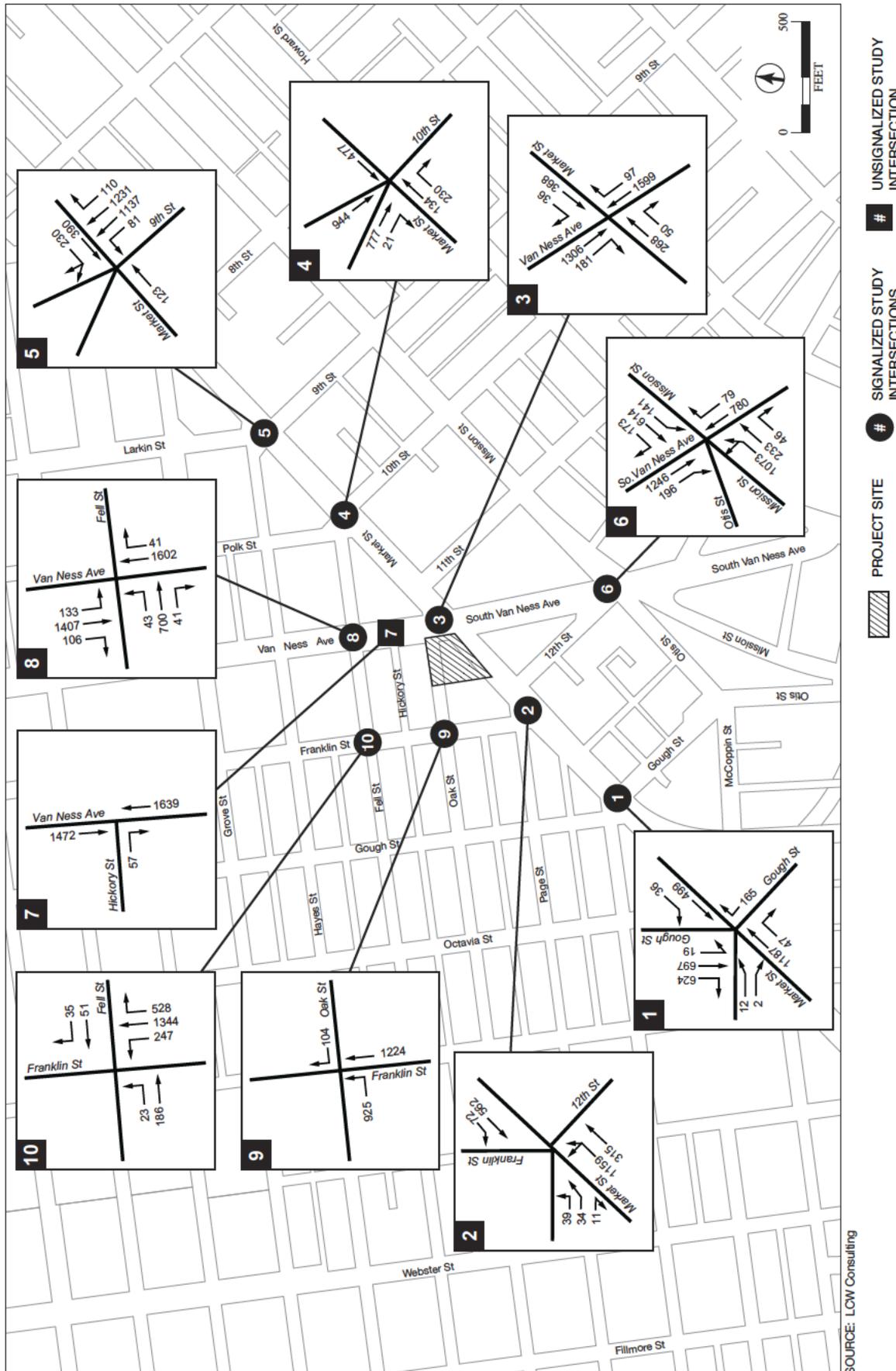


SOURCE: LCW Consulting

ONE OAK PROJECT TRANSPORTATION IMPACT STUDY  
**FIGURE 7A: EXISTING TRAFFIC VOLUMES - WEEKDAY AM PEAK HOUR**

LCW CONSULTING

2009.0159E

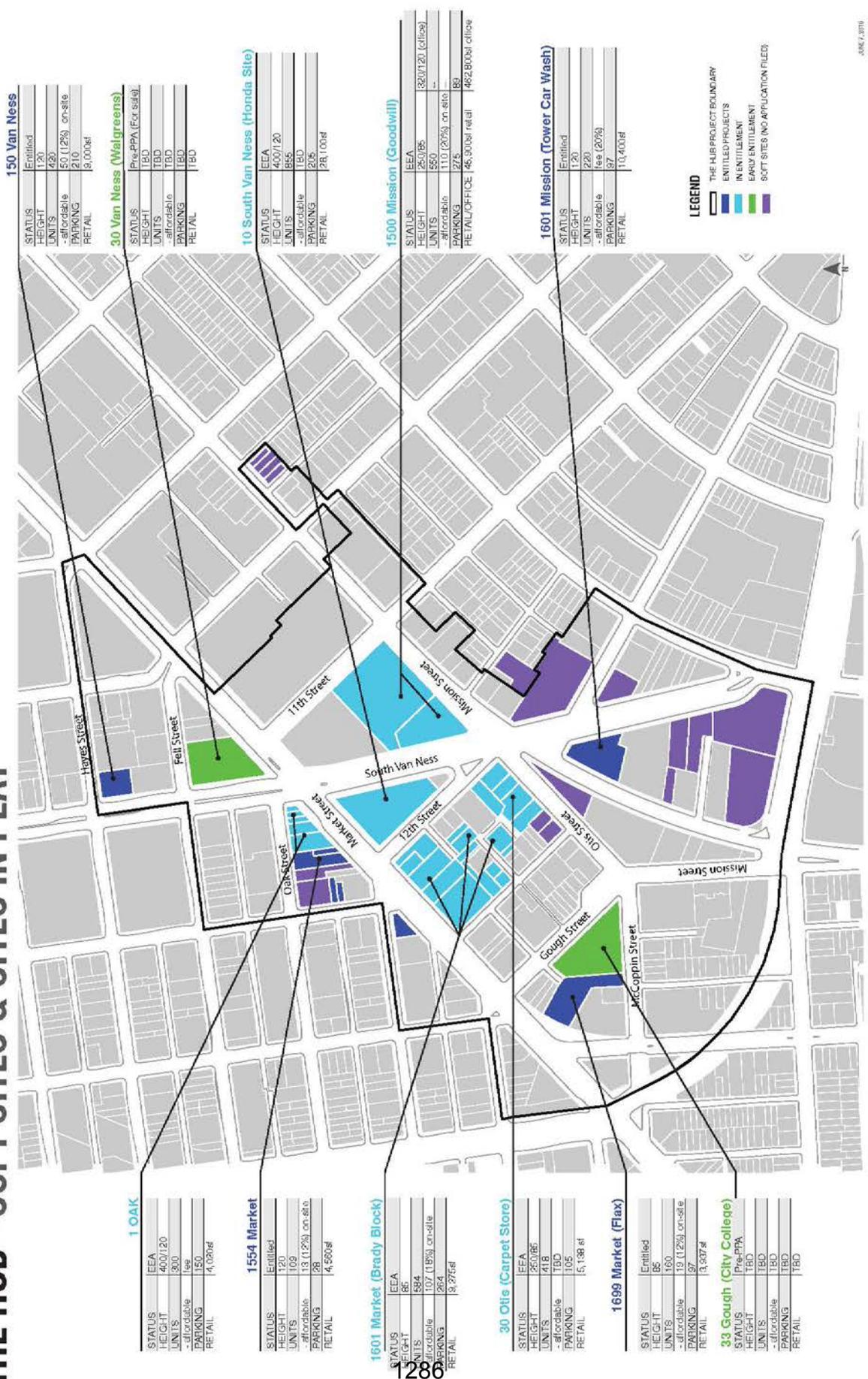


SOURCE: LCW Consulting

ONE OAK PROJECT TRANSPORTATION IMPACT STUDY  
 LCW CONSULTING  
 2009.0159E  
**FIGURE 7B: EXISTING TRAFFIC VOLUMES - WEEKDAY PM PEAK HOUR**

Entitled	Height		Parking ratio		Units		Zoning	
	Existing Tower	Proposed Tower / Podium	Existing Zoning, Max with CU Ratio	Sub Proposal / Approved / Requested Amount	Existing	Proposed	Existing	Proposed
1700 Market		85	.75	32	42	42	NC	C3
150 Van Ness		120	.50	215	429	429	C3	C3
1554 Market		120	.50	55	109	109	C3	C3
22 Franklin		85	.50	12	24	24	C3	C3
1601 Mission		120	.50	110	220	220	C3	C3
1699 Market		85	.75	120	160	160	NC	C3
1740 Market Street		85	.75	75	100	100	NC	C3
1500 Mission	250	400	.50	275	550	550	C3	C3
1 Oak	400	400	.50	152	304	304	C3	C3
<b>TOTAL</b>				1,045	1,938	1,938		
<b>In Entitlement</b>								
1601-1637 Market		85	.75	438	584	584	NC	C3
42 Otis		50	.75	18	24	24	NC	C3
10 South Van Ness	400	590	.50	405	810	984	C3	C3
30 Otis	250	320	.50	177	354	354	C3	C3
<b>TOTAL</b>				1,038	1,772	1,946		
<b>Early entitlement (filed a PPA)</b>								
30 Van Ness	400	520	.50	345	691	927	C3	C3
33 Gough	0	250	.75	212	283	577	P	C3
98 Franklin / 57 Oak	0	320	.50	69	138	433	C3	C3
<b>TOTAL</b>				626	1,111	1,937		
<b>TOTAL In entitlement &amp; early entitlement</b>				1,664	2,883	3,883		
<b>Other Sites (no active project)</b>								
99 South Van Ness	0	250	.50	257	360	514	C3	C3
101 South Van Ness		120	.50	50	70	99	C3	C3
1695 Mission		120	.75	429	400	572	NC	C3
170 South Van Ness		120	.75	325	304	434	NC	C3
50 Otis		65	.75	14	14	18	NC	C3
154 South Van Ness		120	.75	119	83	158	NC	C3
160 South Van Ness		120	.75	124	87	165	NC	C3
1 South Van Ness	400	600	.50	647	945	1,294	C3	C3
<b>TOTAL</b>				1,964	2,263	3,255		
<b>Other Sites (no height changes)</b>								
1707 Market		85	.75	114	153	153	NC	C3
1600 Mission		120	.50	42	84	84	C3	C3
1337 Mission		160	.50	17	34	34	C3	C3
1339 Mission		160	.50	22	43	43	C3	C3
1345 Mission		160	.50	21	42	42	C3	C3
1349 Mission		160	.50	15	30	30	C3	C3
1661 Mission Street		85	.75	37	37	49	C3	C3
Various small sites			.75	528	704	704	NC	C3
<b>TOTAL</b>				796	1,127	1,139		
<b>SUBTOTALS</b>				5,469	6,273	8,277		
<b>TOTAL</b>				3,051				

# THE HUB - SOFT SITES & SITES IN PLAY



**150 Van Ness**

STATUS	Entitled
HEIGHT	120
UNITS	420
-affordable	50 (12%) on-site
PARKING	210
RETAIL	9,000sf

**30 Van Ness (Walgreens)**

STATUS	Pre-PPA (For sale)
HEIGHT	180
UNITS	180
-affordable	180
PARKING	180
RETAIL	180

**10 South Van Ness (Honda Site)**

STATUS	EEA
HEIGHT	400/120
UNITS	855
-affordable	150
PARKING	226
RETAIL	28,100sf

**1500 Mission (Goodwill)**

STATUS	EEA
HEIGHT	250/85
UNITS	550
-affordable	110 (20%) on-site
PARKING	225
RETAIL/OFFICE	145,900sf retail / 462,800sf office

**1601 Mission (Tower Car Wash)**

STATUS	Entitled
HEIGHT	120
UNITS	220
-affordable	fee (20%)
PARKING	87
RETAIL	110,400sf

- LEGEND**
- THE HUB PROJECT BOUNDARY
  - ENTITLED PROJECTS
  - IN-ENTITLEMENT
  - EARLY ENTITLEMENT
  - SOFT SITES (NO APPLICATION FILED)

**1 OAK**

STATUS	EEA
HEIGHT	400/120
UNITS	300
-affordable	fee
PARKING	150
RETAIL	4,020sf

**1554 Market**

STATUS	Entitled
HEIGHT	120
UNITS	109
-affordable	13 (12%) on-site
PARKING	28
RETAIL	4,590sf

**1601 Market (Brady Block)**

STATUS	EEA
HEIGHT	85
UNITS	494
-affordable	107 (19%) on-site
PARKING	264
RETAIL	13,276sf

**30 Otis (Carpet Store)**

STATUS	EEA
HEIGHT	250/85
UNITS	418
-affordable	TBD
PARKING	105
RETAIL	5,138 sf

**1699 Market (Flax)**

STATUS	Entitled
HEIGHT	85
UNITS	60
-affordable	19 (12%) on-site
PARKING	87
RETAIL	13,537sf

**33 Gough (City College)**

STATUS	Pre-PPA
HEIGHT	TBD
UNITS	TBD
-affordable	TBD
PARKING	TBD
RETAIL	TBD

Exhibit 4 Proposed HUB area - Soft Sites & Sites in Play, 6/7/16

DRAFT



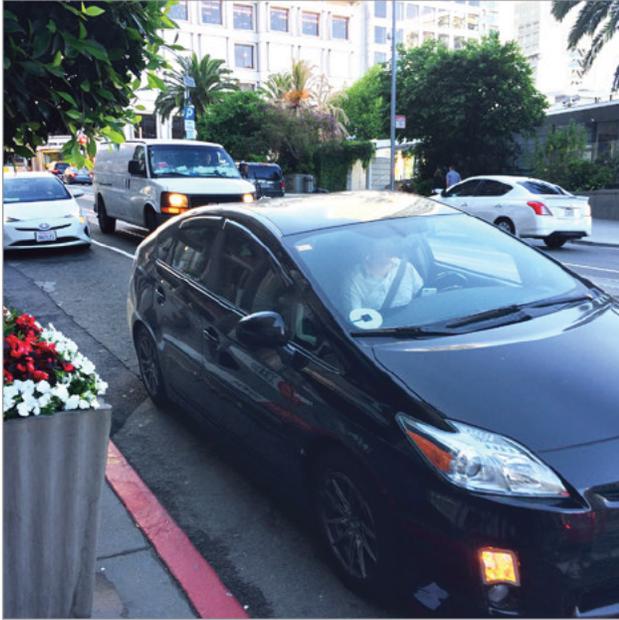
## TNCs Today

A Profile of San Francisco Transportation Network Company Activity



JUNE, 2017

1287



# Contents

<b>Executive Summary</b>	<b>1</b>
<b>Introduction</b>	<b>3</b>
<b>Purpose</b>	<b>4</b>
<b>Methodology</b>	<b>5</b>
<b>Research Questions</b>	<b>7</b>
How many TNCs operate in San Francisco today?	7
How many TNC trips are occurring in San Francisco?	8
When are TNC trips occurring in San Francisco?	9
Where are TNC trips occurring in San Francisco?	11
How much VMT do TNCs generate within San Francisco?	15
Do TNCs provide good geographic coverage throughout the entire city?	17
<b>Future Research</b>	<b>18</b>
<b>For More Information</b>	<b>18</b>
<b>Bibliography</b>	<b>19</b>
<b>Glossary</b>	<b>19</b>

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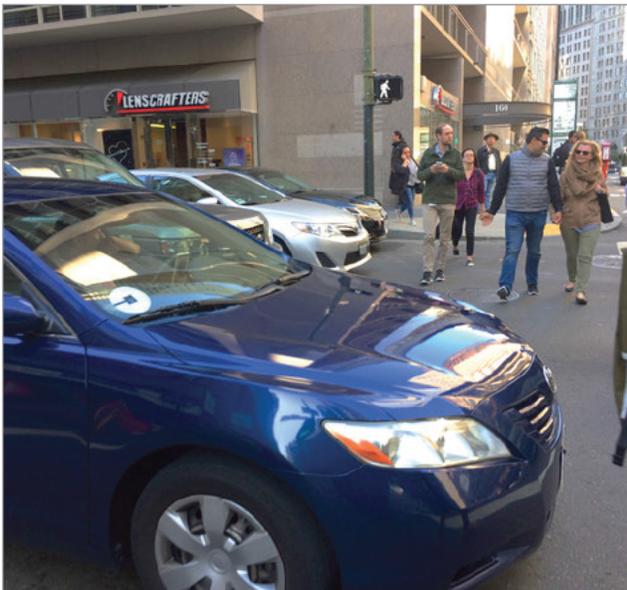
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## Executive Summary

Transportation network companies (TNCs) such as Uber and Lyft are an increasingly visible presence on San Francisco streets, but there has been no comprehensive data source to help the public and decision-makers understand how many TNC trips occur in San Francisco, how much vehicle travel they generate, and their potential effects on congestion, transit ridership, and other measures of system performance. The California Public Utilities Commission (CPUC) regulates TNCs and requires data reporting by TNCs, but will not share these data with local jurisdictions and the public.

The purpose of this report is to provide information on TNC activity in San Francisco, in order to help the San Francisco County Transportation Authority (Transportation Authority) fulfill its role as the Congestion Management Agency for San Francisco County. The report is also intended to inform the Transportation Authority board which is comprised of the members of the San Francisco Board of Supervisors, as well as state and local policy-makers in other arenas, and the general public, on the size, location and time-of-day characteristics of the TNC market in San Francisco.

The information presented is a profile of estimated local TNC usage (trips made entirely within San Francisco) from mid-November to mid-December of 2016. The TNC data was originally gathered by researchers at Northeastern University from the Application Programming Interfaces (APIs) of Uber and Lyft and then shared with the Transportation Authority. The Transportation Authority's data team cleaned and analyzed the data for presentation here.



While this document provides a broad range of descriptive information about TNC trips, it does not evaluate the effects of these TNC trips on the performance of the San Francisco transportation system, nor does it explain TNC customer trip purposes, demographic characteristics, or longer term effects on vehicle ownership and residential and employment location. This report does not identify the extent to which TNCs affect congestion. Many factors contribute to increased congestion—population and employment growth, construction activity, increased delivery and other transportation services, and TNCs.

Subsequent reports and studies by the Transportation Authority and others will address these important analytic and policy topics in depth, including the effects of TNCs on roadway congestion, public transit operations and ridership, disabled access, and equity.

The report is structured around six primary questions:

### HOW MANY TNCs OPERATE IN SAN FRANCISCO TODAY?

- The San Francisco Treasurer's Office estimates that 45,000 Uber and Lyft drivers may operate in San Francisco, and in 2016 sent notices requiring them to register their business with the city.
- Almost 21,000 drivers are estimated to have complied with the requirements to register their business with the city. Of that number, only 29% are San Francisco residents.
- On a typical weekday, over 5,700 TNC vehicles operate on San Francisco streets at peak times, with the peak period occurring between 6:30pm and 7:00pm. On Fridays, over 6,500 TNC vehicles are on the street during the peak of 7:30pm to 8:00pm. This is over 15 times the number of taxis on the street at these times of day.

### HOW MANY TNC TRIPS ARE OCCURRING IN SAN FRANCISCO?

- On a typical weekday, TNCs make over 170,000 vehicle trips within San Francisco, which is approximately 12 times the number of taxi trips, and 15% of all intra-San Francisco vehicle trips. This represents a conservative estimate of total TNC trips in San Francisco because the study's dataset does not include trips with a regional origin or destination.
- Assuming TNC occupancy rates are similar to taxi occupancy rates, it is estimated that at least 9% of all San Francisco person trips use TNCs.

## WHEN ARE TNC TRIPS OCCURRING IN SAN FRANCISCO?

- Significant numbers of TNC vehicle trips occur on both weekdays and weekends, with the highest number on Fridays with over 222,500 trips, and the lowest number on Sundays with approximately 129,000 trips.
- On weekdays, TNC usage is concentrated during the AM and PM peak periods when congestion is greatest, and extends into the evenings on Friday. Saturday and Sunday TNC trips occur primarily in the afternoon and evening.

## WHERE ARE TNC TRIPS OCCURRING IN SAN FRANCISCO?

- TNC trips are concentrated in the densest and most congested parts of San Francisco including the downtown and northeastern core of the city. At peak periods, TNCs are estimated to comprise 25% of vehicle trips in South of Market.
- TNC trips are concentrated on the busiest arterials, yet also operate extensively on neighborhood streets, including along major public transit lines.

## HOW MANY VEHICLE MILES TRAVELED (VMT) DO TNCs GENERATE WITHIN SAN FRANCISCO?

- Intra-SF TNC trips generate approximately 570,000 vehicle miles of travel (VMT) on a typical weekday, comprising as much as 20% of intra-SF-only VMT, at

least 6.5% of average total weekday VMT citywide, and may account for more than 10% of weekend VMT, primarily during the AM peak, PM peak, and early evening time periods. These estimates include both in-service and out-of-service vehicle miles.

- Approximately 20% of total TNC VMT are out-of-service miles. This is significantly lower than the more than 40% of taxi VMT that are out-of-service miles. The greater efficiency of TNCs is likely due to the higher number of TNC vehicles and more efficient technology.

## DO TNCs PROVIDE A HIGH DEGREE OF GEOGRAPHIC COVERAGE THROUGHOUT THE ENTIRE CITY?

- TNCs provide broader service across the city than taxis, particularly in the western neighborhoods.
- TNCs provide fewer trips per population and employment in southern and southeastern areas of the city, which may reflect the presence of fewer TNC vehicles, or neighborhood preferences or demographics.

For more information, or to obtain a downloadable file of Transportation Authority processed data, visit the TNCs Today website at [www.sfcta.org/tncstoday](http://www.sfcta.org/tncstoday).



## Introduction

Transportation network companies (TNCs) such as Uber and Lyft are visible presences on San Francisco's streets, in both the downtown core as well as in the city's neighborhoods. These companies allow people to use a smartphone app to request and pay for rides sourced from a pool of available drivers. These services are taxi-like in that they provide point-to-point transportation primarily in private vehicles. The success of TNCs in attracting rides in San Francisco and other cities reflects the high unmet demand for premium services and the extensive benefits they provide to users who can afford their services. Initially TNCs offered some distinct advantages over taxis including the ability to easily reserve a ride, the ability for both driver and passenger to contact each other and to know the location of the other using GPS, ease of payment, cheaper fares, shorter wait times, and more availability at all times of day due to a larger supply of vehicles. Taxis now offer some of these features, although the supply of taxis is still significantly smaller than TNCs, and taxi fares are higher.

The advantages of TNCs over taxis and other transportation modes are in part a result of the technological innovation of directly connecting travelers and drivers, but are also in part an outcome and reflection of the relatively light regulatory requirements under which TNCs operate, relative to taxis and other for-hire vehicles. The biggest difference between TNCs and other modes is the significantly lower barrier for drivers to enter the market. California state law grants municipalities the ability to regulate taxis, and in San Francisco, the taxi medallion system limits the number of taxi vehicles that can serve the city. In addition, taxis are subject to price controls, must provide access to all areas of the city, must provide service to people with

disabilities, have greater insurance requirements, and are subject to driver background checks and vehicle inspections. In contrast, there is no limit on the number of TNCs that may operate on San Francisco streets, no price controls, no geographic service area requirements, minimal disabled access requirements, limited driver background checks and few vehicle inspection or driver training requirements (TRB 2015).

There is a perception that TNC vehicles now comprise a significant number of the vehicles on San Francisco streets, having increased rapidly since TNCs started operating in the city seven years ago. However, there has been little data to either confirm or refute this perception. The California Public Utilities Commission (CPUC), which regulates TNCs due to the inter-city, non-hail nature of the service they provide, requires TNCs to report to the CPUC an extensive set of information on service provision including where and when trips are starting and ending, the availability of disabled-accessible vehicles, traffic incidents, and hours and miles logged by drivers. However, the CPUC has refused to share these TNC data with San Francisco, stating that it is authorized to withhold official information if disclosure of the information is against the public interest (CPUC Letter to the Transportation Authority, 2017). However, recent SFMTA Travel Decisions Survey results indicate that TNCs are growing in significance as a share of overall San Francisco travel, doubling in mode share served between 2014 and 2015 (SFMTA 2014, SFMTA 2015). In addition, it has been noted that Uber reported an annual tripling of trips in San Francisco (TRB 2015). However, these data sources provide no reliable estimates of the true number of TNC trips occurring in San Francisco, where TNC trips are occurring, or when TNC trips are occurring.





## Purpose

The purpose of this report is to provide information on TNC activity in San Francisco, in order to help the San Francisco County Transportation Authority (Transportation Authority) fulfill its role as the Congestion Management Agency for San Francisco County. The report is also intended to inform the Transportation Authority board which is comprised of the members of the San Francisco Board of Supervisors, as well as state and local policymakers in other arenas, and the general public, on the size, location and time-of-day characteristics of the TNC market in San Francisco.

This document provides estimates of how many TNCs are operating in San Francisco during all times of day and days of week, imputes the number, location, and timing of intra-San Francisco TNC trips based on TNC driver trip acceptance information (referred to in this report as pickups) and TNC driver drop off information (referred to as drop-offs). The report estimates the amount of daily vehicle miles travelled (VMT) generated by TNCs, and contextualizes these relative to the other travel modes operating in San Francisco, including private vehicles, public transit, walking and biking. TNC trips between San Francisco and other counties (regional TNC trips) are not included in these estimates, and as a result these numbers represent a lower-bound estimate of the number of actual TNC vehicles and trips operating in San Francisco. Note that the data on which this report is based does not include any information on TNC trip purposes, travel party size, fares paid, traveler attributes such as gender, income, disability, mode choice shifts, or induced travel.

The information presented is a profile of local TNC usage in San Francisco from mid-November to mid-December of 2016, excluding dates around the Thanksgiving 2016 holiday. The TNC data was originally gathered by researchers at Northeastern University from the Application Programming Interfaces (APIs) of Uber and Lyft which show the locations of available vehicles to mobile apps, and then was shared with the Transportation Authority through a research collaboration over the past year. The other data referenced in the report come from a variety of sources including Caltrans, the San Francisco Municipal Transportation Agency (SFMTA), and the Transportation Authority's SF-CHAMP travel demand model.

This document does not evaluate the near-term impacts of TNCs on the performance of the San Francisco transportation system, nor does it explain potential longer-term effects of TNC provision on vehicle ownership or residential and employment location.

This report does not identify the extent to which TNCs affect congestion. Many factors contribute to increased congestion—population and employment growth, construction activity, increased delivery and other transportation services, and TNCs. Subsequent reports by the Transportation Authority through this project and the larger Emerging Mobility Services and Technology (EMST) policy framework and the Connect SF long-range planning process, both being undertaken in coordination with other City agencies, will address these important analytic and policy questions in depth.

## Methodology

This research team developed and applied multiple procedures to estimate TNC trips within San Francisco. First, the team acquired data on TNC vehicle locations that was gathered from the Uber and Lyft APIs. The research team then cleaned this location data, removing unnecessary, anomalous, or redundant information. Finally, the team identified trips and imputed missing attributes.

### DATA COLLECTION

In order to provide real-time information to drivers and passengers, Lyft and Uber expose certain data through public-facing APIs. This information includes nearby vehicle locations, estimated times-to-pickup, and sometimes, estimated costs. The data exposed through the APIs also includes, among other things, a vehicle identifier associated with a sequence of time-stamped coordinates, and the service types associated with that vehicle, such as UberX or UberPOOL. Sending a request to the API returns a text file response containing this information for the nearest available vehicles. When a vehicle becomes unavailable, either because the driver has turned off their app or they have accepted a ride request, the vehicle disappears from the datastream. Similarly, when the vehicle becomes available, either because the driver has turned on their app or they have completed a ride request, it reappears in the datastream. Researchers at Northeastern University implemented a systematic method for collecting this datastream such that it geographically covers all of San Francisco. The Northeastern University researchers collected information on vehicle locations every five seconds for approximately six weeks. The data collection methodology has no impacts on either drivers or riders.

### DATA CLEANING

The research team collected data by sampling available TNC vehicles using a geographic grid that covers all of San Francisco. This sampling procedure means that any available Uber or Lyft vehicle may be detected by multiple sampling locations. Furthermore, because data is being collected almost continuously in time for each sampling location, the same vehicle will often appear repeatedly in the datastream for each individual sampling location. The first step in the data preparation process involved cleaning the information in the datastream. In addition, the raw data may at times contain anomalous data, which was also screened out to ensure the reasonableness of the GPS traces. The result was a set of unique GPS traces for each TNC vehicle.

### TRIP IDENTIFICATION, TRIP MATCHING AND ATTRIBUTE IMPUTATION

Cleaning resulted in a set of unique “pre-trip” vehicle trajectories that reflect when a vehicle became available (due to the driver dropping off a passenger or starting a shift) and when the vehicle became unavailable (due to the driver accepting a passenger or ending a shift). Once pre-trips and pickup and drop-off locations were defined, “trips” were imputed by linking the pickup and trip drop-off locations. Lyft trips were created first because the Lyft API reveals a persistent vehicle identifier, with which it is possible to build an aggregate matrix of Lyft flows from pickup locations to dropoff locations by detailed time-of-day. This matrix of flows is used to estimate the vehicle miles traveled generated by TNCs. Uber’s API does not have persistent identifiers that are necessary to connect pickup and dropoff locations, so the research team used the Lyft matrix of pickup and dropoff flows by travel analysis zone (TAZ) and time-of-day as a starting point, and then proportionally fitted the matrix to match Uber trip pickup locations and drop-off locations by time-of-day.

A unique aspect of the Uber and Lyft driver labor market is that drivers may drive for both services simultaneously. As a result, these driver vehicles may appear in both the Uber and Lyft datastreams. It is necessary to identify these “matched pre-trips” in order to avoid double-counting of TNC pre-trips and trips. Matched pre-trips were identified by comparing the start and end times of the pre-trips and selecting only those pre-trips whose start and end times both occurred within a limited time window, as well as selecting only pre-trips that traversed the same set of network links in the same sequence. The pre-trip (and associated trip) were then assigned to either Lyft or Uber, based on which pre-trip ended first, representing the first platform on which a driver accepted the trip.

For pre-trips, out of service travel times and distances could be calculated directly from the cleaned and processed datastream. For Lyft trips, trip travel times could be derived from the datastream. Because the datastream does not contain the information on the actual paths used by TNCs on trips, it was necessary to impute distances between observed pickup and dropoff locations using information from the Transportation Authority’s SF-CHAMP model. For Uber trips, both travel times and distances were imputed from the model system.

### DATA LIMITATIONS

It must be emphasized that the TNC information documented in this report does not represent direct observa-

tion of TNC trips. Trips and pre-trips are imputed based on the changes in the supply of Uber and Lyft vehicles as revealed by each company's API. Requests to the CPUC and to Uber and Lyft for data that could be used to validate these findings were declined.

However, as documented in subsequent sections of this report, the summaries of how the time and location of imputed TNC trips vary across time and space are generally consistent with overall travel patterns within the city.

There are a number of other limitations to the data as revealed by the APIs. Pickup locations and drop-off locations are not true trip origins and trip destinations. Instead, they represent where drivers accept rides (which

are assumed to be a few minutes from true trip origins) and where drivers are available again (which are assumed to be near true trip destinations). In addition, no information on the specific TNC products used (such as UberX or LyftLine) can be derived from the datastream. Pooled services like UberPOOL and LyftLine which are designed to encourage users to share rides may not show up in the datastream. No information on TNC vehicle occupancy or traveler demographics is available, nor is consistent information on costs. Finally, these estimates are a lower bound on TNC trips in San Francisco, as all trips with one or more end outside the city (regional and through trips) are excluded from the analysis.

# Research Questions

## HOW MANY TNCs OPERATE IN SAN FRANCISCO TODAY?

Two measures of TNC supply are the number of TNC drivers who regularly drive in the city and the number of TNC vehicles that operate in the city at peak times.

There are no definitive observed data of the number of TNC drivers who regularly drive in San Francisco. It has been estimated that as many as 45,000 TNC drivers may operate in San Francisco, based on the number of letters sent by the San Francisco Treasurer’s office to potential TNC drivers, notifying them of the requirement to register their businesses with the City. (SF Examiner, 2016). The City’s business location database (<https://data.sfgov.org/Economy-and-Community/Registered-Business-Locations-San-Francisco/g8m3-pdis>) provides industrial sector detail and business addresses of individuals who have registered businesses in San Francisco. Based on information from this database, the research team estimates that approximately 21,000 drivers complied with the City’s business registration requirements. In contrast, there are only approximately 1,800 San Francisco taxi vehicle medallions (SFMTA 2016). Table 1 shows the distribution of registered drivers’ locations, by county. It appears that only 29% of TNC drivers who work in San Francisco are

COUNTY	PERCENTAGE
Alameda	21%
Contra Costa	12%
Marin	2%
Napa	0%
San Francisco	29%
San Mateo	16%
Santa Clara	6%
Solano	2%
Sonoma	1%
Outside Bay Area	10%
<b>TOTAL</b>	<b>100%</b>

Source: San Francisco Registered Business Location Database, accessed 2017 May 12

based in the city, indicating that vast majority of TNC drivers are coming in the city from other Bay Area counties and beyond.

Figure 1 shows the estimated number of TNC vehicles that are on San Francisco streets on a typical weekday, by time-of-day, while Figure 2 (next page) shows the number of TNC vehicles on a typical Friday. These data show that on weekdays, the peak number of TNC vehicles occurs between 6:30pm and 7:00pm, when approximately 5,700 TNC vehicles are on San Francisco streets. On Fridays, the peak occurs between 7:30pm and 8:00pm, when an estimated 6,500 TNC vehicles are on the street.

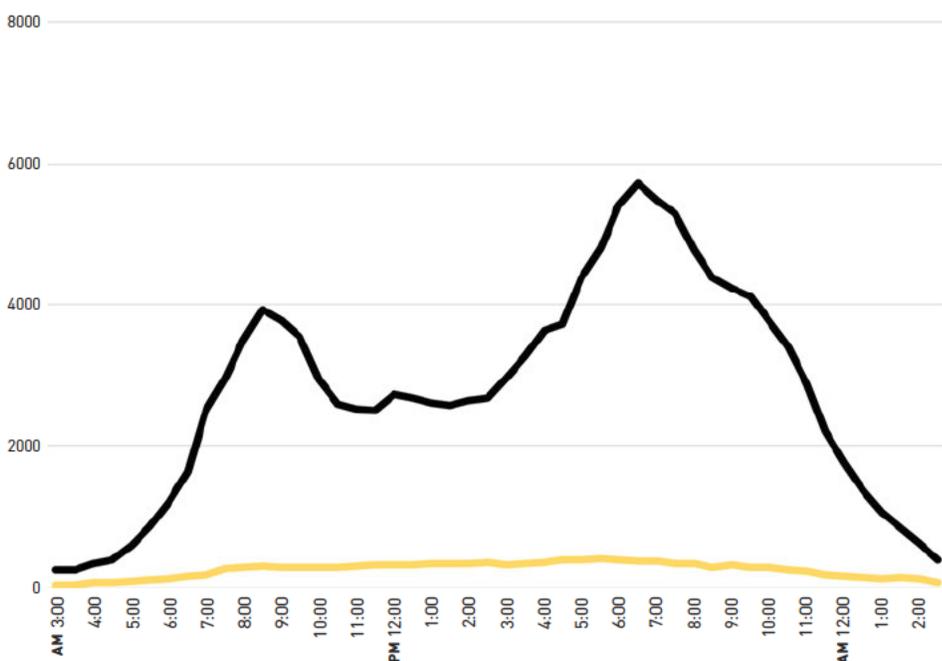


Figure 1. Intra-SF TNC and Taxi Vehicles On Street on Average Wednesday by Time-of-Day

Legend: TNC Vehicles (black line), Taxi Vehicles (yellow line)

SOURCE: TNC data; SFMTA

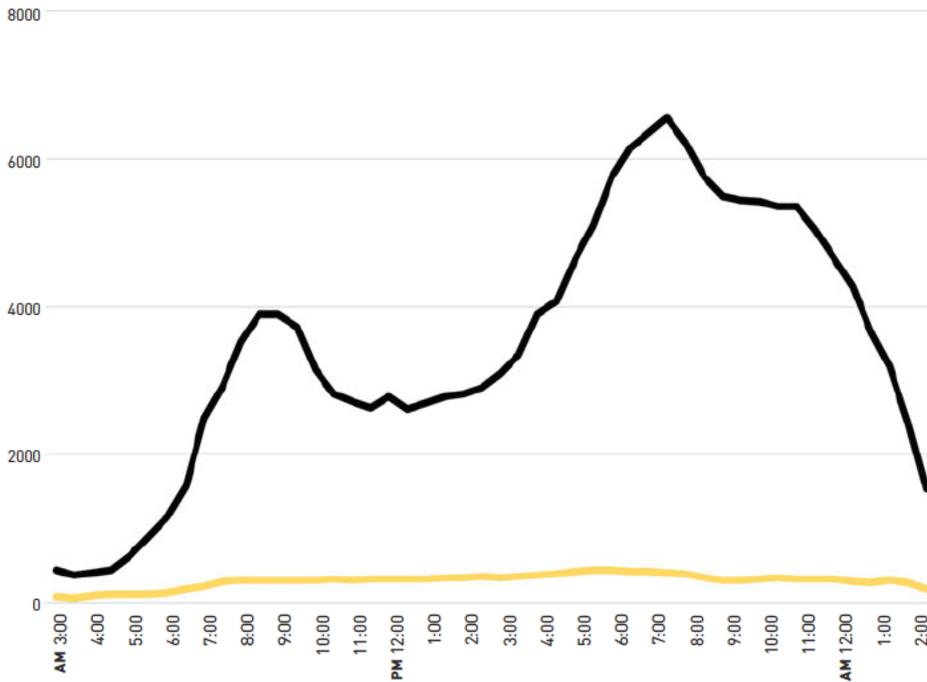


Figure 2. Intra-SF TNC and Taxi Vehicles On Street on Average Friday by Time-of-Day

Legend:  
 ■ TNC Vehicles  
 ■ Taxi Vehicles

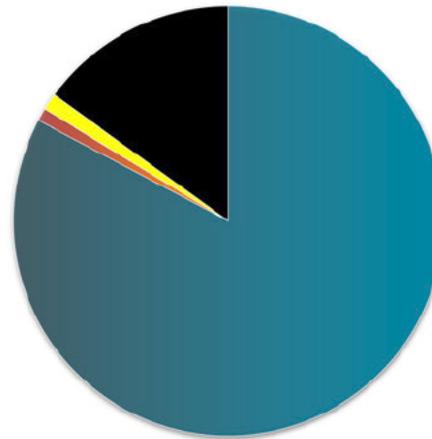
SOURCE: TNC data; SFMTA

## HOW MANY TNC TRIPS ARE OCCURRING IN SAN FRANCISCO?

Two types of TNC trips were estimated: vehicle trips and person trips. The number of TNC vehicle trips is important because more vehicle trips generally leads to increased congestion and conflicts with other street users, while more person trips may indicate enhanced mobility. Again, only those trips with both pickup and drop-off location within San Francisco are considered in the following summaries.

“Vehicle trips” in Table 2 refers to movements by motor vehicles with origins and destinations entirely within San Francisco. Vehicles may carry different numbers of people, or may be public transit vehicles or taxis. Trucks are excluded. Approximately 170,000 TNC vehicle trips are estimated to occur within San Francisco during a typical weekday. This represents approximately 15% of all weekday vehicle trips that both start and end within the city, as shown in Table 2. There are approximately 12 times as many TNC trips as taxi trips during a typical weekday.

Figure 3. Average Wednesday Intra-SF Vehicle Trips by Mode



Legend:  
 ■ Private Auto 83%  
 ■ Public Transit Vehicle 1%  
 ■ Taxi 1%  
 ■ TNC 15%

SOURCE: TNC data; SF-CHAMP.

Table 2. Weekday Intra-SF Vehicle Trips by Mode		
MODE	VEHICLE TRIPS	%
Private Auto	940,000	83%
Public Transit Vehicle	11,000	1%
Taxi	14,000	1%
TNC	170,000	15%
<b>TOTAL</b>	<b>1,135,000</b>	<b>100%</b>

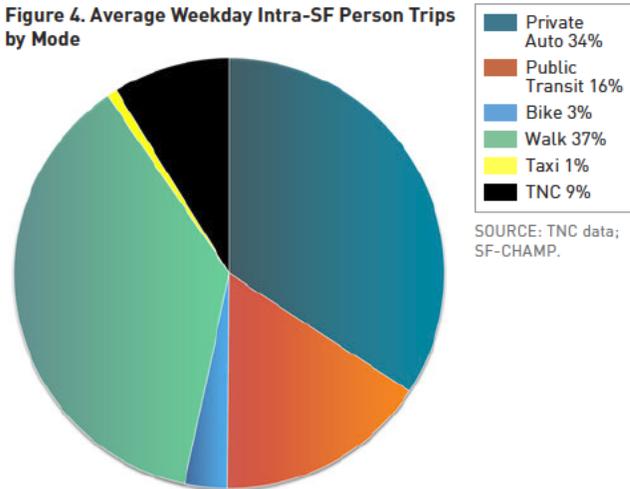
Source: TNC data; SF-CHAMP travel model, SFMTA

Person trips refers to movements by people with origins and destinations in San Francisco. Person trips are different than vehicle trips because person trips include walking and biking trips (which don't require motor vehicles), and also because private vehicles, public transit vehicles and taxis may carry more than one person. For TNCs and taxis, vehicle trips were converted to person trips using an assumed occupancy rate of 1.66, based on observed taxi data (Schaller, 2017). This assumed occupancy rate affects the TNC share of overall travel. Use of a lower occupancy rate would result in lower TNC person trip mode shares. Approximately 290,000 TNC person trips are estimated to occur within San Francisco during a typical weekday. This represents approximately 9% of all weekday person trips within the city, as shown in Table 3.

MODE	PERSON TRIPS	%
Drive	1,099,000	34%
Public Transit	512,000	16%
Bike	103,000	3%
Walk	1,193,000	37%
Taxi	24,000	1%
TNC	283,000	9%
<b>TOTAL</b>	<b>3,214,000</b>	<b>100%</b>

Source: TNC data; SF-CHAMP travel model, SFMTA

Figure 4. Average Weekday Intra-SF Person Trips by Mode



SOURCE: TNC data; SF-CHAMP.

## WHEN ARE TNC TRIPS OCCURRING IN SAN FRANCISCO?

The timing of TNC trips is important because trips that occur during peak periods and weekdays are more likely to exacerbate congestion and delay on roads, affecting both general traffic, surface public transit as well as conflicts with bicycles and pedestrians.

Figure 5 shows the total number of estimated TNC vehicle trips and taxi trips by day-of-week. It shows that TNC trips increase as the week progresses, reaching their peak volume on Friday and hitting their lowest volume on Sunday. This indicates that TNCs are serving both the weekday and

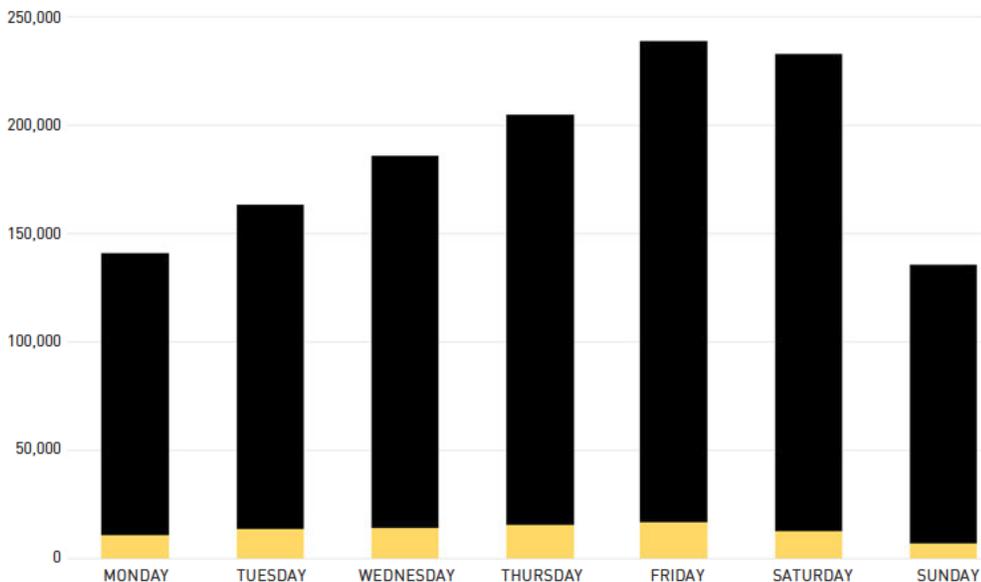


Figure 5. TNC and Taxi Intra-SF Trips by Day-of-Week

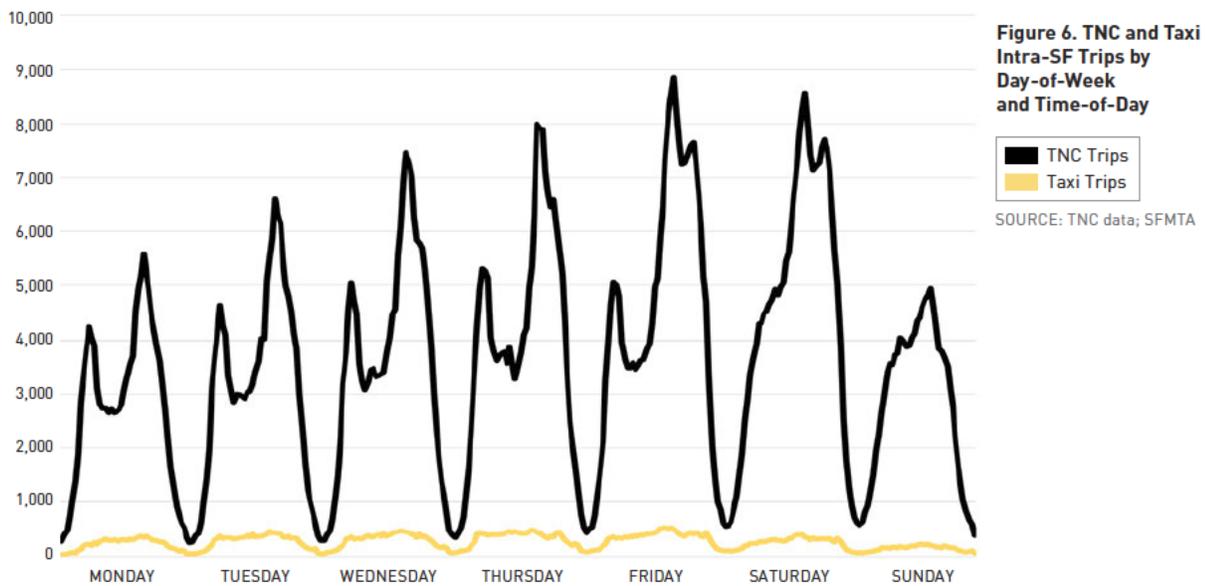
Legend: TNC Trips (Black), Taxi Trips (Yellow)

SOURCE: TNC data; SFMTA

weekend travel markets, and that TNCs have strong discretionary trip market demand.

Figure 6 provides additional detail on the timing of TNC trips by showing the estimated number of trips by half-hour and by day of week. This figure indicates that during the weekdays, TNCs have a clear pattern of peak usage that coincides with the existing AM and PM peak periods. Peak periods typically have the highest availability of other

forms of transportation, and are also the times when added traffic has the highest negative effect on other transportation system users. Figure 6 also shows that on Fridays and Saturdays usage of TNCs extends later into the evening, suggesting that TNCs may also provide additional options for travelers at times when other modes such as public transit, biking or walking may be less attractive due to reduced service or safety concerns.



## WHERE ARE TNC TRIPS OCCURRING IN SAN FRANCISCO?

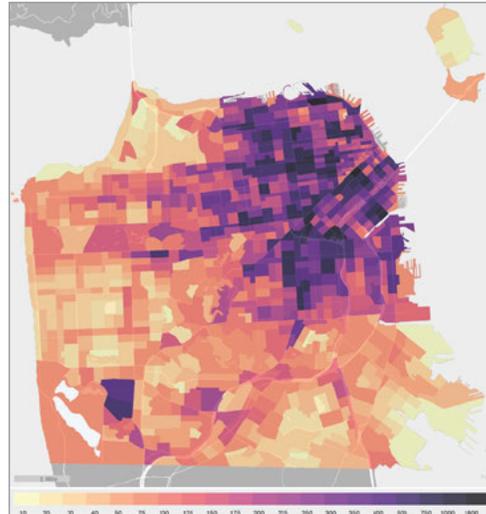
The location of TNC trips is important because trips that occur where there is already significant traffic are more likely to exacerbate congestion and conflicts with other road users, while trips that occur in less congested areas may reflect lower transportation impacts.

Figures 7 through 9 provide geographic detail on the locations of TNC pickups on weekdays, Saturdays and Sundays. In these figures, TNC trip pickups have been aggregated to travel analysis zones (TAZs), which are a basic spatial unit used by the Transportation Authority for transportation analyses (dark colors indicate more daily TNC trips, and light colors indicate fewer daily TNC trips). TAZs are approximately the size of US Census block groups in most of the city, and the size of Census blocks in the core downtown area. Figure 7 illustrates clearly that the vast majority of TNC trips are occurring in San Francisco’s northeast quadrant, which is the most congested area of the city, as well as the area that is most well served by public transit, bicycling and walking facilities. South of Market, the Mission Street corridor, the Van Ness Avenue corridor, Pacific Heights and the Marina all show relatively higher intensities of TNC usage.

To a lesser extent, TNC usage is also high along the Geary Street corridor, Panhandle, and Inner Sunset, and Stonestown/San Francisco State University area.

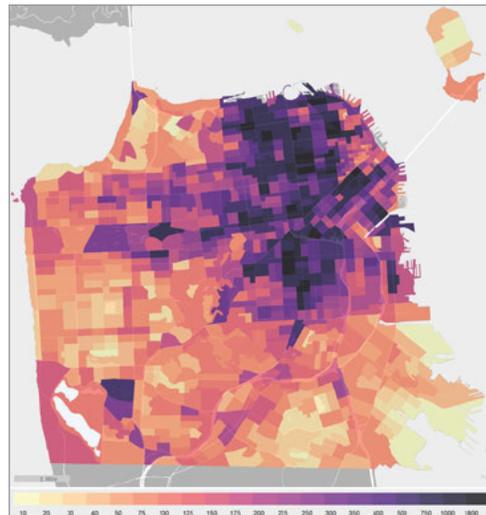
Figure 8 illustrates that the even greater levels of TNC trip-making that occurs on Saturday is also highly concentrated in these same areas, along with more trips from Golden Gate Park and along the Geary Avenue corridor. Figure 9 shows the significantly lower level of TNC trip-making on Sundays, particularly in the northern neighborhoods.

Figures 10–12 (next page) provide an alternative detailed visualization of the locations of TNC drop-off locations. Rather than aggregate the drop-off locations to TAZs, the drop-off point locations are used to directly map the intensity of drop-offs on the roadway network. This provides insights into which specific streets and transit corridors are likely being affected most by TNC activity. The patterns are broadly similar across weekdays, Saturdays and Sunday. The Market Street spine, and areas north and south of Market show high levels of TNC drop-off activities at all times of day. Many other streets clearly stand out as well, including nearly all downtown and SoMa streets, Columbus Ave, Geary Blvd, Mission and Valencia Streets, 19th Avenue, 3rd Street, and San Bruno Avenue.



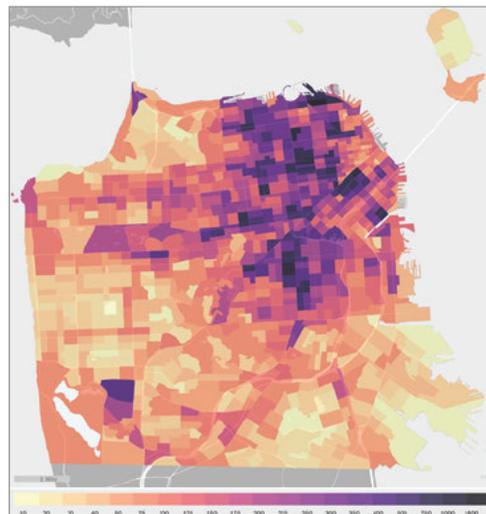
**Figure 7. Average Weekday Intra-SF TNC Pickups by Travel Analysis Zone**

SOURCE: TNC data



**Figure 8. Average Saturday Pickups by Travel Analysis Zone**

SOURCE: TNC data



**Figure 9. Average Sunday Pickups by Travel Analysis Zone**

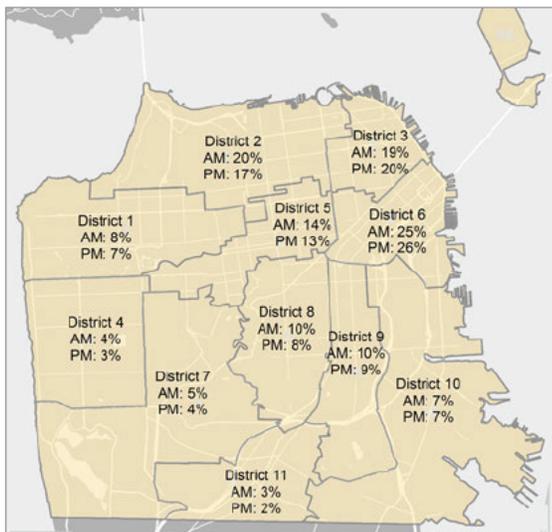
SOURCE: TNC data

The locations with the highest levels of TNC pickups and drop-offs include:

- Union Square
- Market/Van Ness
- Caltrain (4th and King)
- Transbay Terminal (2nd and Market to Harrison/Beale)
- Chinatown
- Marina
- 9th/Brannan
- Fell/Oak/Divisadero
- Embarcadero Center (Clay/Front)
- Clay/Van Ness

Figure 13 summarizes the percentage of all vehicle trips starting in each of the supervisorial district that are TNC vehicle trips. This provides information on how the overall share of 15% of daily vehicle trips as TNC trips varies by time of day and location. In District 6, the research team estimates that more than 25% of AM peak and PM peak period vehicle trips are by TNC.

Figures 14–16 (next page) show the average number of TNC pickups and drop-offs by San Francisco supervisorial district by day-of-week. Figure 14 shows that, as noted above, District 6 absorbs the greatest number of weekday TNC trips, followed closely by District 3 and more distantly by Districts 2 and 5. This likely reflects the significant employment and public transit hubs found in Districts 3 and 6, combined with higher parking supply restrictions and parking costs. Interestingly, Figure 15 indicates that the greatest number of Saturday TNC trips occur in District 3 instead, followed by District 6, possibly reflecting a greater concentration of entertainment and dining opportunities in District 3. Finally, Figure 16 shows the overall lower number of TNC trips occurring across all districts on Sunday, while the relative distribution by district is very similar to that observed on weekdays and Saturdays.



**Figure 13. TNC AM and PM Vehicle Shares by Supervisorial District**

SOURCE: TNC data



**Figure 10. Weekday Pickup Hotspots**

SOURCE: TNC data



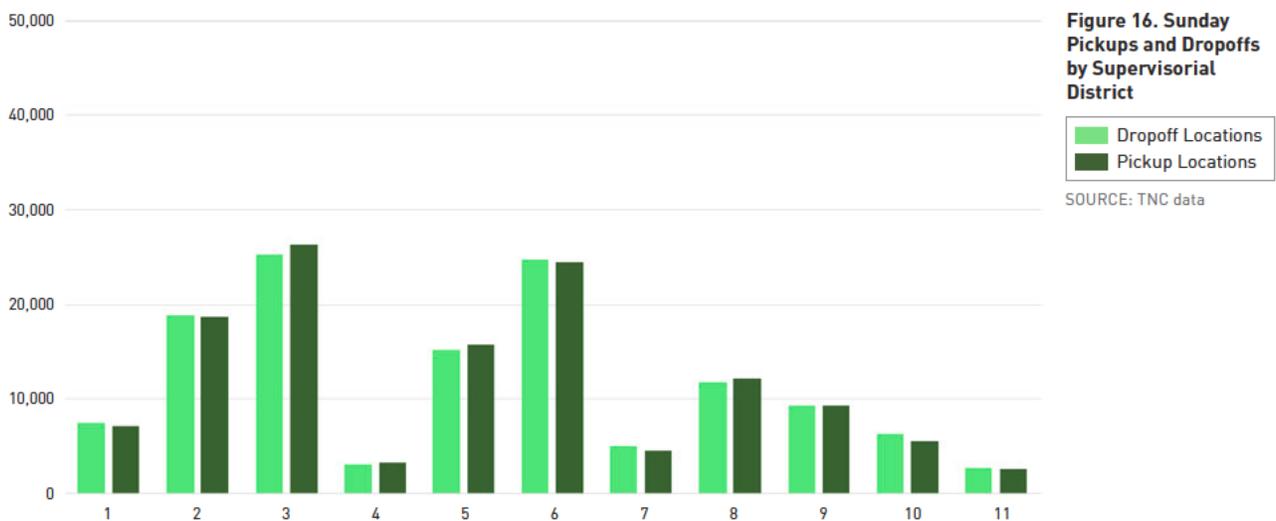
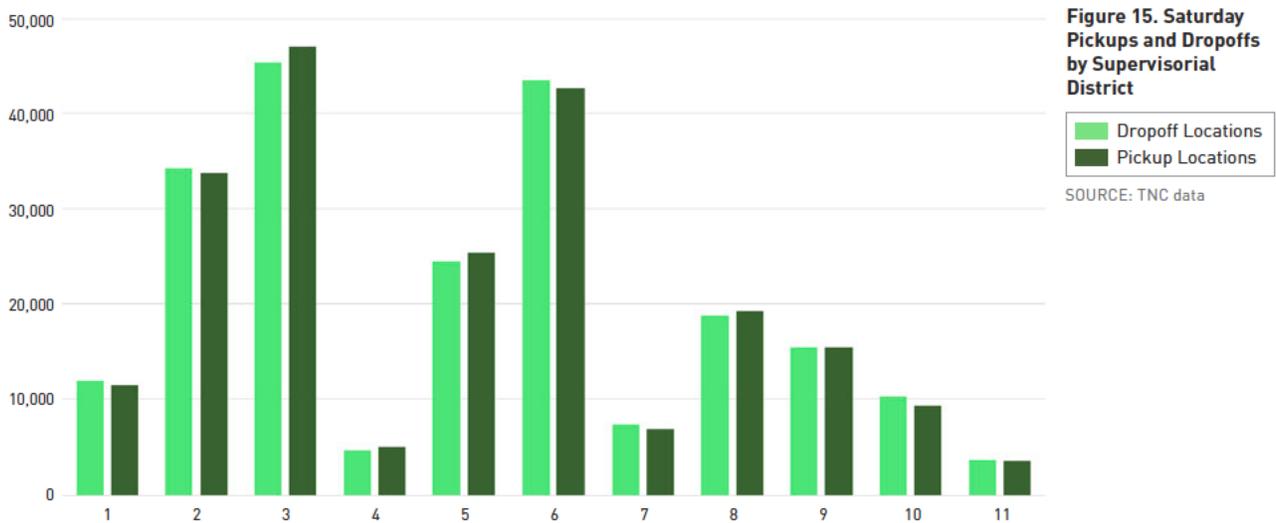
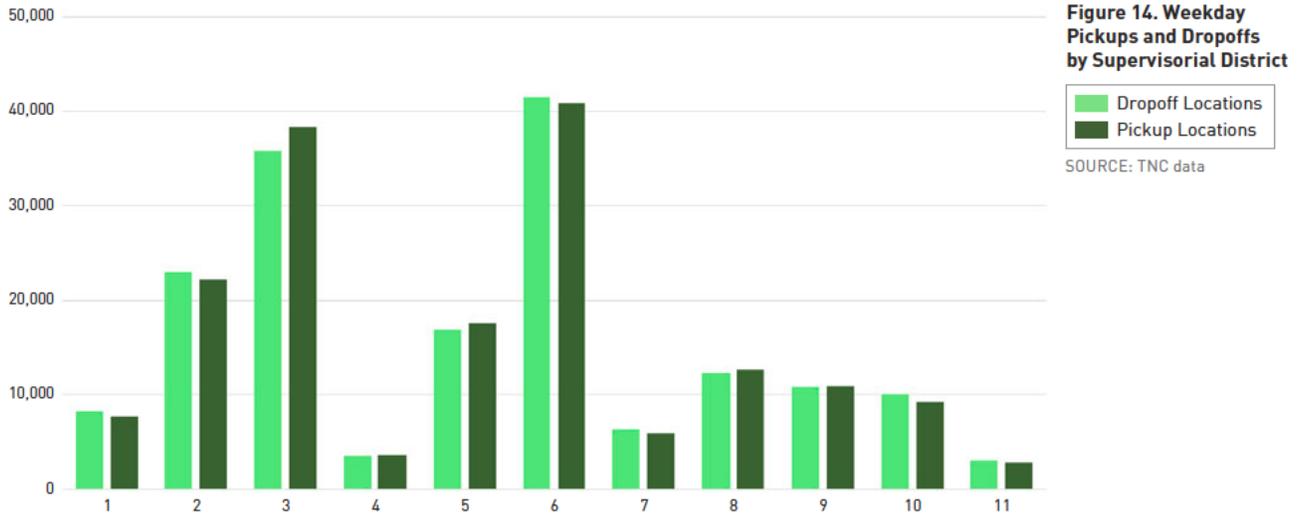
**Figure 11. Saturday Pickup Hotspots**

SOURCE: TNC data



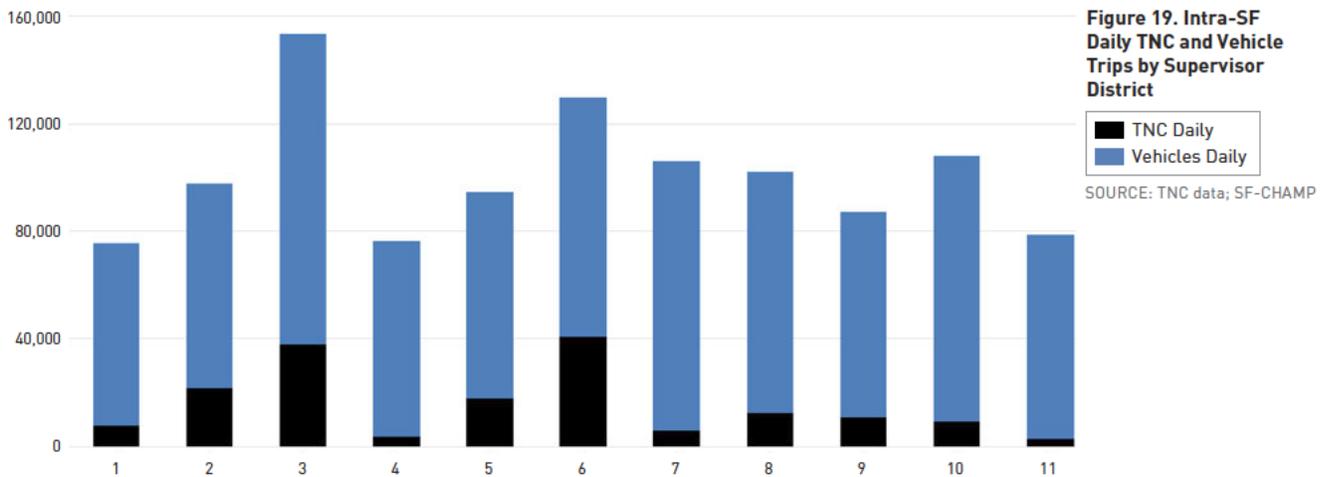
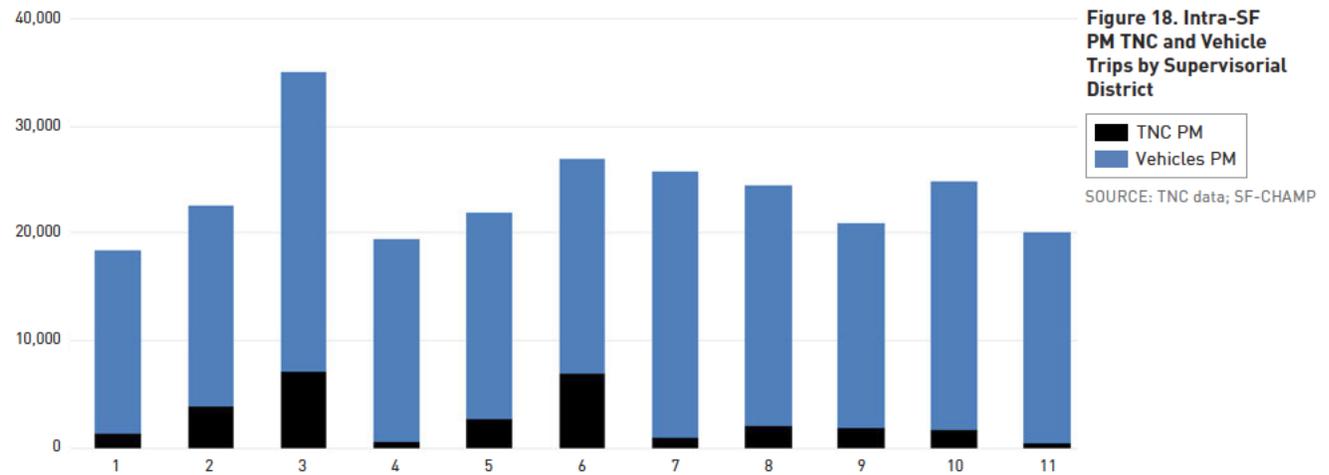
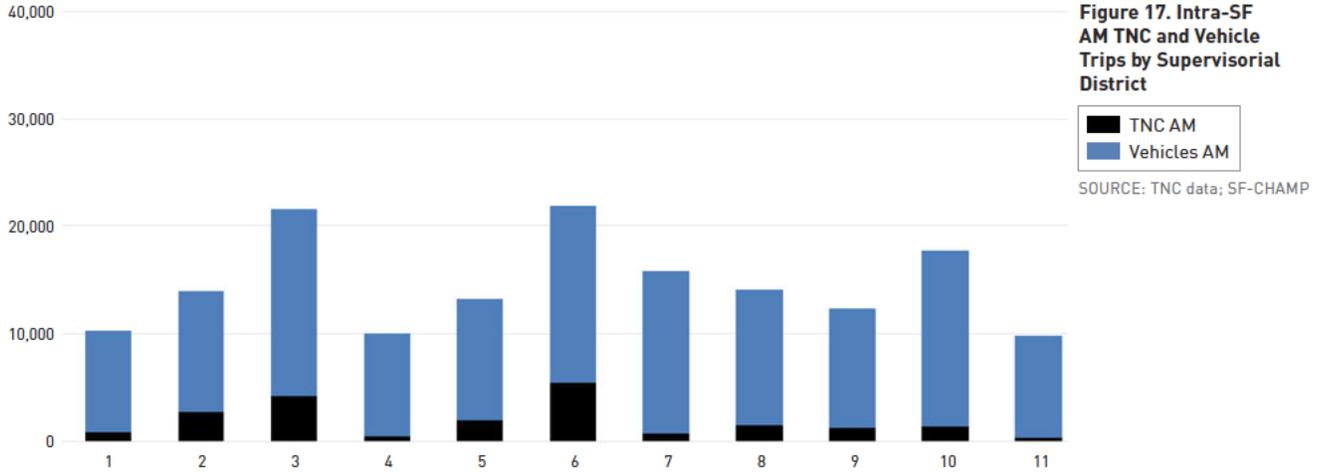
**Figure 12. Sunday Pickup Hotspots**

SOURCE: TNC data



Figures 17–19 further illustrate the total number of TNC and non-TNC vehicle trips by supervisorial district and time of day. These show overall higher levels of TNC vehicle

trips in the PM peak than in the AM peak, and that District 3 and District 6 have the greatest levels and the greatest shares of TNC vehicle trip-making.



## HOW MUCH VMT DO TNCs GENERATE WITHIN SAN FRANCISCO?

The amount of VMT, or vehicle miles travelled, that is generated by TNCs is important because VMT is a fundamental measure of transportation system performance. Higher levels of VMT are associated with greater levels of emissions of greenhouse gases such as CO<sub>2</sub> as well as other pollutants. In addition, higher levels of VMT are also associated with greater roadway congestion and conflicts. For TNCs and taxis, two types of VMT are important, in-service VMT and out-of-service VMT. In-service VMT refers to the vehicle miles traveled when transporting a passenger. Out-of-service VMT refers to the vehicle miles traveled while circulating to pickup a passenger.

Tables 4–6 show the total trips, total VMT, average total trip length, in-service trip length, out-of-service trip length, and percent out-of-service trip length by day-of-week for local TNCs and taxis. These tables indicate that TNCs and taxis are generally similar in terms of average in-service trip length. However, a notably smaller share of TNCs’ total trip lengths are out-of-service miles, while a significant share of total taxi trip length (over 40%) are out-of-service miles. The greater efficiencies of TNCs, as reflected in a lower share of out-of-service miles, are likely primarily a reflection of the larger fleets of TNC drivers operating on the road at any given time, enabling shorter distances to pickup locations. In addition, TNCs’ routing software may be more efficient than the taxi dispatch systems. Most critically, Table 4 indicates that the estimated TNC total VMT on a typical weekday is approximately 570,000 VMT, and this estimate is clearly conservative given that it:

- Includes only intra-SF TNC trips (such as trips to and from San Francisco International Airport).
- Underestimates out-of-service VMT because it excludes the additional distance from acceptance location to where the passenger is actually picked up.
- Excludes VMT associated with TNC drivers commuting to SF from non-SF home origins.

This TNC VMT estimate indicates that intra-SF TNCs generate as much as 20% on weekday VMT for intra-SF vehicle trips and at least 6.5% of total weekday VMT in San Francisco, given Caltrans’ most recent estimate of weekday VMT traveled on San Francisco streets and highways (Caltrans 2014). Saturday roadway volumes are lower than weekday volumes, yet Saturday TNC VMT is even greater than average weekday TNC VMT. It is possible that TNCs may account for approximately 10% of VMT on Saturdays.

**Table 4. Average Weekday Intra-SF Trip Lengths**

	TNCS	TAXIS
Trips	170,400	14,400
VMT	569,700	65,900
Average Total Trip Length	3.3	4.6
Average In-service Trip Length	2.6	2.6
Average Out-of-service Trip Length	0.7	2.0
% Out-of-service Trip Length	21.0%	43.6%

**Table 5. Average Saturday Intra-SF Trip Lengths**

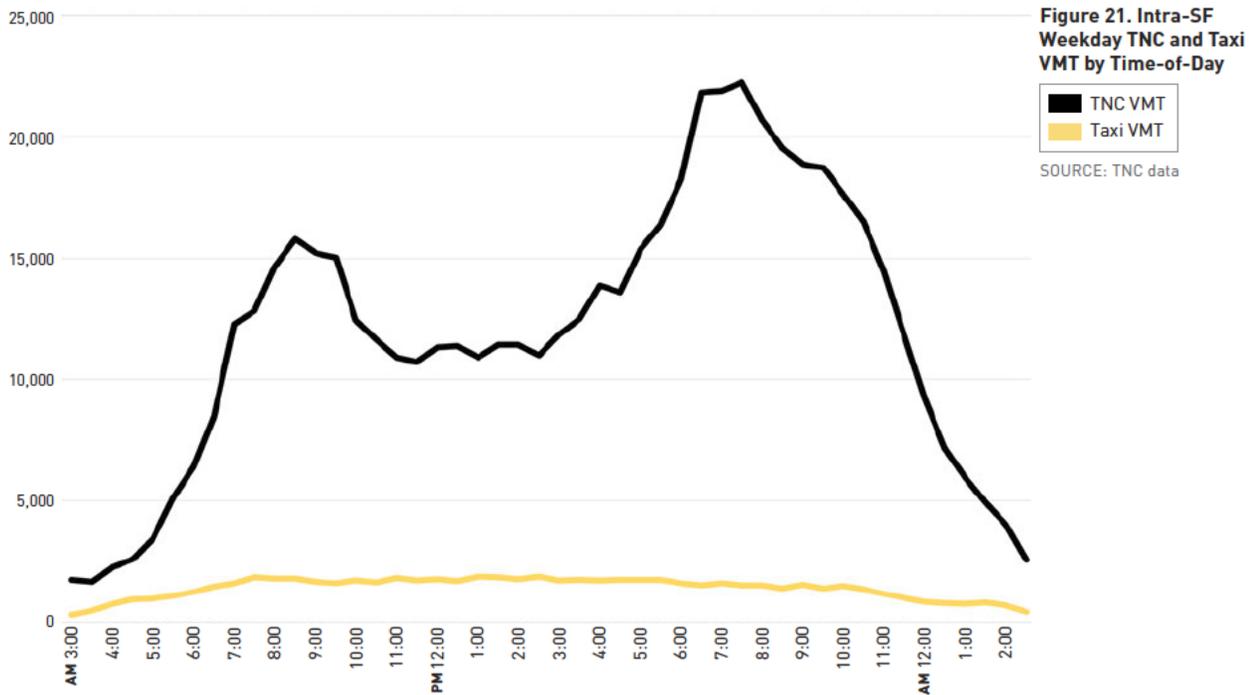
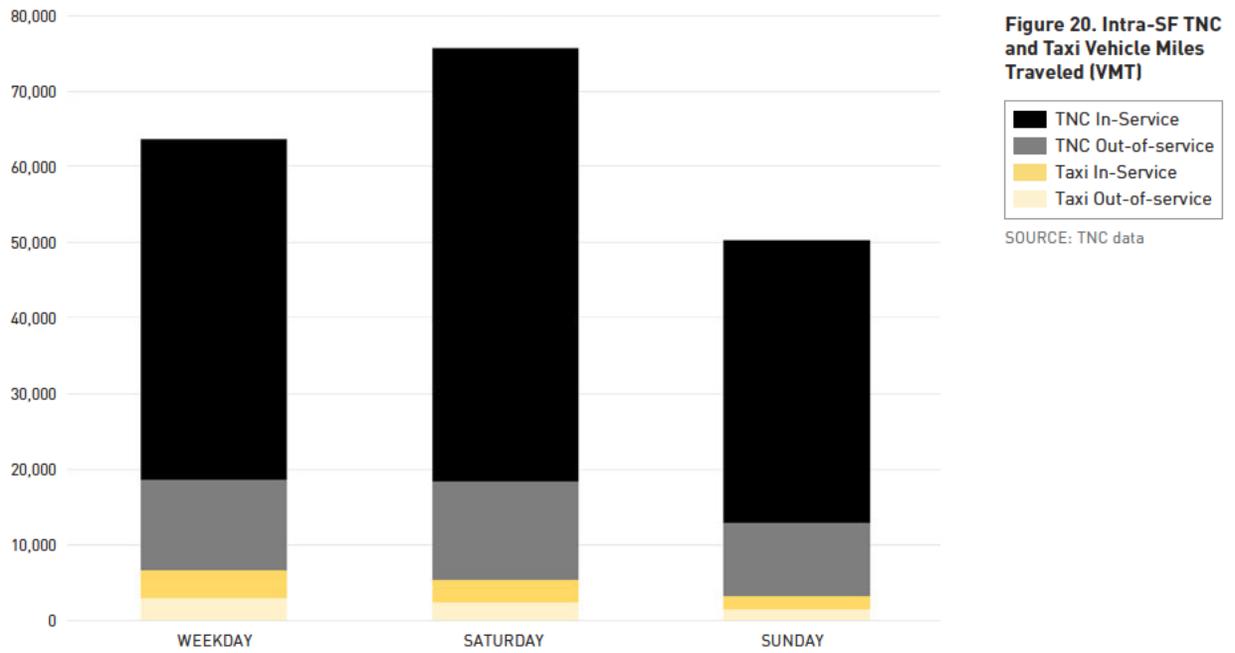
	TNCS	TAXIS
Trips	220,700	12,300
VMT	703,600	53,600
Average Total Trip Length	3.2	4.4
Average In-service Trip Length	2.6	2.4
Average Out-of-service Trip Length	0.6	1.9
% Out-of-service Trip Length	18.6%	44.1%

**Table 6. Average Sunday Intra-SF Trip Lengths**

	TNCS	TAXIS
Trips	129,100	6,700
VMT	471,200	31,900
Average Total Trip Length	3.7	4.8
Average In-service Trip Length	2.9	2.6
Average Out-of-service Trip Length	0.8	2.2
% Out-of-service Trip Length	20.7%	45.5%

Figure 20 (next page) illustrates the amount of estimated in-service and out-of-service VMT generated by local TNCs and taxis for typical weekdays, Saturdays and Sundays. TNCs generate more than 10 times as many VMT as taxis on a typical weekday, while generating 12 times as many trips.

Figure 21 (next page) shows the distribution of weekday VMT by time-of-day for TNCs and taxis. It indicates that most of the VMT generated by TNCs occurs during the AM peak and PM peak hours, with significant VMT also occurring during the evening hours, following the PM peak. VMT generated during periods of peak demand likely exacerbates existing peak period congestion.



## DO TNCs PROVIDE GOOD GEOGRAPHIC COVERAGE THROUGHOUT THE ENTIRE CITY?

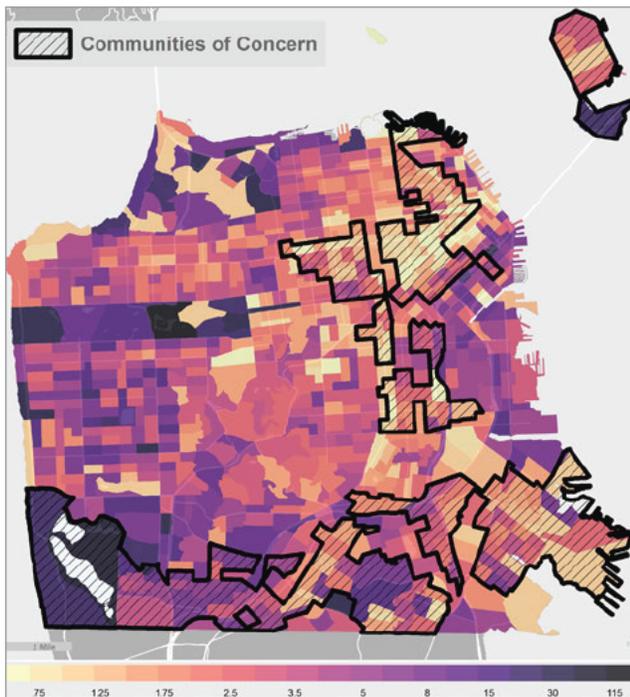
It is important to ensure that all areas of the city have access to transportation alternatives, while also acknowledging that different communities may have different needs and abilities to pay for mobility services. Due to their flexibility, TNCs should be able to provide reasonable geographic coverage to all areas of the city. In order to assess whether TNCs are serving all neighborhoods, two metrics are used: the number of TNC pickups per taxi pickup in each TAZ and the number of TNC pickups per combined population and employment in each TAZ.

Figure 22 shows the number of TNC pickups per taxi pickup. Areas defined as “communities of concern” are also identified. Darker areas indicate where TNCs are providing

broader service than taxis. However, the figure also suggests that southeastern neighborhoods may not be well served by TNCs.

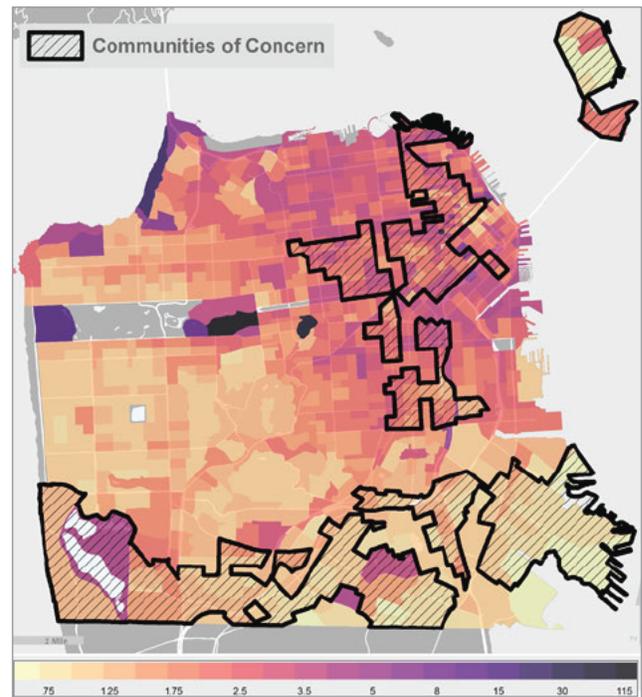
Figure 23 shows the number of TNC pickups per combined population and employment by TAZ. This shows that the northeastern core and northern parts of the city are generally well served by TNCs. Southeastern and southern neighborhoods do not appear to be as well served. This may reflect either a lack of vehicles available in this area, or may reflect inability of residents of these areas to use TNCs, or some combination of these or other factors. Additional data is required to better understand this pattern.

Figure 22. Weekday TNC Pickups per Taxi Pickup



SOURCE: TNC data

Figure 23. TNC Pickups per Population and Employment



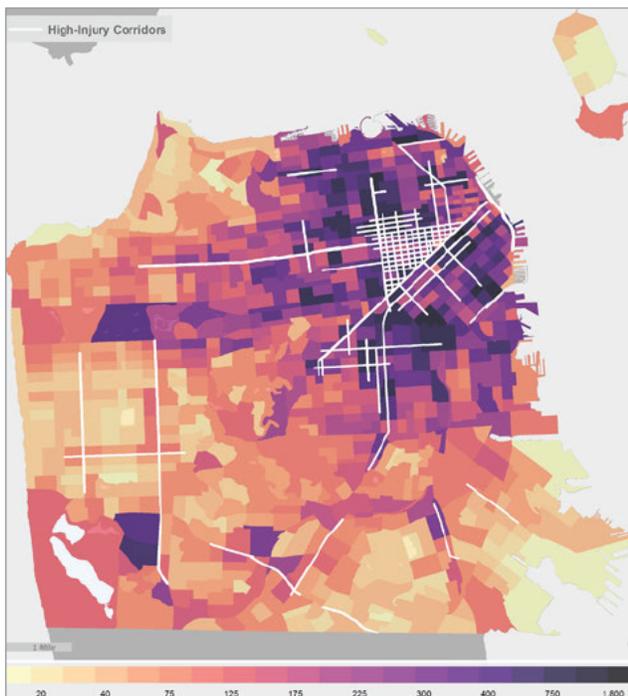
SOURCE: TNC data

## Future Research

The report provides a profile of estimated TNC usage from mid-November to mid-December of 2016. This document does not evaluate the impacts of TNCs on the performance of the San Francisco transportation system, nor does it recommend any policy responses. Subsequent reports by the Transportation Authority and others will address important analytic and policy questions in depth, including:

- **TNC POLICIES.** What is the role of government in regulating TNCs? What TNC regulatory frameworks exist in other US cities or internationally?
- **TNC BEST PRACTICES.** What potential impacts of TNCs have other agencies identified, and what policies have they enacted in response? How have agencies partnered with TNCs?
- **TNCs AND STREET SAFETY.** How do TNCs affect the safety of people who use the roads, including public transit riders, bicyclists and pedestrians? How can TNCs help San Francisco achieve its VisionZero goals?
- **TNCs AND TRANSIT DEMAND.** How do TNCs complement, compete with, or otherwise affect public transit ridership and mode share?
- **TNCs AND PUBLIC TRANSIT OPERATIONS** How do TNCs affect public transit service operations?

Figure 24. High Injury Corridors with Average Weekday Intra-SF TNC Pickups by Travel Analysis Zone



SOURCE: TNC data

- **TNCs AND CONGESTION.** How do TNCs affect roadway congestion, delay and travel time unreliability? How do TNCs affect air quality?
- **TNCs AND DISABLED ACCESS.** To what extent do TNCs serve people with disabilities?
- **TNCs AND EQUITY.** Can TNCs be accessed by all San Francisco residents including communities of concern and those without smartphones or credit cards? Are all neighborhoods served equitably?
- **TNCs, LAND USE AND CURB MANAGEMENT.** What are the best practices for loading/curbside/roadway space allocation? How do TNCs affect parking demand? Is TNC demand associated with certain land uses? What are the effects of TNCs on location choices and auto ownership?

Additional data collection will be necessary in order to help answer these questions. We are seeking/open to research collaborations to obtain further information, including data to validate or enhance these findings, TNC vehicle occupancy information, traveler demographics and travel purposes, travel costs, TNC fleet composition data, and a range of other data items.

## For More Information

The Transportation Authority makes available aggregate travel analysis zone (TAZ) level summaries of TNC pickups and drop-offs by hour of day, which can be downloaded at the Transportation Authority website ([www.sfcta.org/tncstoday](http://www.sfcta.org/tncstoday)). In addition, an interactive visualization of the TAZ-level TNC data can be found at <http://tncstoday.sfcta.org>. The Transportation Authority will not provide detailed telemetry data or processed pre-trip and trip information due to the potential to contain personally identifiable information. Parties interested in the detailed telemetry data may contact the Northeastern University researchers to request access. Further information on ongoing emerging mobility services and technology work being performed by the Transportation Authority can be found on the Transportation Authority website ([www.sfcta.org/emst](http://www.sfcta.org/emst)).

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Transportation Research Board. “TRB Special Report 319: Between Public and Private Mobility: Examining the Rise of Technology-Enabled Transportation Services.” National Academies Press, Transportation Research Board, 2015.

## Glossary

**APPLICATION PROGRAMMING INTERFACE (API):** Programming code that allows interaction with software, or between software components. It is a tool that a developer of an app uses to communicate with data from a central server.

**IMPUTE:** Refers to any method to estimate an unknown or missing value in a dataset based on known values or information.

**PERSON TRIPS:** A trip by one or more people in any mode of transportation.

**TELEMETRY:** A remotely collected continuous series of GPS points with associated time and other information that forms a path.

**TRANSPORTATION NETWORK COMPANY:** Uses an online-enabled platform to connect passengers with drivers using their personal, non-commercial, vehicles.

**TRAVEL ANALYSIS ZONE (TAZ):** A geographic unit used for transportation analysis. The Transportation Authority uses a roughly 1000-zone system with average sizes of 1 block in the downtown area and several blocks for outer areas.

## Planning Department

# Transportation Impact Analysis Guidelines for Environmental Review - Update

San Francisco Planning will issue a series of memos in 2017 and 2018 providing updates to the Transportation Impact Analysis Guidelines.



Receive notifications when memos are released by subscribing here. Unsubscribe at any time.

### Update Announcements

Department staff will present an informational item to the Planning Commission regarding updates to the Transportation Impact Analysis Guidelines on September 28, 2017. These Guidelines, last updated in 2002, serve consultants and City staff in the preparation of transportation impact studies used in environmental review. Please tune in or attend the hearing to learn more and provide verbal or written comments regarding its scope.

**Thursday, September 28, 2017** – Planning Commission Hearing (starting at 12:00pm)  
City Hall, Commission Chambers, Rm 400, 1 Dr. Carlton B. Goodlett Place

Watch live at [sfgovtv.org](http://sfgovtv.org)

Please direct all inquiries to: [CPC.TransportationReview@sfgov.org](mailto:CPC.TransportationReview@sfgov.org) [Get Alerts link above.](#)



### Overview

The Environmental Planning division within the Planning Department reviews projects for potential impacts on

**Exhibit 6 Planning Department, Transportation Impact Analysis Guidelines for Environmental Review -Update**

the environment, a process known as environmental review. The Planning Department conducts environmental review pursuant to the California Environmental Quality Act (CEQA). As part of environmental review, the Planning Department reviews background technical studies, such as transportation impact studies, to assess a project's effects on the physical environment.

These background technical studies support the conclusions of the environmental impact evaluation and guide decision-makers during project approval. To assist in the preparation of transportation impact studies, the Planning Department provides to consultants and city staff a guidance document, the [Transportation Impact Analysis Guidelines](#). The Planning Department periodically updates the guidelines, with the last update in 2002.

Since that time, the Planning Department has instituted various updates to the conditions, data, and methodology within the guidelines. Records of these updates exist in various materials. One substantial example of updates that occurred was a [March 2016 Planning Commission resolution](#) that removed automobile delay from CEQA and added vehicle miles traveled as a transportation criterion (known as "Align").

The Planning Department is in the midst of updating the guidelines comprehensively. The purpose of the update is to achieve high quality deliverables, meaningful analysis, efficient reviews, and better project outcomes through clear standards, methodology, and criteria; understandable, transparent, and predictable process; updated mitigation measures, designs, outcomes, and policies; user-friendly figures; and illustrative examples of project analysis.

For this effort, substantial data collection and analysis is currently underway, primarily at newer development sites. This data collection will result in the creation of refined estimates of how many trips people in newer developments take, the ways they travel, and their common destinations.

## Resources

*Document*

*Date*

[Transportation Impact Analysis Guidelines](#)

Stay tuned for future update memos!

10/01/02

Updates - TBD

[Align – removal of automobile delay and addition of vehicle miles traveled](#)

03/03/16

Table 11 summarizes the weekday PM peak hour trip generation by mode for the Proposed Project. As noted above, the credit for the existing uses on the project site that would be displaced (i.e., the All Star Café, a 30-car surface parking lot, and a partially-occupied commercial building described above) is also presented for the PM peak hour.

Peak Hour/Land Use	Person-Trips				Total	Vehicle Trips
	Auto	Transit	Walk	Other <sup>1</sup>		
<b>AM Peak Hour</b>						
Residential	170	136	51	41	398	130
Restaurant	3	2	6	1	12	2
New Trips	173	138	57	42	410	132
<b>PM Peak Hour</b>						
Residential	200	160	60	48	468	153
Restaurant	31	13	47	12	103	18
	231	173	107	60	571	171
Credit for Existing uses	38	20	60	16	134	11
Net-new Trips	193	153	47	44	442	160

Note:

<sup>1</sup> "Other" mode includes bicycles, motorcycles, taxi/TNC vehicles, and other modes.

Source: SF Guidelines, LCW Consulting, 2016.

130 Cal.App.4th 322  
Court of Appeal, Second District, Division 3,  
California.

Maria MEJIA, Plaintiff and Appellant,  
v.  
CITY OF LOS ANGELES, Defendant and  
Respondent;  
California Home Development, LLC, Real Party in  
Interest and Respondent.

No. B174453.  
|  
May 27, 2005.

**Synopsis**

**Background:** Resident of affected area filed petition for writ of mandate, challenging city’s approval of residential development project under California Environmental Quality Act (CEQA). The Superior Court, Los Angeles County, No. BS081904, David P. Yaffe, J., denied petition. Resident appealed.

**[Holding:]** The Court of Appeal, Croskey, J., held that substantial evidence supported fair argument that project would have significant, unmitigated environmental impacts on animal wildlife and traffic, and thus preparation of environmental impact report (EIR) was required.

Reversed with directions.

West Headnotes (12)

- [1] **Environmental Law**  
  - 🔑 Constitutional Provisions, Statutes, and Ordinances**Environmental Law**  
  - 🔑 Duty of Government Bodies to Consider Environment in General

In enacting the California Environmental Quality Act (CEQA), the Legislature declared its intention that all public agencies responsible for regulating activities affecting the environment give prime consideration to preventing

environmental damage when carrying out their duties; accordingly, CEQA is to be interpreted to afford the fullest possible protection to the environment within the reasonable scope of the statutory language. West’s Ann.Cal.Pub.Res.Code § 21000 et seq.

Cases that cite this headnote

- [2] **Environmental Law**  
  - 🔑 Assessments and Impact Statements

Courts should afford great weight to the administrative guidelines relating to the California Environmental Quality Act (CEQA) except when a provision is clearly unauthorized or erroneous under CEQA. West’s Ann.Cal.Pub.Res.Code § 21000 et seq.; 14 CCR § 15000 et seq.

Cases that cite this headnote

- [3] **Environmental Law**  
  - 🔑 Purpose of Assessments and Statements**Environmental Law**  
  - 🔑 Proceedings**Environmental Law**  
  - 🔑 Proceedings; Certification and Approval

The environmental impact report (EIR) is the heart of the California Environmental Quality Act (CEQA), the purpose of which is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made; thus, since the EIR protects not only the environment but also informed self-government, public participation is an essential part of the CEQA process. West’s Ann.Cal.Pub.Res.Code §§ 21000 et seq., 21061.

1 Cases that cite this headnote

- [4] **Environmental Law**  
  - 🔑 Mitigation Measures

For purposes of the California Environmental Quality Act (CEQA), a project may have a significant effect on the environment, and thus a mitigated negative declaration may be appropriate, if there is a reasonable probability that the project will have a significant environmental impact. West’s Ann.Cal.Pub.Res.Code §§ 21064.5, 21080(c)(2); 14 CCR § 15382.

11 Cases that cite this headnote

Application of the fair argument test for preparation of an environmental impact report (EIR) under the California Environmental Quality Act (CEQA) is a question of law for de novo review on appeal; the appellate court does not defer to the agency’s determination, except on legitimate, disputed issues of credibility, and the agency’s decision not to require an EIR can be upheld only when there is no credible evidence to the contrary. West’s Ann.Cal.Pub.Res.Code § 21000 et seq.

3 Cases that cite this headnote

[5] **Environmental Law**  
🔑Necessity for Preparation of Statement, Consideration of Factors, or Other Compliance with Requirements

There is a low threshold requirement under the California Environmental Quality Act (CEQA) for preparation of an environmental impact report (EIR), and a preference for resolving doubts in favor of environmental review. West’s Ann.Cal.Pub.Res.Code § 21000 et seq.; 14 CCR § 15064(f).

Cases that cite this headnote

[8] **Environmental Law**  
🔑Record of Administrative Proceeding

Administrative record on appeal from trial court’s denial of mandate petition filed by resident of affected area challenging city’s approval of residential development project under California Environmental Quality Act (CEQA) was incomplete; for purposes of CEQA provision governing administrative record, “project” encompasses not only final version of project approved by public agency, but also prior versions constituting substantially same overall activity, and thus record was deficient in failing to include project application materials, staff reports, correspondence, and biotic assessment pertaining to prior versions of project. West’s Ann.Cal.Pub.Res.Code § 21167.6(e).

2 Cases that cite this headnote

[6] **Environmental Law**  
🔑Significance in General

Under the California Environmental Quality Act (CEQA), an environmental impact report (EIR) must be prepared whenever it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact, even if there is substantial evidence to the contrary. West’s Ann.Cal.Pub.Res.Code § 21000 et seq.; 14 CCR § 15064(f).

4 Cases that cite this headnote

[9] **Evidence**  
🔑Records and Decisions in Other Actions or Proceedings

Given inadequacy of administrative record on appeal from trial court’s denial of mandate petition filed by resident of affected area challenging city’s approval of residential development project under California Environmental Quality Act (CEQA), Court of Appeal would take judicial notice of index of administrative record in prior proceeding, as had

[7] **Environmental Law**  
🔑Assessments and Impact Statements

been requested by resident in trial court. West's Ann.Cal.Pub.Res.Code § 21000 et seq.

1 Cases that cite this headnote

[10]

**Environmental Law**

🔑 Record of Administrative Proceeding

**Environmental Law**

🔑 Preservation of Error

On appeal from trial court's denial of mandate petition filed by resident of affected area challenging city's approval of residential development project under California Environmental Quality Act (CEQA), resident's failure to file noticed motion to supplement administrative record pursuant to local court rule did not preclude her from challenging inadequacy of such record, as her request for judicial notice of additional materials in trial court was equivalent of such motion, and developer and city were not prejudiced by any procedural inadequacy. West's Ann.Cal.Pub.Res.Code § 21000 et seq.

2 Cases that cite this headnote

[11]

**Environmental Law**

🔑 Land Use in General

Substantial evidence supported fair argument that residential development project would have significant, unmitigated environmental impacts on animal wildlife, and thus preparation of environmental impact report (EIR) was required under California Environmental Quality Act (CEQA); in light of evidence that project area was home to a number of bird species, including golden eagles, Cooper's hawks, and loggerhead shrikes, which had been designated as species of special concern by Department of Fish and Game, and that portion of property appeared to offer minor movement corridor to area carnivores, and absent current biotic assessment, conclusions and explanations provided in initial study did not preclude reasonable possibility that development of site might have significant impact on animal wildlife. West's Ann.Cal.Pub.Res.Code § 21000 et seq.

*See 4 Witkin, Summary of Cal. Law (9th ed. 1989) Real Property, § 59B; Cal. Jur. 3d, Pollution and Conservation Laws, § 502; Annot., Validity, Construction, and Application of Statutes Requiring Assessment of Environmental Information Prior to Grants of Entitlements for Private Land Use (1977) 76 A.L.R.3d 388.*

11 Cases that cite this headnote

[12]

**Environmental Law**

🔑 Land Use in General

Substantial evidence supported fair argument that residential development project would have significant, unmitigated environmental impacts on traffic, and thus preparation of environmental impact report (EIR) was required under California Environmental Quality Act (CEQA); city improperly relied on threshold of significance standard for traffic impact despite substantial evidence supporting fair argument of significant impact, including public comments expressing concerns about dangers to equestrians, pedestrians, and vehicle riders, who enjoyed shared use of main thoroughfare, and underdeveloped reports by city engineers and planners describing this thoroughfare as collector street which was designed to accommodate traffic from other streets. West's Ann.Cal.Pub.Res.Code § 21000 et seq.; 14 CCR §§ 15064(b), 15064.7(a).

16 Cases that cite this headnote

**Attorneys and Law Firms**

**\*\*790** Maria Mejia, in pro. per., for Plaintiff and Appellant.

Rockard J. Delgadillo, City Attorney, Susan D. Pfann and Jack L. Brown, Assistant City Attorneys, for Defendant and Respondent.

Law Offices of L. Douglas Brown and L. Douglas Brown for Real Party in Interest and Respondent.

## Opinion

CROSKEY, J.

\*326 Maria Mejia challenges the approval by the City of Los Angeles of a residential development project in the Sunland area and the city's adoption of a mitigated negative declaration under the California Environmental Quality Act (CEQA; Pub. Resources Code, § 21000 et seq.). She appeals a judgment denying her petition for writ of mandate, arguing several grounds for error. We conclude that substantial evidence supports a fair argument that the project will have significant, unmitigated environmental \*327 impacts on animal wildlife and traffic, so a mitigated negative declaration was improper. We therefore reverse the judgment with directions to the superior court to grant the petition and issue a writ of mandate ordering the city to vacate its project approval and mitigated negative declaration and to cause an environmental impact report (EIR) to be prepared.

### **FACTUAL AND PROCEDURAL BACKGROUND**

#### *1. Application for a Tentative Tract Map and Project Approval*

California Home applied to the city in June 1999 for approval of a tentative tract map to subdivide 17 acres of land along Wheatland Avenue in the Shadow Hills community. The property consists of rolling hills and flat land, is predominantly undeveloped, and is surrounded by single-family residential homes on large lots with equine appurtenances. The city previously approved a project involving the construction of 28 single-family homes on the site in June 1990, but the homes were never built. California Home's application in June 1999 stated that the new proposed project was the "same project" as the one previously approved.

\*\*791 The city's advisory agency conducted a public hearing on the application, and in December 1999 approved the tentative tract for development of 28 single-family homes subject to conditions, and approved a mitigated negative declaration. A group of homeowners appealed the decision to the city planning commission. The city planning commission reduced the approved number of homes to 23 and revised the conditions. The Planning and Land Use Management Committee affirmed the decision by the planning commission. The city council approved the project in June 2000 and adopted a mitigated negative declaration.<sup>1</sup>

#### *2. Set Aside of the Project Approval*

Mejia filed a petition for writ of mandate in the superior court challenging the project approval under CEQA. The court granted the petition in July 2001 and set aside the project approval. The judgment stated that the court granted the petition because the city "failed to give proper notice of the City's intent \*328 to adopt a Mitigated Negative Declaration," and ordered the city to "proceed with a properly noticed hearing" on the application for a tentative tract map.

#### *3. Further Proceedings and Project Approval*

The city planning department prepared an initial study and proposed mitigated negative declaration in September 2001. The initial study determined that the project would have several potentially significant environmental impacts, but found that the impacts could be mitigated. The advisory agency conducted a public hearing on the application in March 2002. Several neighborhood residents expressed concerns and opposition in writing, and some did so orally at the hearing. The advisory agency concluded at the end of the hearing that the planning department should reconsider the potential environmental impacts, including "height, construction hours, loss of wildlife, speeding on Wheatland, problems with picking up trash and going along Wheatland ... drainage, grading," that California Homes should provide an updated tree report, and that the city department of transportation should "take another look at the traffic generation from the 23-lot development."

The planning department prepared a new initial study and proposed mitigated negative declaration in May 2002. The planning department prepared another initial study and proposed mitigated negative declaration in September 2002 reflecting a reduction in the number of homes from 23 to 21. The initial study determined that the project would have several potentially significant environmental impacts, but found that the impacts could be mitigated. The planning department gave public notice of its intent to adopt a mitigated negative declaration, stating that it would receive comments on the proposal for 30 days, until October 21, 2002. The planning department did not notify the Department of Fish and Game of its intent to adopt a mitigated negative declaration. The advisory agency conducted another public hearing on October 24, 2002. Several neighborhood residents expressed concerns and opposition in writing, and some did so orally at the hearing. The advisory agency concluded at the end of the hearing that the mitigated negative declaration should be approved with two modified conditions. The advisory agency

formally approved the tentative tract and mitigated \*\*792 negative declaration with conditions in November 2002.

Several residents, including Mejia, appealed the decision to the planning commission. The planning commission conducted a public hearing in December 2002 and approved the tentative tract and mitigated negative declaration. The Planning and Land Use Management Committee conducted a public hearing on two days in February 2003 and approved the tentative tract and mitigated negative declaration with 10 additional conditions. The city council \*329 approved the tentative tract in February 2003 and adopted the mitigated negative declaration.

#### 4. Trial Court Proceedings

Mejia filed a petition for writ of mandate in the superior court challenging the project approval under CEQA and on other grounds. The city prepared an administrative record. Mejia requested judicial notice of numerous documents not included in the administrative record. She made several arguments in support of the petition, including the argument that the mitigated negative declaration was improper because the project may have significant impacts on wildlife and traffic despite the mitigation. After a hearing on the merits, the court issued a minute order granting judicial notice of two documents and denying the petition. The court entered a judgment denying the petition in February 2004.

### CONTENTIONS

Mejia contends (1) the project may have significant, unmitigated impacts on animal wildlife, traffic, planning and land use, and cumulative impacts, so a mitigated negative declaration was improper; (2) a mitigated negative declaration was improper because California Home agreed to mitigation measures after the public release of a proposed mitigated negative declaration, rather than before; (3) the city failed to notify the California Department of Fish and Game of its intention to adopt a mitigated negative declaration, as required; (4) the city failed to make all pertinent documents available for review during the public comment period; (5) the city's planning department failed to consider some public comments; (6) the project is inconsistent with the community plan; (7) the tentative tract map fails to disclose private easements, as required by the Los Angeles Municipal Code; and (8) the administrative record prepared by the city in connection with this litigation is incomplete.

### DISCUSSION

#### 1. CEQA Requirements

<sup>[1]</sup> “CEQA is a comprehensive scheme designed to provide long-term protection to the environment. [Citation.] In enacting CEQA, the Legislature declared its intention that all public agencies responsible for regulating activities affecting the environment give prime consideration to preventing environmental damage when carrying out their duties. [Citations.] CEQA is to \*330 be interpreted ‘to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.’ [Citation.]” (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 112, 65 Cal.Rptr.2d 580, 939 P.2d 1280.)

<sup>[2]</sup> An EIR is required for any project that a public agency proposes to carry out or approve that may have a significant effect on the environment. (Pub. Resources Code, §§ 21100, subd. (a), 21151, subd.(a); Guidelines,<sup>2</sup> \*\*793 § 15064, subd. (a)(1).) An EIR must describe the proposed project and its environmental setting, state the objectives sought to be achieved, identify and analyze the significant effects on the environment, state how those impacts can be mitigated or avoided, and identify alternatives to the project, among other requirements. (Pub. Resources Code, §§ 21100, subd. (b), 21151; Guidelines, §§ 15124, 15125.) “The purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project can be minimized; and to indicate alternatives to such a project.” (Pub. Resources Code, § 21061.)

<sup>[3]</sup> “We have repeatedly recognized that the EIR is the ‘heart of CEQA.’ [Citations.] ‘Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made. Thus, the EIR “protects not only the environment but also informed self-government.” [Citations.]’ To this end, public participation is an ‘essential part of the CEQA process.’ [Citations.]” (*Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1123, 26 Cal.Rptr.2d 231, 864 P.2d 502.)

A negative declaration is a written statement that briefly explains why a project will not have a significant environmental impact and therefore will not require an EIR. (Pub. Resources Code, § 21064.) A negative

declaration is proper only if the agency determines based on an initial study that there is no substantial evidence that the project may have a significant effect on the environment. (Pub. Resources Code, § 21080, subs. (c)(1), (d); Guidelines, §§ 15063, subd. (b)(2), 15070, subd. (a).) If an initial study shows that the **\*331** project may have a significant effect on the environment, a *mitigated* negative declaration may be appropriate. A mitigated negative declaration is proper, however, only if project revisions would avoid or mitigate the potentially significant effects identified in an initial study “to a point where clearly no significant effect on the environment would occur, and ... there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.” (Pub. Resources Code, § 21064.5; accord, § 21080, subd. (c)(2).)

[4] “ ‘Significant effect on the environment’ means a substantial, or potentially substantial, adverse change in the environment.” (Pub. Resources Code, § 21068.) The Guidelines define “significant effect on the environment” as “a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. An economic or social change by itself shall not be considered a significant effect on the environment. A social or economic change related to a physical change may be considered in determining whether the physical change is significant.”<sup>3</sup> (Guidelines, § 15382.) A **\*\*794** project “ ‘may’ ” have a significant effect on the environment if there is a “ ‘reasonable probability’ ” that the project will have a significant environmental impact. (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 83, fn. 16, 118 Cal.Rptr. 34, 529 P.2d 66.) “The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data. An ironclad definition of significant effect is not always possible because the significance of an activity may vary with the setting. For example, an activity which may not be significant in an urban area may be significant in a rural area.” (Guidelines, § 15064, subd. (b).)

“Substantial evidence” under CEQA “includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact.” (Pub. Resources Code, § 21080, subd. (e)(1).) “Substantial evidence is not argument, speculation, unsubstantiated opinion or narrative evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the

**\*332** environment.” (*Id.*, § 21080, subd. (e)(2); accord, *id.*, § 21082.2, subd. (c).) The Guidelines define “substantial evidence” as “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Whether a fair argument can be made that the project may have a significant effect on the environment is to be determined by examining the whole record before the lead agency. Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence.” (Guidelines, § 15384, subd. (a).) “Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.” (*Id.*, § 15384, subd. (b); accord, *id.*, § 15064, subd. (f)(5).)

[5] [6] These legal standards reflect a preference for requiring an EIR to be prepared. “There is ‘a low threshold requirement for preparation of an EIR’ (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 84 [118 Cal.Rptr. 34, 529 P.2d 66] ), and a ‘preference for resolving doubts in favor of environmental review’ (*Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1316–1317 [8 Cal.Rptr.2d 473] ). An EIR must be prepared ‘whenever it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact’ (*No Oil, Inc., supra*, at p. 75 [118 Cal.Rptr. 34, 529 P.2d 66] ), even if there is substantial evidence to the contrary (*Arviv Enterprises, Inc. v. South Valley Area Planning Com.* (2002) 101 Cal.App.4th 1333, 1346 [125 Cal.Rptr.2d 140]; *Friends of “B” Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002 [165 Cal.Rptr. 514] ).” (*Bowman v. City of Berkeley* (2004) 122 Cal.App.4th 572, 580–581, 18 Cal.Rptr.3d 814; see Guidelines, § 15064, subd. (f).)

[7] “Application of the ‘fair argument’ test is a question of law for our independent **\*\*795** review. (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1996) 42 Cal.App.4th 608, 617 [49 Cal.Rptr.2d 494]; *Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602 [35 Cal.Rptr.2d 470].) We review the trial court’s findings and conclusions de novo (*Arviv Enterprises, Inc. v. South Valley Area Planning Com., supra*, 101 Cal.App.4th at p. 1346 [125 Cal.Rptr.2d 140] ), and do not defer to the agency’s determination (*Sierra Club v. County of Sonoma, supra*, 6 Cal.App.4th at p. 1318 [8 Cal.Rptr.2d 473] ), except on ‘legitimate, disputed issues of credibility’ (*Quail Botanical Gardens Foundation, Inc. v. City of Encinitas,*

*supra*, at p. 1603 [35 Cal.Rptr.2d 470]; \*333 *Leonoff v. Monterey County Bd. of Supervisors* (1990) 222 Cal.App.3d 1337, 1349 [272 Cal.Rptr. 372] ).” (*Bowman v. City of Berkeley, supra*, 122 Cal.App.4th at pp. 580–581, 18 Cal.Rptr.3d 814.) “Under this standard, deference to the agency’s determination is not appropriate and its decision not to require an EIR can be upheld only when there is no credible evidence to the contrary. [Citation.]” (*Sierra Club v. County of Sonoma, supra*, 6 Cal.App.4th at pp. 1317–1318, 8 Cal.Rptr.2d 473.)

## 2. The Administrative Record Is Incomplete

<sup>[8]</sup> The petitioner in a CEQA proceeding may file a request for the public agency to “prepare the record of proceedings relating to the subject of the action or proceeding.” (Pub. Resources Code, § 21167.6, subd. (a).) The public agency must prepare and certify the record of proceedings within 60 days after service of a request. (*Id.*, § 21167.6, subd. (b)(1).) The record of proceedings includes a broad range of documents pertaining to the project.

Public Resources Code section 21167.6, subdivision (e), states, “The record of proceedings shall include, but is not limited to, all of the following items:

“(1) All project application materials.

“(2) All staff reports and related documents prepared by the respondent public agency with respect to its compliance with the substantive and procedural requirements of this division and with respect to the action on the project.

“(3) All staff reports and related documents prepared by the respondent public agency and written testimony or documents submitted by any person relevant to any findings or statement of overriding considerations adopted by the respondent agency pursuant to this division.

“(4) Any transcript or minutes of the proceedings at which the decisionmaking body of the respondent public agency heard testimony on, or considered any environmental document on, the project, and any transcript or minutes of proceedings before any advisory body to the respondent public agency that were presented to the decisionmaking body prior to action on the environmental documents or on the project.

“(5) All notices issued by the respondent public agency to comply with this division or with any other law governing the processing and approval of the project.

\*334 “(6) All written comments received in response to, or in connection with, environmental documents prepared for

the project, including responses to the notice of preparation.

“(7) All written evidence or correspondence submitted to, or transferred from, the respondent public agency with respect to compliance with this division or with respect to the project.

\*\*796 “(8) Any proposed decisions or findings submitted to the decisionmaking body of the respondent public agency by its staff, or the project proponent, project opponents, or other persons.

“(9) The documentation of the final public agency decision, including the final environmental impact report, mitigated negative declaration, or negative declaration, and all documents, in addition to those referenced in paragraph (3), cited or relied on in the findings or in a statement of overriding considerations adopted pursuant to this division.

“(10) Any other written materials relevant to the respondent public agency’s compliance with this division or to its decision on the merits of the project, including the initial study, any drafts of any environmental document, or portions thereof, that have been released for public review, and copies of studies or other documents relied upon in any environmental document prepared for the project and either made available to the public during the public review period or included in the respondent public agency’s files on the project, and all internal agency communications, including staff notes and memoranda related to the project or to compliance with this division.

“(11) The full written record before any inferior administrative decisionmaking body whose decision was appealed to a superior administrative decisionmaking body prior to the filing of litigation.”

The “project” referenced in Public Resources Code section 21167, subdivision (e), includes not only the final version of the project approved by the public agency, but also prior versions of the project constituting substantially the same overall activity. (*County of Orange v. Superior Court* (2003) 113 Cal.App.4th 1, 9–10, 6 Cal.Rptr.3d 286.)

The earliest documents chronologically in the administrative record prepared by the city are a tentative decision dated June 15, 2001, by the superior court in the prior proceeding initiated by Mejia, and a judgment and writ of \*335 mandate dated July 5, 2001, setting aside the city’s approval of the tentative tract map and directing the city to give proper notice of its intention to adopt a mitigated negative declaration. All other documents in the administrative record, apart from historical maps, postdate

the judgment in the prior proceeding. The city certified that the administrative record includes all the documents in specified files maintained by the city. The city apparently maintains separate files for the project before and after the judgment in the prior proceeding and considers matters concerning the project before the prior judgment as water under the bridge.

The administrative record prepared by the city is incomplete because it excludes documents pertaining to the project that antedate the judgment in the prior proceeding, including project application materials, staff reports, correspondence, environmental studies, and other documents listed in Public Resources Code section 21167.6, subdivision (e), pertaining to prior versions of substantially the same project. We cannot accurately describe the documents missing from the administrative record because most of those documents are not included in the appellate record. Some of the missing documents were the subject of Mejia's request for judicial notice in the superior court. The superior court apparently construed the request as a motion to supplement the administrative record and granted the motion as to only two documents.

<sup>[9]</sup> We conclude that the court should have granted the motion as to other documents as well. For purposes of our review, we need address only the project \*\*797 application submitted in June 1999 (see Pub. Resources Code, § 21167.6, subd. (e)(1)), a biotic assessment dated December 1989, and the advisory agency's approval in June 1990 of a prior project on the same site.<sup>4</sup> The biotic assessment was prepared in connection with the project approved in June 1990. Both that prior project and the project proposed by California Home in June 1999 involved the development of 28 single-family homes, and the application submitted by California Home in June 1999 stated that the proposed project was the "same project" as the one approved in June 1990 but never completed. These documents show that the project approved in June 1990 was a prior version of the project approved in February 2003 and that the projects were substantially the same for purposes of Public Resources Code section 21167.6, subdivision (e). We therefore conclude that the biotic \*336 assessment is a mandatory part of the record of proceedings under items (3) and (7) of subdivision (e). Specifically, the biotic assessment is a document submitted to the city relevant to its finding that there will be no impact on animal wildlife (item (3)) and is written evidence submitted to the city concerning compliance with CEQA with respect to the project (item (7)).

<sup>[10]</sup> We reject the argument by California Home that Mejia cannot challenge the adequacy of the administrative record on appeal because she failed to file a noticed motion to

supplement the administrative record pursuant to rule 9.24(f) of the Local Rules of the Los Angeles Superior Court.<sup>5</sup> Mejia's request for judicial notice was the practical equivalent of such a motion. Mejia filed and served the request together with her opening memorandum of points and authorities in support of the petition several weeks before the hearing on the petition. California Home and the city filed a joint objection to the request more than two weeks before the hearing, and California Home and the city were in no way prejudiced by Mejia's failure to properly label her motion.

*3. A Fair Argument, Based on Substantial Evidence, Can Be Made That The Project May Have a Significant Impact on Animal Wildlife*

<sup>[11]</sup> The biotic assessment prepared in December 1989 described the property as "relatively rich in animal life. There were a number of bird species observed that are wintering in the area (flocks of waxwings, yellow-rumped warblers, white-crowned sparrows, and robins). In addition, a red-tailed hawk was seen roosting in the tall \*\*798 trees on the top of the small hill on the property, and barn owl signs (pellets) were quite common on the northern part of the parcel. This northern area also appears to offer a minor movement corridor to the carnivores of the area..." It stated further, "It is likely that a number of other species use the property. Weather conditions and time of year influence the activity, presence, and visibility of vertebrate species. A late spring/early \*337 summer study would not only record residents on the property, but bird species that only nest in the area and reptile/amphibian species active on the surface... [¶] No threatened or endangered species of animals were observed on the parcel and, given the location and the small size of the parcel, none are expected to use the property for any significant amount of their yearly needs... [¶] One should expect that any urbanization on the site will have negative impacts on most animal numbers... The small mammal movement corridor on the northern edge of the property would be eliminated."

The biotic assessment included a list of animal species observed on the property or expected to be present. The list included two bird species currently identified by the Department of Fish and Game as species of special concern: Cooper's hawk and loggerhead shrike.<sup>6</sup> The biotic assessment also stated that the Pacific kangaroo rat was expected to be present on the property, although it also stated that the "high incidence of kangaroo rats" found in barn owl pellets indicated that "the barn owls must be hunting these prey items off the property, but close to their roosting trees."<sup>7</sup>

The initial study prepared in September 2002 stated that the

property “contains approximately 340 trees, mostly ornamental, non-protected species.” The initial study stated that the project would have no impact on animal wildlife and that the cumulative impact on animal wildlife would be less than significant. In response to each question on the initial study checklist concerning animal wildlife, apart from cumulative impacts, the “No Impact” box was checked.<sup>8</sup> The questions included whether the project would “[h]ave a substantial adverse effect ... on any species identified as a \*338 candidate, sensitive, or special status species,” “interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors,” or “have the potential to degrade the quality of the environment, substantially reduce the habitat of fish or wildlife species, cause a fish \*\*799 or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal....”<sup>9</sup>

The explanations provided in the initial study for the “No Impact” responses stated: “The site is in close proximity to the Angeles National Forest, Hansen Dam Recreation Area, Big Tujunga Wash, and Verdugo Mountains. [¶] The subject site is surrounded by developed properties to the north, south, east, and west. The site itself is not physically linked to any of the above areas. Due to the surrounding developments, it is reasonable to conclude that the subject site does not constitute appropriate or adequate habitat to support significant, endangered, or threatened species of plants or animals. Furthermore, the subject site has not been identified as having significant habitat for threatened, endangered, or sensitive wildlife, fish, or plant species in any official record.” “Project implementation will not interfere with the movement of any native resident wildlife species; the subject site is surrounded by significant developments. No significant fish or wildlife species are known to use this site as part of a migratory path. Development of this site will not impede the movement of any wildlife species. [¶] Several trees will remain on site and any living tree removals will be replanted. Therefore, any potential impact to a bird habitat is less than significant. [¶] Based on the location, surrounding development, and available reference materials (Community Plans, aerial photographs, land use designation and zoning) the site itself is obviously unsuitable to support significant, self-sustaining habitat for any significant species or serve as a suitable wildlife corridor. Areas to the west, south, and east are substantially developed and contain urban environments that cannot provide for adequate wildlife corridors; these areas are linked to the subject site, thus, it cannot be reasonably concluded that any wildlife corridor exists based on existing surrounding obstacles to wildlife movement to and

from the subject site.” “There are no federally protected fish or wildlife species on site. The project does not threaten to eliminate a plant or animal community, or reduce the number or restrict range of a rare or \*339 endangered plant or animal.... The project site is surrounded by developed properties and cannot serve as a wildlife corridor or accommodate significant numbers of sensitive, endangered, or threatened wildlife species. The project will not impact areas containing significant ecological resources.” The initial study did not refer to the 1989 biotic assessment or explain the inconsistencies between the biotic assessment and the initial study. The city did not obtain a current biotic assessment.

Several residents stated in administrative hearings or written comments that they had observed animal wildlife on the property site and expressed concerns that the project would adversely impact animal wildlife. One resident stated that he had observed a family of golden eagles nesting in a tree on the site. The Department of Fish and Game has designated the golden eagle a species of special concern.<sup>10</sup> Other residents referred to golden eagles, owls, hawks, crows, geese, egrets, California quail, and other resident or migratory birds, cottontail rabbits, coyotes, snakes, \*\*800 lizards, and other animals on the property. Mejia noted that the December 1989 biotic assessment had identified several animal species on the property and stated, “A current study should be conducted to determine whether these are candidates, sensitive, or special status species.” Residents emphasized the rural character of the area and stated that some of the terrain surrounding the site is covered with vegetation supporting a wildlife corridor.

The administrative record ordinarily is very limited when there is only an initial study and no EIR. Project opponents who challenge a negative declaration often have no expert studies to rely on. Recognizing this, courts have held that the absence of expert studies is not an obstacle because personal observations concerning nontechnical matters may constitute substantial evidence under CEQA. (*Arviv Enterprises, Inc. v. South Valley Area Planning Com.*, *supra*, 101 Cal.App.4th at p. 1347, 125 Cal.Rptr.2d 140; *Oro Fino Gold Mining Corp. v. County of El Dorado* (1990) 225 Cal.App.3d 872, 882–883, 274 Cal.Rptr. 720.) This is particularly true where an expert assessment corroborates to some extent the personal observations, as here.

The mitigation measures set forth in the mitigated negative declaration as conditions of project approval were not designed to mitigate significant impacts on animal wildlife because the city did not acknowledge any \*340 potentially significant impact on animal wildlife.<sup>11</sup> The two conditions modified by the advisory agency and the 10 conditions

added by the Planning and Land Use Management Committee similarly were not designed to mitigate impacts on animal wildlife.

We conclude that the evidence supports a fair argument that the project may have a significant effect on animal wildlife. In light of the evidence discussed above and absent a current biotic assessment, the conclusions and explanations provided in the initial study do not preclude the reasonable possibility that birds, including species of special concern and others, may roost or nest on the property, that small mammals may use the property as a movement corridor, and that development of the site and elimination of the corridor may have a significant impact on animal wildlife. The proximity of larger wilderness areas does not necessarily compel the conclusion that the site is insignificant to animal wildlife. Contrary to the determinations of the initial study, we conclude that there is a fair argument that the project, in the words of the initial study checklist, may “[h]ave a substantial adverse effect ... on [ ] species identified as a candidate, sensitive, or special status species” or “interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors.”

Our conclusion that a fair argument can be made that the project may have a significant impact on animal wildlife also compels the conclusion that the city was required to consult with the Department of Fish and Game, a trustee agency (Guidelines, § 15386), before conducting an initial study, and subsequently was required to notify the department of the city’s intention to adopt a mitigated negative declaration. \*\*801 (Pub. Resources Code, § 21080.3, subd. (a); Guidelines, §§ 15063, subd. (g), 15072, subd. (a); *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1386–1388, 43 Cal.Rptr.2d 170.)

4. *A Fair Argument, Based on Substantial Evidence, Can Be Made That The Project May Have a Significant Impact on Traffic*

<sup>[12]</sup> Several residents expressed concerns that the project would exacerbate traffic problems on Wheatland Avenue and increase the dangers for vehicle riders, equestrians, and pedestrians using the road. Residents characterized the community as a haven for equestrians who ride on trails and on \*341 Wheatland Avenue. They stated that Wheatland Avenue has no sidewalks; that equestrians and pedestrians share the road with vehicles; that the road is particularly crowded on trash collection day and horse manure collection days (two different days) when refuse cans crowd the road; that vehicles have collided with horses on at least three recent occasions resulting in the

horses having to be killed; and that the increased traffic caused by the additional homes would add to the problem.

A representative of the city Department of Transportation at an advisory agency public hearing in March 2002 acknowledged that Wheatland Avenue is a collector street designed to accommodate traffic from other streets, stating: “So we don’t have a policy that studies a collector street being impacted, because a collector street is designed to handle additional traffic, and all the local streets are supposed to funnel into the collector street, and the collector street is supposed to take them to the major street, which is Sunland. In this case, it’s actually what you have. You have the private streets from the development going to Wheatland Avenue, which is a collector, and the collector street goes down to Sunland, which is the major. So it does follow what it’s designed to be.

“Now, there are other issues with Wheatland that maybe can be resolved, but it may take some winding or something, but many mentioned that it was too narrow or something. Maybe something can be done with that respect, but that has to be looked further into. But as far as significant impact caused by traffic, there’s no significant impact caused by the number of trips generated by this particular development.” The advisory agency stated at the conclusion of the hearing that it would ask the Department of Transportation “to take another look at the traffic generation from the 23–lot development.” After the planning department prepared a new initial study and proposed mitigated negative declaration in September 2002 reducing the number of homes from 23 to 21, the advisory agency approved the project, apparently without further study of potential traffic impacts.

The initial study checklist prepared in September 2002 stated that there would be a less than significant impact in response to the question whether the project would “[c]ause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume to ratio capacity on roads, or congestion at intersections).” The explanation stated, “The Los Angeles Department of Transportation has established traffic impact thresholds based on the type and intensity of land use. The threshold for single-family home developments is 40 dwelling units or more; the project involves 23 [sic], low-density, single-family housing units on large lots. Therefore, the project does not meet the threshold criteria \*342 for traffic impacts. Furthermore, \*\*802 the project will include street improvements and review by the Department of Transportation and the Bureau of Engineering.” Similarly, the advisory agency at a public hearing before the planning

commission in December 2002 explained, “The threshold for a traffic study in this case would be 40 dwelling units. This project does not meet that threshold.”

A threshold of significance may be useful to determine whether an environmental impact normally should be considered significant. (Guidelines, § 15064.7, subd. (a).)<sup>12</sup> A threshold of significance is not conclusive, however, and does not relieve a public agency of the duty to consider the evidence under the fair argument standard. (*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1108–1109, 11 Cal.Rptr.3d 104; *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 110–114, 126 Cal.Rptr.2d 441; see Guidelines, § 15064, subd. (b).)<sup>13</sup> A public agency cannot apply a threshold of significance or regulatory standard “in a way that forecloses the consideration of any other substantial evidence showing there may be a significant effect.” (*Communities for a Better Environment, supra*, at p. 114, 126 Cal.Rptr.2d 441.) We conclude that the city improperly relied on a threshold of significance despite substantial evidence supporting a fair argument that the project may have a significant impact on traffic on Wheatland Avenue. In light of the public comments and absent more careful consideration by city engineers and planners, the evidence supports a fair argument that the increased traffic on Wheatland Avenue as a result of the project would be substantial considering the uses of the road.

#### 5. Other Contentions

In light of our determination that the evidence supports a fair argument that the project may have significant impacts on animal wildlife and traffic, an EIR is required. Accordingly, we need not address Mejia’s other contentions challenging the mitigated negative declaration.

#### \*343 DISPOSITION

The judgment is reversed with directions to the superior court to grant the petition and issue a peremptory writ of mandate ordering the city to vacate its approval of the project and mitigated negative declaration and to cause an EIR to be prepared. Mejia shall recover her costs on appeal.

We Concur: KLEIN, P.J., and ALDRICH, J.

#### All Citations

130 Cal.App.4th 322, 29 Cal.Rptr.3d 788, 05 Cal. Daily Op. Serv. 5264, 2005 Daily Journal D.A.R. 7181

#### Footnotes

- 1 The principal documents reflecting these events should have been but were not included in the administrative record in this proceeding, as discussed *post*. (Pub. Resources Code, § 21167.6, subd. (e).)
- 2 All references to Guidelines are to the CEQA Guidelines (Cal.Code Regs., tit. 14, § 15000 et seq.) developed by the Office of Planning and Research and adopted by the California Resources Agency. (Pub. Resources Code, §§ 21083, 21087.) “[C]ourts should afford great weight to the Guidelines except when a provision is clearly unauthorized or erroneous under CEQA.” (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 391, 253 Cal.Rptr. 426, 764 P.2d 278, fn. 2 (*Laurel Heights I*)).
- 3 “ ‘Environment’ means the physical conditions which exist within the area which will be affected by a proposed project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. The area involved shall be the area in which significant effects would occur either directly or indirectly as a result of the project. The ‘environment’ includes both natural and man-made conditions.” (Guidelines, § 15360; see Pub. Resources Code, § 21060.5.)
- 4 The biotic assessment was included in the administrative record for the prior proceeding initiated by Mejia, but the city did not include the document in the administrative record for the present proceeding. We take judicial notice of the index of the administrative record in the prior proceeding, as requested by the Mejia in the trial court.
- 5 “Once the administrative record has been filed, any disputes about its accuracy or scope should be resolved by appropriate notice[d] motion. For example, if the agency has prepared the administrative record, petitioners may contend that it omits important documents or that it contains inappropriate documents; if the petitioners have prepared the record, the agency may have similar contentions. A motion to supplement the certified administrative record with additional documents and/or to exclude certain documents from the record may be noticed by any party and should normally be

filed concurrently with the filing of petitioner's opening memorandum of points and authorities in support of the writ. Opposition and reply memoranda on the motion should normally be filed with the opposition and [reply] memoranda, respectively, regarding the writ. The motion should normally be calendared for hearing concurrently with the hearing on the writ." (Super. Ct. L.A. County, Local Rules, rule 9.24(f).)

- 6 The Department of Fish and Game maintains lists of species of special concern on its website, stating, " 'Species of Special Concern' (SSC) status applies to animals not listed under the federal Endangered Species Act or the California Endangered Species Act, but which nonetheless 1) are declining at a rate that could result in listing, or 2) historically occurred in low numbers and known threats to their persistence currently exist." (<<http://www.dfg.ca.gov/hcpb/species/ssc/ssc.shtml>>.)
- 7 Unlike several other varieties of kangaroo rat, the Pacific kangaroo rat is not designated as endangered, threatened, or a species of special concern.
- 8 The responses in the initial study of May 2002 were identical to those in the initial study of September 2002. The initial study of September 2001, however, stated that the impacts on animal wildlife would be "Less Than Significant," rather than "No Impact," and that the cumulative impact would be "Potentially Significant Unless Mitigation Incorporated," rather than "Less Than Significant." Thus, in response to the concerns expressed regarding the project after the initial study of September 2001, the city revised the initial study by downgrading the stated impacts on animal wildlife, but apparently did not substantially revise the project other than by reducing the number of homes from 23 to 21.
- 9 The last of these questions is a mandatory finding of significance under section 15065, subdivision (a)(1), of the Guidelines. Contrary to the respondents' argument, an impact need not satisfy the requirements of a mandatory finding of significance to be considered a significant impact.
- 10 See footnote 6, *ante*.
- 11 Some of the conditions nonetheless may mitigate impacts on animal wildlife to some degree, such as the condition requiring the replacement of all "desirable trees" on the property. That condition does not expressly require the replacement of trees significant to native or migratory birds, however. Since the initial study concludes that the project will have no impact on animal wildlife even without mitigation, the "desirability" of trees to be replaced presumably may be determined by some measure other than the benefit to animal wildlife.
- 12 "Each public agency is encouraged to develop and publish thresholds of significance that the agency uses in the determination of the significance of environmental effects. A threshold of significance is an identifiable quantitative, qualitative or performance level of a particular environmental effect, non-compliance with which means the effect will *normally* be determined to be significant by the agency and compliance with which means the effect *normally* will be determined to be less than significant." (Guidelines, § 15064.7, subd. (a), italics added.)
- 13 "The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data. An ironclad definition of significant effect is not always possible because the significance of an activity may vary with the setting. For example, an activity which may not be significant in an urban area may be significant in a rural area." (Guidelines, § 15064, subd. (b).)

5 Cal.App.5th 281  
Court of Appeal,  
Third District, California.

EAST SACRAMENTO PARTNERSHIP FOR A  
LIVABLE CITY, Plaintiff and Appellant,  
v.  
CITY OF SACRAMENTO et al., Defendants and  
Respondents;  
Encore McKinley Village, LLC, Real Party in  
Interest and Respondent.

C079614

Filed 11/7/2016

As Modified on Denial of Rehearing 12/6/2016

**Synopsis**

**Background:** Neighborhood group brought action against city for declaratory, injunctive, and writ relief challenging approval of residential construction project under California Environmental Quality Act (CEQA). The Superior Court, Sacramento County, No. 34-2014-80001851-CU-WM-GDS, Timothy M. Frawley, J., entered judgment for city. Neighborhood group appealed.

**Holdings:** The Court of Appeal, Duarte, J., held that:

<sup>[1]</sup> environmental impact report (EIR) adequately disclosed development agreement;

<sup>[2]</sup> the project description was not defective;

<sup>[3]</sup> EIR did not engage in improper piecemealing; but

<sup>[4]</sup> EIR provided an inadequate explanation for its conclusion that traffic impacts were not significant.

Reversed and remanded with directions.

West Headnotes (45)

<sup>[1]</sup> **Environmental Law**  
Assessments and impact statements

Under California Environmental Quality Act (CEQA), a court may not set aside an agency's approval of an environmental impact report (EIR) on the ground that an opposite conclusion would have been equally or more reasonable. Cal. Pub.Res. Code § 21000 et seq.

Cases that cite this headnote

<sup>[2]</sup> **Environmental Law**  
Preservation of error

Neighborhood group's failure to address the trial court's decision and explain how the trial court erred in denying group's California Environmental Quality Act (CEQA) challenge to city's approval of residential construction project did not forfeit neighborhood group's argument on appeal that the city erred under CEQA in approving the project. Cal. Pub.Res. Code § 21000 et seq.

Cases that cite this headnote

<sup>[3]</sup> **Environmental Law**  
Purpose of assessments and statements

Under California Environmental Quality Act (CEQA), an accurate, stable, and finite project description is the sine qua non of an informative and legally sufficient environmental impact report (EIR).

Cases that cite this headnote

<sup>[4]</sup> **Environmental Law**  
Purpose of assessments and statements

The California Environmental Quality Act (CEQA) reporting process is not designed to freeze the ultimate proposal in the precise mold of the initial project; indeed, new and unforeseen insights may emerge during investigation,

evoking revision of the original proposal. Cal. Pub.Res. Code § 21000 et seq.

Regs. tit. 14, § 15124(d)(1)(B).

Cases that cite this headnote

Cases that cite this headnote

[5] **Environmental Law**  
🔑 Updated or supplemental statements; recirculation

Under California Environmental Quality Act (CEQA), once an agency has prepared an environmental impact report (EIR), no subsequent EIR is required unless substantial changes are proposed in a project that will require major changes in the EIR. Cal. Pub.Res. Code § 21166(a).

Cases that cite this headnote

[8] **Environmental Law**  
🔑 Consideration and disclosure of effects

California Environmental Quality Act (CEQA) does not require an analysis in the environmental impact report (EIR) of each and every activity carried out in conjunction with a project. Cal. Pub.Res. Code § 21000 et seq.

Cases that cite this headnote

[6] **Environmental Law**  
🔑 Adequacy of Statement, Consideration, or Compliance

A development agreement qualifies as an approval that must be included in an environmental impact report's (EIR) project description under the California Environmental Quality Act (CEQA) Guidelines. Cal. Code Regs. tit. 14, § 15124(d)(1)(B).

Cases that cite this headnote

[9] **Environmental Law**  
🔑 Land use in general

City's environmental impact report (EIR) for residential construction project did not need to include analysis of a modification of the development agreement to include a feasibility study for a vehicular tunnel, where the EIR found the tunnel to be infeasible, the city agreed as to this finding of infeasibility, and the tunnel was not part of the project. Cal. Code Regs. tit. 14, § 15262.

Cases that cite this headnote

[7] **Environmental Law**  
🔑 Land use in general

The development agreement required for a master parcel map was adequately disclosed prior to city's approval of the environmental impact report (EIR), as required by the California Environmental Quality Act (CEQA) Guidelines, where the EIR stated that a development agreement was required, and the development agreement was included in the notices of the planning and design commission meeting and of the city council meeting on the project. Cal. Code

[10] **Environmental Law**  
🔑 Sufficiency

The project description in the draft environmental impact report (EIR) for a residential construction project was not rendered fatally defective by a subsequent modification of the project to increase the number of housing units from 328 to 336, including 24 new two-story attached units, even though the change required rezoning for multi-family units, absent evidence that the analysis in the final EIR was defective. Cal. Code Regs. tit. 14, § 15124.

Cases that cite this headnote

[11] **Environmental Law**  
⚡Sufficiency

The project description in the draft environmental impact report (EIR) for a residential construction project was not rendered fatally defective by the omission of the need a variance for driveways four feet narrower than the city standard of 24 feet, where the need for the variance was added in the final EIR, absent evidence of any prejudice from the omission or any significant impact on the environment from the narrower driveways.

Cases that cite this headnote

[12] **Environmental Law**  
⚡Scope of project; multiple projects

California Environmental Quality Act (CEQA) mandates that environmental considerations do not become submerged by chopping a large project into many little ones, each with a potential impact on the environment, which cumulatively may have disastrous consequences. Cal. Pub.Res. Code § 21000 et seq.

Cases that cite this headnote

[13] **Environmental Law**  
⚡Major government action

A “project” under California Environmental Quality Act (CEQA) is the whole of an action which has a potential for resulting in a physical change in the environment, directly or ultimately, and includes the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. Cal. Pub.Res. Code § 21000 et seq.

Cases that cite this headnote

[14] **Environmental Law**  
⚡Scope of project; multiple projects

Improper piecemealing of California Environmental Quality Act (CEQA) environmental review occurs when the purpose of the reviewed project is to be the first step toward future development or when the reviewed project legally compels or practically presumes completion of another action. Cal. Pub.Res. Code § 21000 et seq.

Cases that cite this headnote

[15] **Environmental Law**  
⚡Land use in general

City’s environmental impact report (EIR) for residential construction project did not engage in improper piecemealing in failing to include a proposed vehicular tunnel as part of the project, even though the tunnel would be used only for access to and from the project, and even if the city removed planned construction of a nearby connector road from its general plan, where the tunnel was not a necessary part of the project because the project had two other points of vehicular access, the EIR found the tunnel to be infeasible, the city agreed as to the finding of infeasibility, and any amendment to the general plan would require California Environmental Quality Act (CEQA) review. Cal. Pub.Res. Code § 21000 et seq.; Cal. Code Regs. tit. 14, § 15262.

Cases that cite this headnote

[16] **Environmental Law**  
⚡Land use in general

City’s environmental impact report (EIR) for residential construction project did not engage in improper piecemealing in failing to include a half-street closure of a nearby local street as part of the project, even if the city removed planned construction of a nearby connector road from its general plan, since the closure was a modest

change by the city in response to traffic concerns, and any amendment to the general plan would require California Environmental Quality Act (CEQA) review. Cal. Pub.Res. Code § 21000 et seq.

Cases that cite this headnote

Cases that cite this headnote

[20] **Environmental Law**  
🔑 Mitigation measures

Specific mitigation measures are not required under the statute providing that an environmental impact report (EIR) is not required to reference, describe, or discuss project or cumulative effects on the regional transportation network if the project incorporates mitigation measures in prior environmental documents; the statute only requires that if there are such measures, the project incorporate them. Cal. Pub. Res. Code § 21159.28(a).

Cases that cite this headnote

[17] **Environmental Law**  
🔑 Consideration of alternatives

California Environmental Quality Act (CEQA) requires analysis of a project’s potentially significant exacerbating effects on existing environmental hazards, effects that arise because the project brings development and people into the area affected. Cal. Pub.Res. Code § 21000 et seq.

Cases that cite this headnote

[21] **Environmental Law**  
🔑 Land use in general

Environmental impact report (EIR) for residential construction project was not required to reference, describe, or discuss project or cumulative effects on the regional transportation network, since the project incorporated mitigation measures in prior environmental documents, where the project was to be developed consistent with the applicable mitigation measures in the regional transportation network’s sustainable communities strategy (SCS) program EIR. Cal. Pub. Res. Code § 21159.28(a).

[18] **Environmental Law**  
🔑 Consideration and disclosure of effects

In the absence of a specific factual foundation in the record, dire predictions by nonexperts regarding the consequences of a project do not constitute substantial evidence requiring analysis in an environmental impact report (EIR). Cal. Pub.Res. Code § 21000 et seq.

Cases that cite this headnote

Cases that cite this headnote

[19] **Environmental Law**  
🔑 Land use in general

Neighborhood group’s vague claim that residential development atop a closed landfill would exacerbate the existing air pollution from the landfill and a nearby road and a railway was insufficient to require review in the project’s environmental impact report (EIR), since the claim was not evidence that the project would produce a particular adverse effect. Cal. Pub.Res. Code § 21000 et seq.

[22] **Environmental Law**  
🔑 Land use in general

Substantial evidence supported the city’s methodology in focusing on intersections rather than road segments, in the traffic analysis of environmental impact report (EIR) for residential construction project, including the EIR’s

explanation that roadway capacity was governed by intersections. Cal. Pub. Res. Code § 21000 et seq.

Cases that cite this headnote

unsupported. Cal. Code Regs. tit. 14, § 15151.

Cases that cite this headnote

[23] **Environmental Law**  
🔑 Land use in general

City’s addition of a new roadway impact to its final environmental impact report (EIR) for residential construction project did not require recirculation of the EIR, since only the level of service designation for the roadway segment changed between the draft EIR and the final EIR, and there was no change in the amount of traffic on the roadway segment between the draft and final EIR. Cal. Pub. Res. Code § 21000 et seq.

Cases that cite this headnote

[26] **Environmental Law**  
🔑 Necessity for Preparation of Statement, Consideration of Factors, or Other Compliance with Requirements

Compliance with a general plan in and of itself does not insulate a project from the environmental impact report (EIR) requirement, where it may be fairly argued that the project will generate significant environmental effects. Cal. Pub. Res. Code § 21151.

Cases that cite this headnote

[24] **Environmental Law**  
🔑 Adequacy of Statement, Consideration, or Compliance

When a challenge is brought to studies on which an environmental impact report (EIR) is based, the issue is not whether the studies are irrefutable or whether they could have been better; the relevant issue is only whether the studies are sufficiently credible to be considered as part of the total evidence that supports the agency’s decision. Cal. Code Regs. tit. 14, § 15151.

Cases that cite this headnote

[27] **Environmental Law**  
🔑 Consideration and disclosure of effects

In preparing an environmental impact report (EIR), the lead agency must consider and resolve every fair argument that can be made about the possible significant environmental effects of a project, irrespective of whether an established threshold of significance has been met with respect to any given effect. Cal. Pub. Res. Code § 21151.

Cases that cite this headnote

[25] **Environmental Law**  
🔑 Assessments and impact statements

A clearly inadequate or unsupported study used as the basis for an environmental impact report (EIR) is entitled to no judicial deference; the party challenging the EIR, however, bears the burden of demonstrating that the studies on which the EIR is based are clearly inadequate or

[28] **Environmental Law**  
🔑 Land use in general

Environmental impact report (EIR) for residential construction project provided an inadequate explanation for its conclusion that traffic impacts that would decrease the level of service (LOS) on some roads and create “significant delays” were less than significant, where the EIR merely stated that the project was consistent with the general plan, and that the LOS thresholds of the City’s general plan reflected “community values.” Cal.

Pub. Res. Code § 21100(c); Cal. Code Regs. tit. 14, §§ 15064(c), 15151.

plan policy.

Cases that cite this headnote

Cases that cite this headnote

[29]

**Appeal and Error**

🔑 Defects, objections, and amendments

If the appellant fails to set forth all of the material evidence, its claim of insufficiency of the evidence is forfeited.

Cases that cite this headnote

[32]

**Zoning and Planning**

🔑 Grounds for Grant or Denial; Conformity to Regulations

To be consistent with the general plan, a subdivision development must be compatible with the objectives, policies, general land uses, and programs specified in the general plan, and the nature of the policy and the nature of the inconsistency are critical factors to consider.

Cases that cite this headnote

[30]

**Environmental Law**

🔑 Land use in general

Neighborhood group failed to establish that city’s proposed mitigation measures for significant traffic impacts of residential construction project, of making fair share contributions to various traffic improvements, were infeasible or ineffective, and thus group failed to establish the environmental impact report (EIR) was inadequate, even if there was no regional network mitigation program such as a traffic fee program, absent evidence that the fair share program for city traffic was infeasible. Cal. Pub.Res. Code §§ 21002.1(a), 21100(b)(3), 21159.28.

Cases that cite this headnote

[33]

**Zoning and Planning**

🔑 Grounds for Grant or Denial; Conformity to Regulations

A subdivision development’s inconsistencies with the general plan’s vague, general policies that “encourage” actions may not be fatal, but an approval must be set aside, however, where there is an inconsistency with a mandatory policy.

Cases that cite this headnote

[31]

**Zoning and Planning**

🔑 Conformity of regulations to comprehensive or general plan

Local land use and development decisions must be consistent with the applicable general plan, and a project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment, even if it is not in perfect conformity with each and every general

[34]

**Zoning and Planning**

🔑 Permits, certificates, and approvals

**Zoning and Planning**

🔑 Permits, certificates, and approvals

A city’s determination that a project is consistent with the city’s general plan carries a strong presumption of regularity, and this determination can be overturned only if the city abused its discretion, that is, did not proceed legally, or if the determination is not supported by findings, or if the findings are not supported by substantial evidence.

Cases that cite this headnote

[35] **Zoning and Planning**  
🔑 Decisions of boards or officers in general

When the Court of Appeal reviews an agency’s decision for consistency with its own general plan, it accords great deference to the agency’s determination because the body which adopted the general plan policies in its legislative capacity has unique competence to interpret those policies when applying them in its adjudicatory capacity.

Cases that cite this headnote

[36] **Zoning and Planning**  
🔑 Comprehensive or general plan

Because policies in a city’s general plan reflect a range of competing interests, the city must be allowed to weigh and balance the plan’s policies when applying them, and it has broad discretion to construe its policies in light of the plan’s purposes.

Cases that cite this headnote

[37] **Zoning and Planning**  
🔑 Grounds for Grant or Denial; Conformity to Regulations

Court’s role in reviewing city’s decision approving proposed project for consistency with city’s own general plan is simply to decide whether city considered applicable policies and extent to which proposed project conforms with those policies.

Cases that cite this headnote

[38] **Zoning and Planning**  
🔑 Mootness

Neighborhood group’s argument on appeal, that residential development project was inconsistent with a provision of city’s general plan requiring improvements to the citywide transportation system as a condition of accepting certain reductions in a road’s level of service (LOS), was rendered moot by an amendment of the general plan that removed the condition requiring improvements to the citywide transportation system.

Cases that cite this headnote

[39] **Zoning and Planning**  
🔑 Streets and roads; traffic considerations

Even assuming that city’s residential development project eliminated a dedicated bike lane for one block, the city acted within its discretion in finding that the project was consistent with city’s “Bikeway Master Plan,” where the project reflected a commitment to bicycle transportation.

Cases that cite this headnote

[40] **Zoning and Planning**  
🔑 Mootness

Neighborhood group’s argument on appeal, that residential development project was inconsistent with a provision of city’s general plan requiring new neighborhoods to include transit stops within one-half mile of all dwellings, was rendered moot by an amendment of the general plan to state that such transit stops were merely “encouraged.”

Cases that cite this headnote

[41] **Zoning and Planning**  
🔑 Other particular considerations

Residential development project was not improperly inconsistent with provisions of city’s general plan designed to promote the health and well-being of the community by protecting the public from the adverse effects of air pollution, noise, and other health hazards, since the provisions were vague and subjective.

Cases that cite this headnote

[42] **Zoning and Planning**  
🔑Comprehensive or general plan

Because policies in a general plan reflect a range of competing interests, the governmental agency must be allowed to weigh and balance the plan’s policies when applying them, and it has broad discretion to construe its policies in light of the plan’s purposes.

Cases that cite this headnote

[43] **Environmental Law**  
🔑Assessments and impact statements

Neighborhood group’s failure to use a separate heading or subheading to raise their arguments on appeal challenging the adequacy of the environmental impact report (EIR) for a residential construction project forfeited those arguments on appeal. Cal. R. Ct. 8.204(a)(1)(B).

Cases that cite this headnote

[44] **Environmental Law**  
🔑Other particular subjects and regulations

Under city “Environmental Constraint Policy” stating that projected exterior noise levels for residential development shall be less than listed levels “to the extent feasible,” compliance is tied to feasibility, the policy is not mandatory, and thus an inconsistency does not require an

approval to be set aside.

Cases that cite this headnote

[45] **Zoning and Planning**  
🔑Other particular considerations

A reasonable person could have found that residential development project’s exterior noise level from nearby freeway and railway was consistent with city’s general plan requiring noise to be limited to 60 decibels “to the extent feasible,” and thus city acted within its discretion in making that finding, even if outdoor areas other than yards would have noise exceeding 60 decibels, where the project had noise mitigation.

See 12 Witkin, Summary of Cal. Law (10th ed. 2005) Real Property, § 832 et seq.

Cases that cite this headnote

**\*\*780** APPEAL from a judgment of the Superior Court of Sacramento County, Timothy M. Frawley, Judge. Reversed with directions. (Super. Ct. No. 34-2014-80001851-CU-WM-GDS)

**Attorneys and Law Firms**

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**Opinion**

Duarte, J.

**\*286** Real Party in Interest Encore McKinley Village, LLC

(Encore) proposed to construct the McKinley Village Project (the Project), a 328-unit residential development on a 48.75-acre site located in East Sacramento and bounded on the south and east by Union Pacific Railroad tracks \*287 and on the north and west by the Capital City Freeway. The City of Sacramento certified the Project's environmental impact report (EIR) and approved the Project.

East Sacramento Partnership for a Livable City (ESPLC), a neighborhood group, appeals from denial of its petition for a writ of mandate and complaint for declaratory and injunctive relief to set aside the City's approval of the Project. ESPLC contends the City violated the California Environmental Quality Act (CEQA) (Pub. Res. Code, § 2100 et seq.)<sup>1</sup> when it approved the Project because (1) the Project description is defective; (2) there was illegal piecemealing; (3) the EIR failed to analyze significant health risks; (4) the EIR ignored significant traffic impacts; and (5) the EIR failed to disclose or mitigate methane migration. Further, ESPLC contends the Project is inconsistent with the City's general plan.

We find merit in only the fourth contention. ESPLC challenges the threshold of significance used in the EIR to determine whether traffic impacts are significant. The City relied on policies in its general plan that permit congested traffic conditions within the core area of the City, thus finding no significant impact of congested traffic on neighborhood streets. As we explain in Part I E 2, compliance with a general plan policy does not conclusively establish there is no significant environmental impact, and the City failed to explain why it found none in this circumstance. We reverse the judgment and remand for the City to correct this deficiency in the EIR.

## BACKGROUND

### *The Project*

The Project, as finally approved, is a 336-unit residential development with a community recreation center and three parks on a 48.75-acre site. The Project is residential infill, designed to be consistent with the quality and character of the adjoining East Sacramento and McKinley Park neighborhoods. The Project site is roughly football-shaped and sandwiched between Interstate 80 Business Route (Capital City Freeway) to the north and the Union Pacific Railroad tracks to the south. The site meets the City's definition of land targeted for infill development.

\*\*781 To the north of the Project, across the freeway, is the

former 28th Street Landfill, now designated Sutter's Landing Regional Park. To the southwest is a residential neighborhood in midtown Sacramento. To the south, across the railroad tracks, is the Cannery Business Park on C Street. Across C Street is a residential neighborhood in East Sacramento.

\*288 There will be two points of access to the Project. The first is the upgrade of the existing A Street Bridge, which will connect the Project to 28th Street in midtown. The second is a new underpass under the Union Pacific railroad embankment to C Street, between 40th Street and Tivoli Way. Both access points will accommodate vehicular, bicycle, and pedestrian traffic.

### *The EIR*

The EIR studied and analyzed the Project's impacts compared to two baselines, the existing conditions (existing plus project) and future or cumulative conditions (cumulative plus project). The cumulative conditions were based on a build-out of the City's 2030 general plan. The EIR found no project specific or cumulative impacts that could not be avoided; all impacts could be mitigated to a less than significant level.

In response to concerns about the health risks to residents of the Project, a health risk analysis accompanied the EIR. This study determined the potential cancer risk to future residents due to diesel particulate matter emissions from diesel trucks and locomotives. The study concluded the cancer risk for the majority of residents was 80 in one million; at one residence, the risk was 120 in one million. These values were within accepted levels.

The primary issue was traffic. The EIR analyzed traffic impacts using the level of service (LOS) method, with a scale of A to F. LOS A is free flowing traffic and LOS F is congested, "stop and go" traffic. The EIR studied 32 intersection and 19 roadway segments. It found significant traffic impacts at some intersections under cumulative plus project conditions and included a number of traffic mitigation measures to reduce those impacts to less than significant.

### *City Approval and Subsequent Challenge*

On April 29, 2014, by a vote of six to three, the City certified the EIR for the Project, adopted the findings of fact, adopted mitigation measures within the City's responsibility and jurisdiction, and adopted the Mitigation Monitoring Program.

The following month, ESPLC filed a petition for writ of mandate and complaint for declaratory and injunctive relief, challenging the City's decision to approve the Project. ESPLC contended there were numerous violations of CEQA, and approval of the Project violated the City's general plan. ESPLC sought a declaration that the Project approval was invalid and an injunction against any further action on the project.

\*289 The trial court denied the petition and ESPLC appealed.

## DISCUSSION

### I

#### *Alleged CEQA Violations*

##### *A. Standard of Review*

Section 21168.5 provides that a court's inquiry in an action to set aside an agency's decision under CEQA "shall extend only to whether there was a prejudicial abuse of discretion. Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported \*\*782 by substantial evidence." The CEQA Guidelines<sup>2</sup> define "substantial evidence" as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." (CEQA Guidelines, § 15384, subd. (a).)

<sup>[1]</sup>In applying this substantial evidence standard to an action to set aside an agency's decision under CEQA, we resolve reasonable doubts in favor of the agency's decision. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 393, 253 Cal.Rptr. 426, 764 P.2d 278 (*Laurel Heights*)). "A court may not set aside an agency's approval of an EIR on the ground that an opposite conclusion would have been equally or more reasonable. [Citation.] A court's task is not to weigh conflicting evidence and determine who has the better argument when the dispute is whether adverse effects have been mitigated or could be better mitigated. We have neither the resources nor scientific expertise to engage in such analysis, even if the statutorily prescribed standard of review permitted us to do so. Our limited function is consistent with the principle that 'The purpose

of CEQA is not to generate paper, but to compel government at all levels to make decisions with environmental consequences in mind. CEQA does not, indeed cannot, guarantee that these decisions will always be those which favor environmental considerations.' [Citation.]" (*Ibid.*)

<sup>[2]</sup>"An appellate court's review of the administrative record for legal error and substantial evidence in a CEQA case, as in other mandamus cases, is the same as the trial court's: The appellate court reviews the agency's action, not \*290 the trial court's decision; in that sense appellate judicial review under CEQA is de novo. [Citations.] We therefore resolve the substantive CEQA issues ... by independently determining whether the administrative record demonstrates any legal error by the [City] and whether it contains substantial evidence to support the [City's] factual determinations." (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 427, 53 Cal.Rptr.3d 821, 150 P.3d 709.)<sup>3</sup>

##### *B. Adequacy of Project Description*

<sup>[3]</sup> <sup>[4]</sup> <sup>[5]</sup>"An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR." (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193, 139 Cal.Rptr. 396 (*County of Inyo*)). However, the "CEQA reporting process is not designed to freeze the ultimate proposal in the precise mold of the initial project; indeed, new and unforeseen insights may emerge during investigation, evoking revision of the original proposal. [Citation.]" (*Id.* at p. 199, 139 Cal.Rptr. 396.) "Under section 21166, subdivision (a), once an agency has prepared an EIR, no subsequent EIR is required unless substantial changes are proposed in a project that will require major changes in the EIR." (*Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 935-936, 231 Cal.Rptr. 748, 727 P.2d 1029.)

The project description in the EIR must include "[a] list of permits and other approvals \*\*783 required to implement the project." (CEQA Guidelines, § 15124, subd. (d)(1)(B).) ESPLC contends the project description omitted numerous City approvals, including a development agreement, a rezoning request to allow multi-family residences, an increase in the number of residential units from 328 to 336, and variances for driveway widths.

"Noncompliance with CEQA's information disclosure requirements is not per se reversible; prejudice must be shown. (§ 21005, subd. (b).) This court has previously explained, '[a] prejudicial abuse of discretion occurs if the failure to include relevant information precludes informed

decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process.’ [Citations.]” (*Association of Irrigated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1391, 133 Cal.Rptr.2d 718 (*AIR*)).

**\*291** 1. *Development Agreement*

<sup>[6]</sup>A development agreement qualifies as an approval that must be included in the project description. (*Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899, 926, 146 Cal.Rptr.3d 12 (*Rialto*)).

<sup>[7]</sup>The draft EIR identified a large lot tentative subdivision map as one of the City approvals required. This map is properly called a master parcel map and requires a development agreement. The final EIR changed the terminology to a master parcel map and added that a development agreement was required. The development agreement was included in the notice of the March 13, 2014, planning and design commission meeting and the April 29, 2014, city council meeting on the Project. ESPLC commented on the development agreement. Thus, the development agreement was adequately disclosed both for “informed decisionmaking and informed public participation” before the City certified the EIR and approved the Project. (*AIR, supra*, 107 Cal.App.4th at p. 1391, 133 Cal.Rptr.2d 718.)

<sup>[8]</sup>ESPLC contends the City failed to proceed in the manner required by law because the EIR did not analyze the development agreement. CEQA “does not require an analysis in the EIR of each and every activity carried out in conjunction with a project.” (*Native Sun/Lyon Communities v. City of Escondido* (1993) 15 Cal.App.4th 892, 909–910, 19 Cal.Rptr.2d 344.) It is sufficient if the EIR makes reference to the development agreement to alert “persons interested in that document to its relevance in the decisionmaking process.” (*Id.* at p. 909, 19 Cal.Rptr.2d 344.) Similarly, it is sufficient if, as here, the development agreement is included in the notice of the public hearing on the Project before the city council. (*Rialto, supra*, 208 Cal.App.4th at p. 927, 146 Cal.Rptr.3d 12.)

<sup>[9]</sup>ESPLC argues the development agreement should have been analyzed in the EIR because it was modified to change the Project and this substantial change was never analyzed.

A major concern regarding the Project was the limited access. Several comments requested a vehicular tunnel at Alhambra Boulevard as a condition of the Project. Several

residents made this point at the city council meeting on approval of the Project. At the beginning of that meeting, Councilman Hansen proposed modifying the development agreement to make a vehicular tunnel at Alhambra Boulevard into a City project. He called the tunnel a “capital improvement project” and couched it as “the most secure way that we can get vehicular access at this project.” The developer had agreed to contribute \$2.2 million for a tunnel, either vehicular or bicycle; the vehicular tunnel would be **\*\*784** the City’s top priority and the developer would provide \$100,000 for study of the feasibility of such a tunnel.

**\*292** Contrary to ESPLC’s argument, the City did not agree to build the Alhambra Boulevard vehicular tunnel or approve it. Rather, it simply expressed a preference for such a tunnel and agreed to study its feasibility. A feasibility study does not require an EIR. (CEQA Guidelines, § 15262.) Further, it is questionable whether a vehicular tunnel at Alhambra Boulevard will be built. The EIR found the Alhambra tunnel to be infeasible due to the cost, estimated at \$28.4 million, the need for approval from Union Pacific, the need to construct temporary tracks, and impact on nearby properties. The City agreed as to this finding of infeasibility. A vehicular tunnel at Alhambra Boulevard was not part of the Project and did not need to be included in the Project description.

2. *Expanded Rezoning*

<sup>[10]</sup>At the time of the draft EIR, the Project included 328 single-family residential units. In response to requests for housing diversity, the number of housing units was increased to 336; the number of single family homes was decreased and a new type of housing was added, the Parkside Flats, consisting of 24 two-story attached units around the Project’s central park. The final EIR noted the necessary rezoning for multi-family units and analyzed the effect of the increased number of units, finding the increase in the number of students would not exceed the capacity of local schools. It also found there would be no significant increase in demand for services, and that the slight increase in traffic would have no significant impact.

ESPLC contends the project description in the draft EIR omitted the necessary rezoning for multi-family units and the increase in the number of units and this omission made the project description fatally defective. This slight change, the addition of eight housing units, is the type of change to be expected during the CEQA process. (*County of Inyo, supra*, 71 Cal.App.3d at p. 199, 139 Cal.Rptr. 396.) ESPLC has failed to show how the analysis in the final EIR was

defective or that the slight increase in housing units precluded meaningful decision making or public comment.

### 3. Variance for Driveways

<sup>[11]</sup>Residences next to the freeway or railroad tracks are in four-house clusters and their driveways are in a T-court configuration. These driveways are 20 feet wide rather than the City standard of 24 feet. The draft EIR did not include the need for a driveway variance as one of the necessary approvals of the Project. It was added in the final EIR.

ESPLC contends “the City failed to proceed in the manner required by law” by failing to include this approval in the project description. ESPLC \*293 fails to show any prejudice from the omission or that the narrower driveways had any significant impact on the environment. The contention fails.

#### C. Piecemealing

<sup>[12]</sup> <sup>[13]</sup>“CEQA mandates that environmental considerations do not become submerged by chopping a large project into many little ones, each with a potential impact on the environment, which cumulatively may have disastrous consequences. [Citation.] CEQA attempts to avoid this result by defining the term ‘project’ broadly. [Citation.] A project under CEQA is the whole of an action which has a potential for resulting in a physical change in the environment, directly or ultimately, and includes the activity which is being \*\*785 approved and which may be subject to several discretionary approvals by governmental agencies. [Citation.]” (*Burbank–Glendale–Pasadena Airport Authority v. Hensler* (1991) 233 Cal.App.3d 577, 592, 284 Cal.Rptr. 498.)

The process of attempting to avoid a full environmental review by splitting a project into several smaller projects which appear more innocuous than the total planned project is referred to as “piecemealing.” (See *Berkeley Keep Jets Over the Bay Com. v. Board of Port Cmrs.* (2001) 91 Cal.App.4th 1344, 1358, 111 Cal.Rptr.2d 598 (*Berkeley Jets*)). Our Supreme Court set forth the relevant standard: “We hold that an EIR must include an analysis of the environmental effects of future expansion or other action if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects. Absent these two circumstances, the future expansion need not be considered in the EIR for the proposed project.”

(*Laurel Heights, supra*, 47 Cal.3d at p. 396, 253 Cal.Rptr. 426, 764 P.2d 278.)

<sup>[14]</sup>Improper piecemealing occurs “when the purpose of the reviewed project is to be the first step toward future development” or “when the reviewed project legally compels or practically presumes completion of another action.” (*Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal.App.4th 1209, 1223, 150 Cal.Rptr.3d 591.) By contrast, an EIR need not analyze “specific future action that is merely contemplated or a gleam in a planner’s eye. To do so would be inconsistent with the rule that mere feasibility and planning studies do not require an EIR.” (*Laurel Heights, supra*, 47 Cal.3d at p. 398, 253 Cal.Rptr. 426, 764 P.2d 278.)

### 1. Alhambra Boulevard Vehicular Tunnel

<sup>[15]</sup>ESPLC contends the City engaged in illegal piecemealing because it failed to analyze the vehicular tunnel proposed at Alhambra Boulevard. As discussed, the City did not approve a vehicular tunnel at Alhambra Boulevard; it \*294 approved only studying the feasibility of such a project. A feasibility study does not require an EIR. (CEQA Guidelines, § 15262.) While the tunnel would be used only for access to and from the Project, it is not a necessary part of the Project and the Project was not conditioned upon its construction. There are two other points of vehicular access to the Project: A Street and an extension between 40th Street and Tivoli Way to C Street. Further, construction of the Alhambra vehicular tunnel is not reasonably foreseeable. Rather, it is currently deemed infeasible, due to its considerable expense, the need for Union Pacific approvals, and the difficulties and impacts of construction.

### 2. Half-Street Closure on 28th Street

<sup>[16]</sup>The draft EIR disclosed that the Project would add approximately 1,100 daily trips to 28th Street south of C Street. The draft EIR concluded this increase was not a significant impact, but because 28th Street was a local street in a residential neighborhood, the EIR suggested the City should monitor the traffic volumes to determine if a half-street closure was necessary. The half-street closure would divert traffic to C Street and then to 29th Street. C Street carries less traffic than 28th Street and 29th Street is a larger road. The final EIR noted that several comments supported a half-street closure at 28th and C Streets. It

concluded a half-street closure on 28th Street could be utilized, and “[a]dditional traffic calming measures would most likely be needed at **\*\*786** C Street west of 28th Street.” The draft minutes of the city council meeting to approve the Project indicate the council also passed a motion to include a half-street closure at 28th and C Streets. That motion is not cited to by either party and we have not found it in the 55,000–page administrative record.

ESPLC contends the EIR should have disclosed and analyzed the potential impacts of the half-street closure at 28th Street.

The trial court found the half-street closure would result in diverting 114 to 124 vehicles during peak hours from one local road (28th Street) to another that had less traffic (C Street) and then to a major collector road with greater capacity (29th Street). Thus, the effect of the half-street closure would be to reduce the traffic impact on 28th Street and move the traffic to streets better able to handle the increase. This type of minor change does not require a new EIR. (*Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.*, *supra*, 42 Cal.3d at p. 936, 231 Cal.Rptr. 748, 727 P.2d 1029.) This modest change by the City in response to traffic concerns is not illegal piecemealing.

### 3. Sutter’s Landing Parkway (Connector)

ESPLC contends the failure to analyze the Alhambra tunnel and the half-street closure “are especially troubling given the city council’s decision, **\*295** also at the last minute, to remove nearby Sutter’s Landing Parkway from its General Plan.” Sutter’s Landing Parkway is proposed construction of a new east-west roadway between 28th Street and Richards Boulevard. Also proposed is an interchange between Sutter’s Landing Parkway and the Capital City Freeway.

As part of the motion authorizing the half-street closure, the city council directed the city manager to “remove the Sutter Landing Connector from the General Plan at the next major update.” As that motion is not in the record, we cannot determine exactly what the City agreed to do. The trial court found that “technically” the City agreed to *consider* removing the connector from the general plan. ESPLC does not explain how the possible removal of Sutter’s Landing Parkway, or the interchange connector, from the general plan makes the failure to discuss the Alhambra tunnel or the 28th Street half-street closure illegal piecemealing. As respondents note, any amendment to the general plan will require CEQA review. (*DeVita v.*

*County of Napa* (1995) 9 Cal.4th 763, 793, 38 Cal.Rptr.2d 699, 889 P.2d 1019.)

#### D. Failure to Analyze Significant Health Risks

ESPLC contends the EIR failed to analyze or address the significant health risks posed to future residents of the Project, particularly the increased cancer risk and the risk of methane gas migration.<sup>4</sup>

The Project is bounded by a freeway and railroad tracks, and thus subject to toxic air contaminants (TAC’s), which are airborne pollutants that pose a potential hazard to human health. The Project is also near the former 28th Street landfill, which has the potential for off-site subsurface gas (methane) migration. The northern portion of the Project contains two groundwater monitoring wells and six soil **\*\*787** gas probes, used as part of the post-closure monitoring of the closed landfill.<sup>5</sup>

The trial court found, based on decisions of courts of appeal, that CEQA did not require an EIR to analyze the existing effects of the environment on future residents of the Project. The California Supreme Court recently approved that position in *California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th 369, 196 Cal.Rptr.3d 94, 362 P.3d 792 (CBIA). Our high court held: “[A]gencies subject to CEQA generally are not required to analyze the impact of existing environmental **\*296** conditions on a project’s future users or residents. But when a proposed project risks exacerbating those environmental hazards or conditions that already exist, an agency must analyze the potential impact of such hazards on future residents or users. In those specific instances, it is the *project’s* impact on the environment—and not the *environment’s* impact on the project—that compels an evaluation of how future residents or users could be affected by exacerbated conditions.” (*Id.* at pp. 377–378, 196 Cal.Rptr.3d 94, 362 P.3d 792.) “[N]owhere in the statute is there any provision ... plainly delegating power for the agency to determine whether a project must be screened on the basis of how the environment affects its residents or users.” (*Id.* at p. 387, 196 Cal.Rptr.3d 94, 362 P.3d 792.)

Much of ESPLC’s argument is that the site of the Project is an unhealthy place to live. This argument is similar to that made and rejected in *Preserve Poway v. City of Poway* (2016) 245 Cal.App.4th 560, 199 Cal.Rptr.3d 600. “Here, a significant part of [project opponent’s] concern was that ‘[a]llowing housing to be built on the Stock Farm property across the street from a heavily used equestrian facility will create untold problems for the City and those residents who would move there. No residential development should be

allowed where such traffic—horses, cars, trucks and trailers—exists.’ [CBIA] holds this type of impact is outside CEQA’s scope. [Citation.]” (*Id.* at p. 582, 199 Cal.Rptr.3d 600.)

<sup>[17]</sup>What must be analyzed under CEQA is “a project’s potentially significant *exacerbating* effects on existing environmental hazards—effects that arise because the project brings ‘development and people into the area affected.’ ” (*CBIA, supra*, 62 Cal.4th at p. 388, 196 Cal.Rptr.3d 94, 362 P.3d 792.) The court provided an example. “Suppose that an agency wants to locate a project next to the site of a long-abandoned gas station. For years, that station pumped gasoline containing methyl tertiary-butyl ether (MTBE), an additive—now banned by California—that can seep into soil and groundwater. [Citations.] Without any additional development in the area, the MTBE might well remain locked in place, an existing condition whose risks—most notably the contamination of the drinking water supply—are limited to the gas station site and its immediate environs. But by virtue of its proposed location, the project threatens to disperse the settled MTBE and thus exacerbate the existing contamination. The agency would have to evaluate the existing condition—here, the presence of MTBE in the soil—as part of its environmental review. Because this type of inquiry still focuses on the *project’s impacts on the environment*—how a project might worsen existing conditions—directing an agency to evaluate how such worsened conditions could affect a project’s future users or residents is entirely **\*\*788** consistent with this focus and with CEQA as a whole.” (*Id.* at p. 389, 196 Cal.Rptr.3d 94, 362 P.3d 792.)

<sup>[18]</sup> <sup>[19]</sup>ESPLC seeks to apply the exacerbation standard to health risks in the Project. It contends “[a]dditional vehicles, residents, visitors, and others **\*297** coming to the property because of the Project will undeniably contribute to, and exacerbate, the already bad air quality, traffic, and other environmental conditions.” The traffic concerns of the Project are discussed *post*. Beyond traffic impacts, ESPLC’s vague claim of exacerbation, without any factual support, is insufficient. “[I]n the absence of a specific factual foundation in the record, dire predictions by nonexperts regarding the consequences of a project do not constitute substantial evidence. [Citations.]” (*Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1417, 43 Cal.Rptr.2d 170 (*Gentry*)). “ ‘Unsubstantiated opinions, concerns, and suspicions about a project, though sincere and deeply felt, do not rise to the level of substantial evidence....’ [Citation.] Thus, ‘project opponents must produce ... evidence, other than their unsubstantiated opinions, that a project *will produce a particular adverse effect.*’ [Citation.]” (*Banker’s Hill, Hillcrest, Park West*

*Community Preservation Group v. City of San Diego* (2006) 139 Cal.App.4th 249, 274, 42 Cal.Rptr.3d 537.) As to the concern of increased air pollution, we note the Project is an infill residential project and without such projects, development would likely occur in more distant suburban areas, resulting in even more pollution from automobile commuter traffic. (See *CBIA, supra*, 62 Cal.4th at p. 379, 196 Cal.Rptr.3d 94, 362 P.3d 792.)

### E. Ignoring Significant Traffic Impacts

#### 1. Impact on Roadways

ESPLC contends the EIR failed to analyze and propose mitigation for the Project’s impact on freeways. “CEQA expressly allows streamlining of transportation impacts analysis for certain land use projects based on metropolitan regional ‘sustainable communities strategies.’ ” (*Center for Biological Diversity v. Department of Fish and Wildlife* (2015) 62 Cal.4th 204, 230, 195 Cal.Rptr.3d 247, 361 P.3d 342.) The City relied on that streamlining. Under section 21159.28, if a project is consistent with the region’s sustainable communities strategy (SCS), the EIR is not required to reference, describe, or discuss project or cumulative effects on the regional transportation network, provided the project incorporates mitigation measures in prior environmental documents. (§ 21159.28, subd. (a).) Here, the applicable region is the Sacramento Area Council of Governments (SACOG). The Project is consistent with SACOG’s SCS and Metropolitan Transportation Plan (MTP). Nonetheless, the EIR did provide information as to the impact of the project on the Capital City Freeway.

<sup>[20]</sup> <sup>[21]</sup>ESPLC asserts there is no regional traffic impact fee and no nonconstruction-related transportation mitigation measures are included in the general plan EIR. Therefore, ESPLC argues, “the intent of [ ] section 21159.28 is not met here, and the City erred in relying on it as an excuse to **\*298** not analyze and address the Project’s significant freeway impacts.” The statute does not require specific mitigation measures, only that if there are such measures, the project incorporate them. The record indicates the Project will be developed consistent with the applicable mitigation measures in the SACOG MTP/SCS Program EIR. ESPLC has failed to show error in the City’s reliance on section 21159.28.

**\*\*789** ESPLC next faults the EIR for failing to analyze roadway segments; instead the EIR focused on intersections. The EIR studied 32 intersections. Information on nearly 20 roadway segments was provided but labeled “for information purposes only.”

<sup>[22]</sup>The EIR explained that its traffic analysis was focused on intersections rather than roadway segments because roadway capacity was governed by intersections. Under the Traffic Impact Analysis Guidelines, the decision on which to study should be made on an individual project basis. These guidelines further state that in general, intersections rather than roadways should be studied when analyzing in-fill areas. Substantial evidence supports the City's methodology in focusing on intersections.

<sup>[23]</sup>ESPLC contends the City was required to recirculate the EIR because the final EIR identified a new roadway segment impact. In the draft EIR, C Street between Alhambra Boulevard and 33rd Street was identified as a major collector road operating at LOS A under both existing and existing plus conditions and at LOS B under cumulative plus project conditions. In the final EIR, the road designation was corrected to a local (rather than major collector) road. Under the local designation, the road segment operates currently at LOS D and at LOS E with the Project, and at LOS F under cumulative plus project conditions.

As we have explained, the EIR focused on impacts to intersections rather than roadway segments, and substantial evidence supported the decision to focus on intersections. Further, although the level of service designation changed in the final EIR due to the correction to the roadway segment's designation, there was no change in the *amount of traffic* on this roadway segment between the draft and final EIR. The impact was not new, only the designation and corresponding LOS classification.

With respect to the " 'for informational purposes' " examination of roadway segments, ESPLC contends the EIR omitted several roadway segments that will be impacted by the Project. ESPLC identifies 29th Street, 30th Street, and 33rd Street, and relies on comments made by its traffic expert. That expert, Hexagon Transportation Consultants, Inc., questioned various assumptions, traffic models, and conclusions of the draft EIR as to the traffic impacts.

<sup>\*299</sup> "Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure." (CEQA Guidelines, § 15151.) "When the evidence on an issue conflicts, the decisionmaker is 'permitted to give more weight to some of the evidence and to favor the opinions and estimates of some of the experts over the others.' [Citation.]" (*AIR, supra*, 107 Cal.App.4th at p. 1397, 133 Cal.Rptr.2d 718.)

<sup>[24]</sup> <sup>[25]</sup>"When a challenge is brought to studies on which an EIR is based, 'the issue is not whether the studies are irrefutable or whether they could have been better. The relevant issue is only whether the studies are sufficiently credible to be considered *as part of* the total evidence that supports the' agency's decision. [Citation.] 'A clearly inadequate or unsupported study is entitled to no judicial deference.' [Citation.] The party challenging the EIR, however, bears the burden of demonstrating that the studies on which the EIR is based 'are clearly inadequate or unsupported.' [Citation.]" ( <sup>\*\*790</sup> *State Water Resources Control Bd. Cases* (2006) 136 Cal.App.4th 674, 795, 39 Cal.Rptr.3d 189.)

ESPLC has failed to carry its burden to show the traffic studies are inadequate. ESPLC objects to the omission of certain roadway segments, but fails to explain how the analysis of intersections on these same streets in the draft EIR is inadequate to analyze the traffic impact of the Project.

## 2. *Thresholds of Significance*

ESPLC contends the City failed to properly adjudge the significance of the traffic impacts of the project. In particular, ESPLC faults the EIR for relying on general plan traffic policies, which ESPLC categorizes as non-CEQA standards, to find that LOS E and LOS F conditions on City streets are not significant impacts.

The draft EIR explains the threshold of significance used to determine significant impacts. "The significance criteria used to evaluate the project impacts are based on Appendix G of the CEQA Guidelines, the thresholds adopted by the City in applicable general plans and previous environmental documents, and professional judgment." For intersections, there is a significant impact if traffic generated by the project degrades LOS from an acceptable to unacceptable LOS. If the LOS is already unacceptable, a <sup>\*300</sup> significant impact occurs when traffic generated by the Project increases the average vehicle delay by five seconds or more.<sup>6</sup>

Under General Plan Mobility Element Policy M 1.2.2, the City allows for flexible LOS standards. In the core area, bounded by C Street, the Sacramento River, 30th Street, and X Street (downtown and midtown), LOS F conditions are acceptable during peak hours. In multi-model districts, characterized by frequent transit service, mixed uses, and high density, LOS A–E shall be maintained and in other areas, LOS A–D shall be maintained. In either case, up to

LOS F conditions may be acceptable to achieve other goals, provided there are improvements to the overall system or non-vehicular transportation is promoted.

Using this general plan policy as the threshold of significance, the EIR found no significant impact on 28th Street or its intersection with E Street under existing plus Project conditions, although the level of service went from LOS C to LOS E for the street, and LOS A to LOS D for the intersection in the morning. The intersection at E Street and 29th Street went from LOS C to LOS E in the morning. The impacts are greater, in some cases LOS F, under the cumulative plus project conditions, but the EIR found no significant impacts.

“CEQA grants agencies discretion to develop their own thresholds of significance (CEQA Guidelines, § 15064, subd. (d)).” (*Save Cuyama Valley v. County of Santa Barbara* (2013) 213 Cal.App.4th 1059, 1068, 153 Cal.Rptr.3d 534.) That discretion, however, is not unbounded, as the determination that the Project has no significant environmental impact must be supported by substantial evidence. (§ 21168.5.) In **\*\*791** *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 126 Cal.Rptr.2d 441 (*CBE*), overruled on another ground in *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1109, footnote 3, 184 Cal.Rptr.3d 643, 343 P.3d 834, this court upheld invalidation of a CEQA Guideline that directed an agency to find an environmental impact not significant if it complies with a regulatory standard. We found the guideline “relieves the agency of a duty it would have under the fair argument approach to look at evidence beyond the regulatory standard, or in contravention of the standard, in deciding whether an EIR must be prepared.” (*Id.* at p. 113, 126 Cal.Rptr.2d 441.) A **\*301** regulatory standard could not be applied so as to foreclose consideration of substantial evidence showing a significant environmental impact from a project. (*Id.* at p. 114, 126 Cal.Rptr.2d 441.)

<sup>[26]</sup>Compliance with a general plan in and of itself “does not insulate a project from the EIR requirement, where it may be fairly argued that the project will generate significant environmental effects.” (*City of Antioch v. City Council* (1986) 187 Cal.App.3d 1325, 1332, 232 Cal.Rptr. 507.) A project’s effects can be significant even if “they are *not* greater than those deemed acceptable in a general plan.” (*Gentry, supra*, 36 Cal.App.4th at p. 1416, 43 Cal.Rptr.2d 170; also *Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714, 732, 187 Cal.Rptr.3d 96 [EIR required “if substantial evidence supports a fair argument that the Project may have significant unmitigated noise impacts, even if other evidence shows the Project will

not generate noise in excess of the County’s noise ordinance and general plan”]; *Berkeley Jets, supra*, 91 Cal.App.4th at p. 1381, 111 Cal.Rptr.2d 598 [“the fact that residential uses are considered compatible with a noise level of 65 decibels for purposes of land use planning is not determinative in setting a threshold of significance under CEQA”].)

The City and Encore cursorily contend these cases are not applicable because they address a threshold of significance in the context of deciding whether to prepare an EIR in the first instance, not in the context of a completed EIR’s application of significance thresholds. But they do not explain why the rule differs with the context.

<sup>[27]</sup>In *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 11 Cal.Rptr.3d 104 (*Amador Waterways*), this court addressed the two uses of thresholds of significance and found the *CBE* rule applied to both. A threshold of significance is used to determine whether an EIR must be prepared. (*Id.* at pp. 1106–1107, 11 Cal.Rptr.3d 104.) Thresholds of significance are also used in preparing the EIR: “[I]n preparing the EIR, the agency must determine whether any of the *possible* significant environmental impacts of the project will, in fact, be significant. In this determination, thresholds of significance can once again play a role. As noted above, however, the fact that a particular environmental effect meets a particular threshold cannot be used as an automatic determinant that the effect is or is not significant.” (*Id.* at p. 1109, 11 Cal.Rptr.3d 104.) “Thus, in preparing an EIR, the agency must consider and resolve every fair argument that can be made about the possible significant environmental effects of a project, irrespective of whether an established threshold of significance has been met with respect to any given effect.” (*Ibid.*)

In *Amador Waterways*, the project at issue was replacement of a 130-year-old canal with a pipeline. Because leakage from the canal contributed to flow in **\*\*792** streams, the pipe would reduce these flows, turning some **\*302** streams into seasonally intermittent streams, and significantly reducing the flow in one. (*Amador Waterways, supra*, 116 Cal.App.4th at pp. 1102, 1111, 11 Cal.Rptr.3d 104.) The agency found the reduction in stream flows was insignificant based on the threshold of significance developed from the standardized Appendix G of the CEQA Guidelines, and plaintiff challenged that determination because the threshold of significance did not address reduction in stream flows. (*Id.* at p. 1111, 11 Cal.Rptr.3d 104.) We found the EIR insufficient because the reduction in stream flows was an effect on the environment and the EIR failed to explain why it was insignificant. Section 21100, subdivision (c) requires an

EIR to “contain a statement briefly indicating the reasons for determining that various effects on the environment of a project are not significant and consequently have not been discussed in detail in the environmental impact report.” (See also CEQA Guidelines, § 15128.)

<sup>[28]</sup>Here, the EIR found traffic impacts at intersections on 28th and 29th Streets that changed conditions from LOS C to LOS E and from LOS A to LOS D under existing plus project conditions.<sup>7</sup> Under cumulative plus project conditions, several intersections on 28th, 29th, and 30th Streets are at LOS F, with significant delays. The EIR found these impacts to be less than significant based solely on the mobility element in the City’s general plan, without any *evidence* that such impacts were insignificant. Indeed, the Master EIR for the City’s 2030 general plan, which adopted the mobility element at issue, recognized that the impact of traffic increases above LOS D-E were “significant and unavoidable.” Further, the EIR finds similar changes to LOS conditions in East Sacramento, outside the core area, *are* significant impacts and require mitigation. Accordingly, there is evidence of a significant impact on traffic on 28th, 29th, and 30th Streets. As in *Amador Waterways*, the EIR contains no explanation why such increases in traffic in the core area are not significant impacts, other than reliance on the mobility element of the general plan that permits LOS F in the core area during peak times.

In response to a comment questioning the City’s discretion in establishing its own LOS thresholds of significance, the final EIR states that the LOS thresholds of the City’s general plan reflect “community values.” Such “community values” do not, however, necessarily measure environmental impacts. (Cf. *Berkeley Jets*, *supra*, 91 Cal.App.4th at p. 1381, 111 Cal.Rptr.2d 598 [land use noise threshold not determinative for CEQA].) The core area of the general plan covers downtown and midtown Sacramento and includes both busy commercial and quiet residential streets. The CEQA Guidelines caution that “the significance of an activity may vary with the setting.” (CEQA Guideline, § 15064, subd. (b).)

The general plan alone does not constitute substantial evidence that there is no significant impact. “[T]he fact that a particular environmental \*303 effect meets a particular threshold cannot be used as an automatic determinant that the effect is or is not significant. To paraphrase our decision in *Communities for a Better Environment*, a threshold of significance cannot be applied in a way that would foreclose the consideration of other substantial evidence tending to show the environmental effect to which the threshold relates might be significant. [Citation.]” (*Amador Waterways*, *supra*, 116 Cal.App.4th at p. 1109, 11

Cal.Rptr.3d 104.)

Because the EIR fails to explain or provide substantial evidence to support the finding of no significant traffic impact at these intersections, we must reverse the \*\*793 trial court’s denial of ESPLC’s petition for a writ of mandate and remand the case for issuance of a writ directing the City to set aside its certification of the final EIR and to take the action necessary to bring the transportation and circulation section of the EIR into compliance with CEQA. (See § 21168.9 [describing contents of court order after a finding of noncompliance with CEQA].) The City need only correct the deficiency in the EIR that we have just described before considering recertification of the EIR. (See *Amador Waterways*, *supra*, 116 Cal.App.4th at p. 1112, 11 Cal.Rptr.3d 104.)

### 3. Mitigation

ESPLC contends the mitigation measures proposed for significant traffic impacts are infeasible or ineffective.

An EIR must propose and describe mitigation measures to minimize the significant environmental impacts identified in the EIR. (§§ 21002.1, subd. (a); 21100, subd. (b)(3); CEQA Guidelines, § 15126.4, subd. (a)(1).)

The EIR concluded the Project would exacerbate LOS F conditions at the H Street/Alhambra Boulevard intersection, but the impact would be less than significant if Mitigation Measure 4.9–1 were adopted. That mitigation measure requires Encore to pay the City to monitor and re-time the traffic signal at that intersection. ESPLC contends there is no evidence that mitigation measure will be effective.

<sup>[29]</sup>In response to the comment by ESPLC’s traffic consultant questioning the effectiveness of the mitigation measure, the final EIR responded the mitigation measure would improve the delay from 110 seconds to 40.8 seconds and referred to Appendix O (the Traffic Model Output Data) to the draft EIR for technical calculations. ESPLC has not addressed Appendix O or otherwise shown that it does not provide substantial evidence supporting the mitigation measure. “If the appellant fails to set forth all of the material evidence, its claim of insufficiency of the evidence is forfeited.” (*Garlock Sealing Technologies, LLC v. NAK Sealing Technologies Corp.* (2007) 148 Cal.App.4th 937, 951, 56 Cal.Rptr.3d 177.)

<sup>[30]</sup> \*304 For traffic impacts under cumulative plus project conditions, the mitigation measures required fair share

contributions to various traffic improvements. ESPLC contends this is not legally sufficient mitigation because the City admits it has no fee program. ESPLC cites to a comment claiming freeway impacts should be mitigated to which the City responds there is no *regional network* mitigation program (such as a traffic fee program) for purposes of section 21159.28. ESPLC does not show where the City admitted there is no fair share program for city traffic. Instead, the City describes the program: “Fair share contributions collected from a project are required to be used for the purpose it was collected for and cannot be applied to other purposes. If the project is approved by the City of Sacramento, the fair share contributions, defined as mitigation, will be collected at the plan check review phase. Monies collected for this purpose will be placed in a special fund and will be used to fund improvements required at that location.” ESPLC has not shown these mitigation measures are infeasible.

ESPLC contends one of the mitigation measures, 4.9–6, will result in removal of a bicycle lane on H Street for one block between 30th Street and Alhambra Boulevard and is therefore infeasible because it conflicts with policies of the general plan. We discuss this point in the next section.

## II

### *Consistency with General Plan*

ESPLC contends the Project is inconsistent with the City’s general plan. Specifically, **\*\*794** ESPLC contends the Project is inconsistent with transportation policies, transit policies, policies promoting health and well-being, and noise policies.

#### *A. The Law*

<sup>[31]</sup> <sup>[32]</sup> Local land use and development decisions must be consistent with the applicable general plan. (*Families Unafraid to Uphold Rural etc. County v. Board of Supervisors* (1998) 62 Cal.App.4th 1332, 1336, 74 Cal.Rptr.2d 1 (*FUTURE*)). “A project is consistent with the general plan ‘if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment.’” [Citation.] A given project need not be in perfect conformity with each and every general plan policy. [Citation.] To be consistent, a subdivision development must be ‘compatible with’ the objectives, policies, general land uses and programs

specified in the general plan.” (*Ibid.*)

<sup>[33]</sup> “[T]he nature of the policy and the nature of the inconsistency are critical factors to consider.” (*FUTURE, supra*, 62 Cal.App.4th at p. 1341, 74 Cal.Rptr.2d 1.) Inconsistencies with vague, general policies that “encourage” actions may not be **\*305** fatal. (See *Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 719, 29 Cal.Rptr.2d 182.) An approval must be set aside, however, where there is an inconsistency with a mandatory policy. (*Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 783, 32 Cal.Rptr.3d 177 (*Endangered Habitat*)).

<sup>[34]</sup> “A city’s determination that a project is consistent with the city’s general plan ‘carries a strong presumption of regularity. [Citation.] This determination can be overturned only if the [city] abused its discretion—that is, did not proceed legally, or if the determination is not supported by findings, or if the findings are not supported by substantial evidence. [Citation.] As for this substantial evidence prong, it has been said that a determination of general plan consistency will be reversed only if, based on the evidence before the local governing body, ‘... a reasonable person could not have reached the same conclusion’ [Citation.]’ [Citation.]” (*Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 238, 128 Cal.Rptr.3d 733 (*Clover Valley*)); see also *Naraghi Lakes Neighborhood Preservation Assn. v. City of Modesto* (2016) 1 Cal.App.5th 9, 18–19, 204 Cal.Rptr.3d 67)

<sup>[35]</sup> <sup>[36]</sup> <sup>[37]</sup> “When we review an agency’s decision for consistency with its own general plan, we accord great deference to the agency’s determination. This is because the body which adopted the general plan policies in its legislative capacity has unique competence to interpret those policies when applying them in its adjudicatory capacity. [Citation.] Because policies in a general plan reflect a range of competing interests, the governmental agency must be allowed to weigh and balance the plan’s policies when applying them, and it has broad discretion to construe its policies in light of the plan’s purposes. [Citations.] A reviewing court’s role ‘is simply to decide whether the city officials considered the applicable policies and the extent to which the proposed project conforms with those policies.’ [Citation.]” (*Save our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 142, 104 Cal.Rptr.2d 326 (*Save our Peninsula*)).

#### *B. Transportation Policies*

<sup>[38]</sup> ESPLC contends the Project is inconsistent with Mobility Element M 1.2.2 of the general plan, which

requires the developer to make improvements to the citywide transportation system in exchange for accepting LOS E and LOS F \*\*795 conditions. Since this action commenced, the City has adopted a new 2035 general plan. Under the new general plan, Mobility Element M 1.2.2 has been amended and no longer requires improvements to the citywide transportation system as a condition of accepting LOS E or LOS F conditions. In *Sierra Club v. Board of Supervisors* (1981) 126 Cal.App.3d 698, 704–706, 179 Cal.Rptr. 261 (*Sierra Club*), a challenge to a zoning ordinance based on \*306 inconsistency with the general plan became moot when, during pendency of the appeal, a new general plan was adopted with which the ordinance was consistent. In *La Mirada Avenue Neighborhood Assn. of Hollywood v. City of Los Angeles* (2016) 2 Cal.App.5th 586, 206 Cal.Rptr.3d 343, the appellate court dismissed as moot a challenge to several exceptions to a neighborhood plan granted for construction of a large store after the city amended the plan to make the exceptions unnecessary. As in *Sierra Club* and *La Mirada*, because the Project is now consistent with Mobility Policy M 1.2.2, this contention is now moot.

<sup>[39]</sup>ESPLC contends the Project is inconsistent with the Bikeway Master Plan because Mitigation Measure 4.9–6(a) (prohibiting on-street parking and increasing traffic lanes on H Street between 30th Street and Alhambra Boulevard) eliminates a dedicated bike lane. The City and Encore dispute that a bike lane is eliminated.

The EIR is inconsistent about whether a dedicated bike lane is eliminated. In response to comments challenging the mitigation measures, it asserts this mitigation measure “would not result in the loss of a bike lane.” However, in response to the next comment (which the EIR misreads as only a request to prohibit on-street parking rather than a concern about losing a bike lane), the final EIR states “[t]he bike lane would be shared for a portion of the eastbound travel lane just west of 30th Street.” In any event, a “project need not be in perfect conformity with each and every general plan policy.” (*FUTURE*, *supra*, 62 Cal.App.4th at p. 1336, 74 Cal.Rptr.2d 1.) Given the Project’s commitment to bicycle transportation, the City could reasonably conclude the Project was consistent with the general plan despite the possible loss of a dedicated bike lane for one block. (*Clover Valley*, *supra*, 197 Cal.App.4th at p. 238, 128 Cal.Rptr.3d 733.)

#### C. Land Use and Environmental Policies

<sup>[40]</sup>ESPLC contends the project is inconsistent with land use policy 4.5.6 which requires new neighborhoods to include transit stops within one-half mile of all dwellings. This contention is moot because this provision of the

general plan has changed. (*Sierra Club*, *supra*, 126 Cal.App.3d at pp. 704–706, 179 Cal.Rptr. 261.) The 2035 general plan only “encourage[s]” transit stops within one-half mile; it is no longer a requirement.

<sup>[41]</sup><sup>[42]</sup>ESPLC next contends the Project is inconsistent with several policies in the general plan designed to promote the health and well-being of the community by protecting the public from the adverse effects of air pollution, noise, and other health hazards. ESPLC cites to three policies and one goal, but fails to mention—or dispute—the portions of the EIR that found the Project was consistent with these policies and goal. Further, these policies \*307 and goal are vague and subjective. In this situation our deference to the City’s finding of consistency is the greatest because the City “in its legislative capacity has unique competence to interpret those policies when applying them in its adjudicatory capacity. [Citation.] Because policies in a general plan reflect a range of \*\*796 competing interests, the governmental agency must be allowed to weigh and balance the plan’s policies when applying them, and it has broad discretion to construe its policies in light of the plan’s purposes.” (*Save our Peninsula*, *supra*, 87 Cal.App.4th at p. 142, 104 Cal.Rptr.2d 326.) ESPLC has not shown that “ ‘a reasonable person could not have reached the same conclusion’ ” as to the Project’s consistency with these policies and goal. (*Clover Valley*, *supra*, 197 Cal.App.4th at p. 238, 128 Cal.Rptr.3d 733.)

#### D. Noise Policies

<sup>[43]</sup>ESPLC raises three points concerning noise under a single heading challenging the noise impacts as inconsistent with the general plan. It contends first that the exterior noise level at residences near the freeway exceed the 60 dB limit under the general plan; second that the mitigation measures to reduce noise near the railroad tracks are not effective and there is no assurance they will be implemented; and third that the noise analysis fails to properly take into account a future rail line. The second and third points do not challenge the Project’s consistency with the general plan; instead, they relate to the adequacy of the EIR and require a separate heading or subheading. (Cal. Rules of Court, rule 8.204(a)(1)(B).) Failure to follow this rule forfeits the argument. (*San Joaquin River Exchange Contractors Water Authority v. State Water Resources Control Bd.* (2010) 183 Cal.App.4th 1110, 1135, 108 Cal.Rptr.3d 290.)

The environmental noise assessment prepared for the Project studied traffic noise levels at private yards of residences near the freeway. It concluded that after construction of a sound wall atop a four-foot earthen berm, the typical maximum noise levels in the backyard areas

would be 60 dB. That is the highest level of “normally acceptable” noise exposure for single family and duplex residences under the general plan.

ESPLC contends the noise level in some outdoor areas is actually higher. In discussing interior noise and the mitigation required, the draft EIR states the exterior noise at building façades for residences near the freeway are 65–68 dB and less than 70 dB for houses in the second tier. The difference in the noise readings, apparently, is that the noise assessment study measured noise only at the “private yards,” are generally shielded by residences from noise, and there may be higher noise levels in the trash and recycling areas behind the houses that are not designed as “outdoor activity areas.” ESPLC disputes that these areas behind the houses will be used solely for trash and the like and not for outdoor activity.

**\*308** Assuming that the City noise levels apply to *all* outdoor areas, and that the noise readings conducted for purposes of mitigation of interior noise levels are accurate, we still cannot find an inconsistency with the general plan sufficient to set aside approval of the Project on this ground.

[44] [45] Environmental Constraint Policy 3.1.1 states: “The City shall require noise mitigation for all development where the projected exterior noise levels exceed those shown in Table EC 1, to the extent feasible.” Because compliance is tied to feasibility, the policy is not mandatory, so an inconsistency does not require setting aside the approval. (See *Endangered Habitats*, *supra*, 131 Cal.App.4th at p. 783, 32 Cal.Rptr.3d 177.) Here, the

Project had noise mitigation. Whether further mitigation was “feasible,” such that the policy was violated, was a decision within the discretion of City. The City’s decision to find the noise consistent with the general plan meets the reasonable person standard. **\*\*797** (*Clover Valley*, *supra*, 197 Cal.App.4th at p. 238, 128 Cal.Rptr.3d 733.)

## DISPOSITION

The judgment is reversed and the matter is remanded to the trial court with directions to enter a new judgment, consistent with section 21168.9 and this opinion, granting ESPLC’s petition for a writ of mandate. The parties shall bear their own costs on appeal. (See Cal. Rules of Court, rule 8.278(a).)

We concur:

Raye, P.J.

Butz, J.

## All Citations

5 Cal.App.5th 281, 209 Cal.Rptr.3d 774, 16 Cal. Daily Op. Serv. 11,866, 2016 Daily Journal D.A.R. 11,152

## Footnotes

- 1 Further undesignated statutory references are to the Public Resources Code.
- 2 The regulations implementing CEQA are codified at California Code of Regulations, title 14, section 15000 et seq. and are called the State CEQA Guidelines (14 Cal Code Regs., tit. 14, § 15001). These regulations are hereinafter referred to as CEQA Guidelines.
- 3 Because we review the City’s decision, not the trial court’s, we reject the argument of the City and Encore that ESPLC forfeited its claims by failing to address the trial court’s decision and explain how the trial court erred.
- 4 In the trial court, ESPLC also contended the EIR failed to analyze noise at the Project. ESPLC now reframes the argument relating to noise as a failure to comply with the general plan, see Part II D, *post*.
- 5 New residents in the Project will be given written notice of the former landfill and monthly gas monitoring.
- 6 In Senate Bill No. 743 (2013–2014 Reg. Sess.), the Legislature has recognized the conflict between considering vehicle delay to be an environmental impact and encouraging infill projects to reduce greenhouse gas emissions and traffic-related air pollution. (Stats. 2013, ch. 386, § 5.) New section 21099, subdivision (b)(1) requires the Office of Planning and Research to prepare new guidelines for establishing criteria for determining the significance of transportation impacts of certain infill projects. Once these guidelines are certified, automobile traffic delays, as described solely by LOS or

similar measures, shall not be considered a significant impact on the environment, with some exceptions. (Id. subd. (b)(2).)

- 7 We recognize that the half-street closure at C Street and 28th Street may affect the results of the traffic analysis. That street closure, however, was not analyzed in the EIR.



# The Growing Case for a New Approach to SF's Parking Problem

by *Tuesday, April 26, 2016*

People drive more if more parking is provided.

As intuitive as that may sound, until recently there wasn't definitive research showing the link between available parking and driving. And through most of the 20th Century, the policies that shaped cities like San Francisco relied the assumption that parking must be built to meet an inevitable demand.

Now, a growing body of research shows that it works the other way around: available parking is perhaps the single biggest factor in people's decision to drive. The research shows that just building housing on a transit line doesn't reduce automobile use, but reducing parking does.

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Photo: [Dave Glass/Flickr](#)

This information comes as San Francisco is in the midst of one of its biggest new-housing construction booms in history, projected to add 100,000 households and more than 190,000 new jobs by 2040. If everyone arrives with a car, that's going to be a recipe for gridlock and economic stagnation. The effects on the environment, quality of life and pedestrian safety will be substantial. The city will grind to a halt.

Fortunately, city officials have been planning for this growth on several fronts, including the Transportation Sustainability Program. This three-part program is designed to invest more in our transportation system, align our environmental rules with policy goals like emissions reductions and smart growth along transit, and shift choices to makes it easier for people to get around by transit, walking, biking, or car-sharing.

The growing research on the link between available parking and people's decision to drive is part of the data the SFMTA, Planning Department, and San Francisco County Transportation Authority are considering as they work on legislation that will help shape future development in the city and provide incentives for people to get around without relying on driving alone in a car.

A study [[PDF](#)] published by the national Transportation Research Board analyzed prior research and original data from nine U.S. cities dating back to 1960. Providing parking "in cities is a likely cause of increased driving among residents and employees in those places," the authors concluded.

Another study [[PDF](#)], published in the journal *Transport Policy* in 2012, reached similar conclusions in analyzing three boroughs in New York City. Researchers found "a clear relationship between guaranteed

Projects

Taxis

Traffic

Walking

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Weigh in on Design Details for a Safer 6th Street at Our Open House

Let Cities Save Lives With Automated Speed Enforcement, Says National Safety Board

parking at home and a greater propensity to use the automobile for trips made to and from work, even when both work and home are well served by transit.”

In San Francisco, the early findings are consistent. A study [PDF] led by the SFMTA and the Planning Department last year found that “residents, workers, and visitors of residences, offices, and retail sites that do not have access to parking drive less than those who do have access to parking.”

Providing free parking isn't actually free. The cost of parking spaces is borne by people who shop at that store – even if they can't afford to own a car – because the cost of parking is baked into the price of shampoo, milk or whatever the store sells. Or providing parking comes at the expense of something else, like using the space and investment needed to provide affordable housing in a city with a housing crunch.

That argument has long been made by Donald Shoup, professor emeritus at the University of California, Los Angeles.

In his 2005 book *The High Cost of Free Parking*, Shoup wrote: “Planners mandate free parking to alleviate congestion, but end up distorting transportation choices, debasing urban design, damaging the economy, and degrading the environment.”

This debate isn't new. But as our already traffic-strained city grows in the 21st century, so does the compelling case for a different approach to parking.

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HeadsUp: [#InnerSunset](#)  
Streetscape work will require shuttles to provide [#NJudah](#) surface svc on multiple wknds...  
<https://t.co/PcWutkTse7> — 32 min 41 sec ago

---

Attn: 1 Muni elevator out of service; Van Ness — 3 hours 8 min ago

---

UPDATE: Delay on Third btwn Kirkwood and La Salle has cleared. Southbound [#TThird](#) has resumed service. — 15 hours 27 min ago

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Reminder: From 7:30p Fri. 9/8 to start of AM svc on 9/11, shuttles to provide [#NJudah](#) svc btwn Dub./Church & LaPlay...  
<https://t.co/OwnU9jDhW8> — 15 hours 32 min ago

---

ATTN: Southbound [#TThird](#) blocked on Third btwn Kirkwood and La Salle by [#SFPD](#) activity. — 15 hours 33 min ago

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Table 13 Proposed Project Delivery/Service Vehicle-Trips and Loading Space Demand			
Land Use	Daily Truck Trip Generation	Peak Hour Loading Spaces	Average Hour Loading Spaces
Residential	13.1	0.76	0.60
Restaurant	14.5	0.84	0.67
<b>Total</b>	<b>27.6</b>	<b>1.69</b>	<b>1.27</b>

Source: SF Guidelines, LCW Consulting.



# SAN FRANCISCO PLANNING DEPARTMENT

## PUBLIC NOTICE

### Availability of Notice of Preparation of Environmental Impact Report and Public Scoping Meeting

**Date:** July 12, 2017  
**Case No.:** 2015-004568ENV  
**Project Title:** 10 South Van Ness Avenue Mixed- Use Project  
**Zoning:** C-3-G (Downtown-General Commercial)  
 Van Ness and Market Downtown Residential Special Use District  
 120-R-2/120/400-R-2 Height and Bulk Districts  
**Block/Lot:** 3506/004 and 003A  
**Project Sponsor:** 10 SVN, LLC  
 c/o Jim Abrams, J. Abrams Law, P.C. – (415) 999-4402  
 jabrams@jabramslaw.com  
**Lead Agency:** San Francisco Planning Department  
**Staff Contact:** Rachel Schuett – (415) 575-9030  
 rachel.schuett@sfgov.org

1650 Mission St.  
 Suite 400  
 San Francisco,  
 CA 94103-2479

Reception:  
**415.558.6378**

Fax:  
**415.558.6409**

Planning  
 Information:  
**415.558.6377**

A notice of preparation (NOP) of an environmental impact report (EIR) has been prepared by the San Francisco Planning Department in connection with this project. The report is available for public review and comment on the Planning Department's Negative Declarations and EIRs web page (<http://www.sfplanning.org/sfceqadocs>). CDs and paper copies are also available at the Planning Information Center counter on the first floor at 1660 Mission Street, San Francisco. Referenced materials are available for review by appointment at the Planning Department's office on the fourth floor at 1650 Mission Street. (Call (415) 575-9030)

**Project Description:** The 10 South Van Ness Avenue project site is located at the southwest corner of South Van Ness Avenue and Market Street, in the South of Market neighborhood of San Francisco. The project block is bounded by Market Street to the north, South Van Ness Avenue to the east, and 12th Street to the southwest. The project site has frontages on Market and 12th streets and South Van Ness Avenue. The project site is occupied by a 91,088 gross square foot (gsf), two-story, 30- to 45-foot-tall building, and a small vacant lot. The original building (the northern portion of the existing building) was constructed in 1927, and is considered an individual historical resource because it once housed the internationally-celebrated and iconic music venue, Fillmore West, and because of its association with music promoter, and Fillmore West founder, Bill Graham. The original building and its southern addition are currently occupied by the San Francisco Honda Dealership and Service Center.

The project sponsor, 10 SVN, LLC, proposes to demolish the existing building and construct a mixed-use residential building, with up to 984 residential units, retail space on the ground floor, and two below-grade levels for parking and loading activities accessed from a single curb cut and driveway on 12th Street. Up to 518 vehicle parking spaces and seven freight loading spaces would be provided. In addition 336 class I and 61 class II bicycle parking spaces would be provided.

Exhibit 12 10 South Van Ness, Availability of Notice of Preparation of EIR & Public Scoping Meeting, 7/12/17

Two project design options are being considered: a two-tower design (the “proposed project”) with two separate 41-story, 400-foot-tall towers (420 feet at the top of the elevator penthouses) on top of podiums; and the “single tower project variant” with a single 55-story, 590-foot-tall tower (610 feet at the top of the elevator penthouses) on top of a podium. The proposed project would be approximately 1,071,100 gsf, with approximately 43,150 square feet (sf) of usable open space which would include a 2,975-sf mid-block alley that would provide a pedestrian connection between South Van Ness Avenue and 12th Street. The single tower project variant would be approximately 1,073,000 gsf, with approximately 47,210 sf of open space which would include a mid-block pedestrian alley that would provide a pedestrian connection between Market and 12th streets. A streetscape variant (the “straight-shot streetscape variant”) is also being considered. The straight-shot streetscape variant would extend the eastern sidewalk and pedestrian promenade on 12th Street to 40 feet in width along the project site’s frontage. Both the proposed project’s streetscape design and the straight-shot streetscape variant would comply with the Better Streets Plan and the Better Market Street project. The straight-shot streetscape variant could be developed in conjunction with either the proposed project or the single tower project variant. Additional details regarding the project description are available in the NOP.

The Planning Department has determined that an initial study and EIR must be prepared for the proposed project and variants prior to any final decision regarding whether to approve the project. The purpose of the initial study and EIR is to provide information about potential significant physical environmental effects of the proposed project, and variants, to identify possible ways to minimize the significant effects, and to describe and analyze possible alternatives to the proposed project. Preparation of an NOP, initial study, or EIR does not indicate a decision by the City to approve or to disapprove the project. However, prior to making any such decision, the decision makers must review and consider the information contained in the EIR.

The Planning Department will hold a **PUBLIC SCOPING MEETING** on **August 2, 2017** at 6 p.m. at 10 South Van Ness Avenue, in the Second Floor Atrium. The purpose of this meeting is to receive oral comments to assist the Planning Department in reviewing the scope and content of the environmental impact analysis and information to be contained in the EIR for the project. To request a language interpreter or to accommodate persons with disabilities at this meeting, please contact the staff contact listed above at least 72 hours in advance of this meeting. Written comments will also be accepted until 5 p.m. on **August 11, 2017**. Written comments should be sent to Rachel A. Schuett, San Francisco Planning Department, 1650 Mission Street, Suite 400, San Francisco, CA 94103.

If you work for an agency that is a Responsible or a Trustee Agency, we need to know the views of your agency as to the scope and content of the environmental information that is relevant to your agency’s statutory responsibilities in connection with the proposed project. Your agency may need to use the EIR when considering a permit or other approval for this project. We will also need the name of the contact person for your agency. If you have questions concerning environmental review of the proposed project, please contact Rachel Schuett at **(415) 575-9030**.

Members of the public are not required to provide personal identifying information when they communicate with the Commission or the Department. All written or oral communications, including submitted personal contact information, may be made available to the public for inspection and copying upon request and may appear on the Department’s website or in other public documents.

August 25, 2017

VIA EMAIL AND HAND DELIVERY

Board President London Breed and Members of  
the Board of Supervisors c/o Clerk of the Board of  
Supervisors  
#1 Dr. Carlton B. Goodlett Place  
City Hall, Room #244  
San Francisco, CA 94102-4689

Re: Board of Supervisors September 5, 2017 Meeting Agenda Item: Appeal of California  
Environmental Quality Act (CEQA) Certification of Final Environmental Impact Report  
– One Oak Street

Dear President Breed and Members of the Board:

This firm represents One Oak Owner, LLC (“Project Sponsor”), the Project Sponsor of the One Oak Street Project (the “Project”). On June 15, 2017, the San Francisco Planning Commission certified the Final Environmental Impact Report (“FEIR” or “EIR”) for the Project. Jason Henderson (“Appellant”) filed an appeal of the Certification on July 17, 2017. The FEIR is adequate, sufficient and complete and the Appellant’s objections are entirely without merit. We respectfully request that this Board affirm the certification of the FEIR and reject this appeal.

Ironically, the Project’s EIR demonstrates that this in-fill project in a transit-rich location has only one significant unavoidable impact: a cumulative construction-related traffic impact that will occur during the construction phase of the Project. (Impact C-TR-7). In fact, the Project exemplifies sustainable urbanism by replacing a surface parking lot and low-rise office with high-rise, high-density housing immediately adjacent to a major transit, pedestrian and bicycling hub.

This letter addresses the primary objections raised by Appellant in his July 17 appeal letter. The Project is in the Market/Octavia Plan Area, which was the subject of a thorough EIR analyzing the Plan and the anticipated development under that Plan. Although the Project was among the anticipated projects analyzed in the earlier Plan EIR and is consistent with the Plan, the City nonetheless prepared an EIR for the Project.

Notwithstanding the thoroughness of the City’s analysis, the appeal attacks the Project’s EIR by taking issue primarily with the City’s wind and transportation methodologies. These are not

Board President London Breed and  
Members of the Board of Supervisors  
August 25, 2017  
Page 2

unique to the analysis before this Board in this EIR; rather, they are employed by the City in all its environmental review documents. Further, the City's wind and transportation methodologies were adopted after thorough consideration and analysis of data and scientific studies and are supported by substantial evidence. Appellant's complaints are just that, mere complaints, unsupported by data and evidence. As a consequence, this Board should reject this appeal.

In addition, your September 5 agenda includes two additional Project-related items: a General Plan Amendment and Zoning Map Amendment ordinance implementing a height swap of two 668 square foot portions of the Project site. In response to comments made at the Board's Land Use and Transportation Committee hearing on those items, the Project Sponsor re-examined the design approved by the Planning Commission and concluded that a small modification to the design would eliminate the need for the height swap (and the attendant General Plan and Zoning Map Amendments). The Planning Department reviewed the revision to the design and confirmed that it does not represent a substantial change to the plans approved by the Planning Commission. We understand that the Planning Department will address this in greater detail in its written submittal to this Board. The Project Sponsor has withdrawn its applications for the General Plan Amendment and Zoning Map Amendment because they are no longer necessary. However, these items are on your agenda because they have been heard at the Land Use and Transportation Committee. Consequently, the Project Sponsor respectfully requests that this Board disapprove of these items on your agenda because these actions are now moot.

**1. Appellant's Objections to the EIR's Transportation Analysis are Without Merit.**

*a. Claims Regarding VMT Methodology*

The Appellant claims that the City's VMT and traffic impact methodology (used City-wide as well as in this EIR) is flawed, alleging that the City misapplied the MTC's regional scale threshold of significance to assess VMT impact. The Appellant's objection to the recently adopted city-wide VMT methodology is without merit and unsupported by data and evidence.

As thoroughly explained in the EIR and in RTC Response TR-2, in compliance with California Senate Bill 743, the San Francisco Planning Commission replaced automobile delay (vehicular level of service or LOS) with VMT criteria on March 3, 2016, pursuant to Resolution 19579. Addressing the City's approach to its VMT analysis, the RTC at Page 4.16-4.17 explains:

The Department's approach to VMT analysis under CEQA is based on a screening analysis which compares development-estimated VMT to the regional average, as

Board President London Breed and  
Members of the Board of Supervisors  
August 25, 2017  
Page 3

recommended by OPR in a technical advisory that accompanied its January 2016 draft CEQA guidelines implementing Senate Bill 743. As recommended by OPR, the Planning Department uses maps illustrating areas that exhibit low levels of existing and future VMT to screen out developments that may not require a detailed VMT analysis. The Planning Department relies on the San Francisco Chained Activity Model Process (SF-CHAMP) model runs prepared by the San Francisco County Transportation Authority to estimate VMT within different geographic locations (i.e., Traffic Analysis Zones, or TAZs) throughout San Francisco.

The RTC goes on to further explain that the significance criteria used to assess VMT impacts, a 15 percent threshold below regional VMT thresholds, is “consistent with CEQA Section 21099 and the thresholds of significance for other land uses recommended in the Office of Planning and Research’s proposed transportation impact guidelines” [RTC at Page 4.17].

The Appellant further claims that the Project is in a “part of San Francisco where the tolerance for more VMT is zero.” Taken literally, it seems Appellant is asserting that projects must restrict project occupants and visitors from ever using a vehicle to travel to and/or from the Project site. Such a demand, on its face, is neither reasonable nor feasible. The RTC at Page 4.17 addressed this very point, stating: “the threshold is set at a level that acknowledges that a development site cannot feasibly result in zero VMT without substantial changes in variables that are largely outside the control of a developer (e.g., large-scale transportation infrastructure changes, social and economic movements, etc.)” Furthermore, Appellant supports his assertion that the VMT threshold for the Project should be zero by stating that that automobile capacity near the Project site is already constrained. However, in making this argument, Appellant is essentially arguing for an automobile capacity metric (e.g., vehicular level of service), which, as evidenced by Planning Commission Resolution 19579 adopting the VMT threshold of significance, encourages harmful sprawl development and as such is not an effective criterion in assessing a project’s transportation impacts on the environment.

Accordingly, the Appellant’s disagreement with the City’s VMT methodology is unsupported by countervailing evidence and is without merit. Further, the lead agency has discretion in determining the appropriate threshold of significance used to evaluate the severity of a particular impact and does not violate CEQA when it chooses to apply a significance threshold that is founded on substantial evidence, as stated in the CEQA Guidelines and supported in the holdings of multiple Courts of Appeal decisions. (See CEQA Guidelines, Section 15064 subd.(b); *Lotus v. Dept. of Transportation* (2014) 223 Cal. App. 4th 645, 655 n.7 [“The standard of significance applicable in any instance is a matter of discretion exercised by the public agency depending on

Board President London Breed and  
Members of the Board of Supervisors  
August 25, 2017  
Page 4

the nature of the area affected.”]; *Mission Bay Alliance v. Office of Community Investment and Infrastructure* (2016) 6 Cal.App.5th 160, 192 [“The lead agency has substantial discretion in determining the appropriate threshold of significance to evaluate the severity of a particular impact.”]).

Where an agency’s significance thresholds are challenged by a project opponent, the standard of review for a court reviewing the selected threshold is “substantial evidence”, meaning the court must give deference to the lead agency’s decision to select particular significance thresholds, including the threshold for VMT impacts. (See *Mission Bay Alliance v. Office of Community Investment and Infrastructure* (2016) 6 Cal.App.5th 160, 206 [“CEQA grants agencies discretion to develop their own thresholds of significance and an agency’s choice of a significance threshold will be upheld if founded on substantial evidence.”]).

The FEIR’s use of VMT as a significance threshold is founded on substantial evidence, as clearly and thoroughly established in the record. Appellant’s broadside attack on the City’s adopted VMT methodology is without merit and should be rejected by this Board.

*b. Claims regarding TNCs and Transportation Analysis*

Appellant claims that the EIR’s transportation analysis is inadequate because it does not reflect Transportation Network Company (TNC) demands. However, as discussed below, the relationship between TNCs and transportation impacts is currently speculative because there is insufficient data at this point in time on the influence of TNC operations on overall travel demand and conditions in San Francisco, including the loading demand or VMT impacts of the project.

The Planning Department, in a Memorandum dated February 23, 2017, set out the current state of the City’s inquiry into the potential influence TNCs may have on transportation impacts. In that memorandum, which is attached to this Response as Exhibit A, the Planning Department stated that due to a lack of data, it is “currently difficult, if not impossible, to document how transportation network company operations quantitatively influence overall travel conditions in San Francisco and elsewhere.” The RTC in Response TR-2 at Page 4.18-4.19 reflects this conclusion, and includes details from the memorandum regarding the relationship between TNCs and transportation impacts:

To date, there is limited information as to how the introduction/adoption of transportation network companies affects travel behavior (e.g., whether people using these services are making trips they would not otherwise make, or

Board President London Breed and  
Members of the Board of Supervisors  
August 25, 2017  
Page 5

substituting a transportation network company ride for a trip they would make by another mode). The Census Bureau and other government sources do not currently include transportation network company vehicles as a separate travel mode category when conducting survey/data collection (e.g., American Community Survey, Decennial Census, etc.). Thus, little can be determined from these standard transportation industry travel behavior data sources. Further, the transportation network companies are private businesses and generally choose not to disclose specifics regarding the number of vehicles/drivers in their service fleet, miles driven with or without passengers, passengers transported, etc. Thus, based on the information currently available it is currently difficult, if not impossible, to document how transportation network company operations quantitatively influence overall travel conditions in San Francisco or elsewhere. Thus, for the above reasons, the effects of for-hire vehicles as it relates to transportation network companies on VMT is not currently estimated in CEQA, except to the extent those trips are captured in taxi vehicle trip estimates for a development.

The CEQA Guidelines require that the conclusions and findings of the lead agency be supported by substantial evidence. [CEQA Guidelines Section 15091(b)]. CEQA Guidelines Section 15384 goes on to provide that “[a]rgument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence.” Although the San Francisco County Transportation Authority (SFCTA) recently issued a report on TNC use in June of 2017 entitled “TNCs Today”, the report contains limited information gathered from a limited time period during the holiday season (mid-November to mid-December 2016 excluding dates around the Thanksgiving holiday). The report itself explains that further analysis, data collection and study is required to understand the potential relationships of TNCs to other issues such as public transit operations and ridership and congestion. Thus, as of the date of this appeal, except to the extent captured in taxi vehicle trips as analyzed in the EIR, there otherwise is inadequate data on TNCs to include in this response or in the EIR. As stated above, the CEQA Guidelines prohibit a lead agency from using speculation to substantiate its findings or conclusions. As no substantial evidence on the issue currently exists, in accordance with CEQA’s mandate to avoid engaging in speculation or using speculation to substantiate its conclusions, the City’s approach to the issue is correct. Accordingly, this claim should be rejected by this Board.

Board President London Breed and  
Members of the Board of Supervisors  
August 25, 2017  
Page 6

**2. Appellant’s Objections to the EIR’s Alternatives Analysis Are Without Merit.**

The Project’s affordable housing contributions make possible a 100% below market rate (BMR) housing project, including approximately 16 BMR units of transitional aged youth (“TAY”) housing, within a 1/3 mile of the Project (the “Octavia BMR Project”). The location of the Octavia BMR Project in such close proximity to the Project site was made possible because the Project Sponsor relinquished its property rights to acquire two Octavia Boulevard Parcels (R and S) included as part of the Octavia BMR Project. Further changes to the Octavia BMR Project proposed by the Project Sponsor, including the use of the density bonus program, may result in up to 102 BMR units, as well as an approximately 4,800-sf on-site childcare facility. If adopted by MOHCD, this proposal would represent an approximately 33% affordable housing contribution by the Project.

Notwithstanding the close proximity of the Octavia BMR Project to the Project site, Appellant claims that the EIR should have included an analysis of an alternative with onsite inclusionary housing, in addition to the alternatives analyzed in the EIR. It is well-established law that CEQA does not mandate the analysis of a limitless number of alternatives nor does it require the analysis of any conceivable permutation that a project opponent can imagine. Rather, Section 15126.6(a) of the CEQA Guidelines requires only that an EIR consider a reasonable range of alternatives that will foster informed decision-making and limits the range of alternatives according to the “rule of reason” requiring the EIR to set forth only those alternatives necessary to permit a reasoned choice. Further, the alternatives should be limited to those that would avoid or substantially lessen any of the significant effects of the project. Of those alternatives, the EIR need only examine in detail those that the lead agency determines could obtain most of the basic objectives of the project.

As discussed in the EIR and the Response to Comments (“RTC”), the number and range of alternatives analyzed in the EIR is sufficient and complies with the CEQA Guidelines.

The EIR did not consider an alternative including on-site inclusionary housing because it would fail to lessen or avoid the Project’s one identified significant cumulative construction-related traffic impact, as required in the CEQA Guidelines. Further, to the extent Appellant is advancing the on-site affordable housing alternative as a surrogate for a claim that the Project has a social or economic impact because the affordable housing is not located on-site, the EIR thoroughly analyzed this issue (see RTC Chapter 4E) and correctly concluded that the proposed Project will not result in any social or economic impacts that that would indirectly result in significant effects to the physical environment.

Board President London Breed and  
Members of the Board of Supervisors  
August 25, 2017  
Page 7

Specifically, RTC at Page 4.78 states:

The CEQA Guidelines clarify that social or economic impacts alone shall not be treated as significant effects on the environment. Evidence of social or economic impacts (e.g., rising property values, increasing rents, changing neighborhood demographics, etc.) that do not contribute to, or are not caused by, physical impacts on the environment are not substantial evidence of a significant effect on the environment. In short, social and economic effects are only relevant under CEQA if they would result in or are caused by an adverse physical impact on the environment.

We would respectfully note that the fact that CEQA does not address such social or economic impacts does not preclude public discourse on such matters in forums intended for public policy deliberations; they are simply not the subject of analysis under CEQA. (See, for example, *Preserve Poway v. City of Poway*, 199 Cal. Rptr. 3d 600 (Cal. Ct. App. 4th Dist. Mar. 9, 2016) [“heated public debate about community character” does not alone create an issue requiring analysis under CEQA.]).

As discussed in RTC at Page 4.77-78, the proposed Project will not physically displace any existing residents or residential uses or create any blight or urban decay. Additionally, the EIR analyzes the impact of the proposed Project on the existing character of the built environment and on the land use character of the neighborhood in Section 4.B, Land Use and Land Use Planning on EIR pp. 4.B.1-4.B.9. The EIR concludes that the proposed Project would not divide an established community. It further concluded that the proposed Project was not inconsistent with the varied mix of land uses in the area and was consistent with the City’s vision for future building heights in the area. As such, the EIR correctly concludes that the proposed Project would not have a significant impact related to land use.

With regard to the Project’s affordable housing contribution, the RTC at Page 4.80 clearly describes:

[T]he proposed project is subject to the City’s Inclusionary Affordable Housing Program (Planning Code Section 415), the Market-Octavia Affordable Housing Fee (Planning Code Section 416) and the Van Ness & Market Special Use District Affordable Housing Fee (Planning Code Section 249.33). Working together with the Mayor’s Office of Housing and Community Development (MOHCD), the Project Sponsor voluntarily relinquished valuable development rights at Parcels R and S on Octavia Boulevard and assigned them, along with preliminary designs

Board President London Breed and  
Members of the Board of Supervisors  
August 25, 2017  
Page 8

and entitlement applications, to MOHCD to allow the future production of 100% below market rate (BMR) housing, including approximately 16 BMR units of transitional aged youth (“TAY”) housing, within a 1/3 mile of the Project. In exchange, MOHCD agreed to “direct” the Project’s Section 415 in-lieu fee toward the production of housing on three Octavia Boulevard Parcels (R, S & U) (collectively, “the Octavia BMR Project”), subject to the satisfaction of certain conditions, including compliance with CEQA and certain future discretionary approvals for both the One Oak Project and the Octavia BMR Project. Accordingly, although the Octavia BMR project is a separate project requiring further approvals, its proximity to the project site and the conveyance of the development rights to MOHCD for use as affordable housing sites supports the conclusion that the proposed project will not result in blight or urban decay or the loss of affordable housing because, on the contrary, it would provide both new market rate and permanent BMR housing where none exists today.

At the time of publication of the FEIR, the Project Sponsor’s directed in lieu contribution to the Octavia BMR Project was anticipated to fund the creation of 72 BMR units at that site, including approximately 16 BMR units of TAY housing. However, in response to comments from the community and to maximize the Project’s benefits to the neighborhood, the Project Sponsor has since worked with MOHCD to utilize the newly adopted affordable housing density bonus program (codified in Planning Code Section 206) to increase this number to up to 102 BMR units, with an approximately 4,800-sf on-site childcare facility. If adopted by MOHCD, this proposal would represent an approximately 33% affordable housing contribution by the Project.

In light of CEQA’s mandate to examine alternatives that lessen or avoid identified significant impacts, an on-site affordable housing alternative was not necessary and was not required to inform the decision-makers or to permit a reasoned choice. This conclusion is further supported by the close physical proximity of the proposed Octavia BMR Project to the One Oak Project.

### **3. Appellant’s Objections to the EIR’s Wind Impacts Analysis Are Without Merit.**

Appellant claims that the EIR fails as an informational document because the City’s long-standing wind methodology (used in the One Oak EIR as in all other City environmental analyses) does not expressly include an analysis of wind impacts on bicyclists. As discussed below, the City’s approach is well-supported by the evidence and in fact is more protective of the public than alternative approaches used in other municipalities in the world (such as London). Thus, this claim should be rejected by this Board.

Board President London Breed and  
Members of the Board of Supervisors  
August 25, 2017  
Page 9

Although CEQA does not mandate the study of wind impacts, the City nonetheless has elected to study potential wind impacts, using a long-standing methodology and threshold of significance it developed based on thorough scientific data and studies. As set forth in great detail in the EIR, the City's adopted approach incorporates the wind criteria set forth in Section 148 of the Planning Code. Put simply, Section 148 states that equivalent wind speeds (defined as an hourly mean wind speed adjusted to incorporate the effects of gustiness or turbulence on pedestrians) of 26 miles per hour (mph) for one hour a year are a hazard. Section 148 also expressly looks at the effect of wind on pedestrians. The RTC explains this fully in Chapter 4 at Page 4.64-65:

The City has established a comfort and hazard criteria for use in evaluating the wind effects of proposed buildings. The wind hazard criterion that is defined in Planning Code Section 148 is used by the Planning Department as a significance threshold in the CEQA environmental review process to assess the environmental impact of projects throughout San Francisco and is therefore the basis of the analysis in the EIR. Planning Code Section 148 criteria are based on pedestrian-level wind speeds. As such, the City's established methodology is based on a proposed project's effect on pedestrian safety and comfort and does not explicitly include any criteria specifically applicable to cyclists.

While there are no specific widely accepted industry standard criteria applicable to the assessment of wind effects on bicyclists, the RTC at Page 4.65 did identify international criteria, known as the Lawson Criteria, which is used by governmental agencies in other parts of the world to establish threshold wind speed at which cyclists would become destabilized. As noted on RTC at Page 4.65, the selection of test points for Lawson Criteria wind studies is "very similar to the selection of the test points analyzed in the One Oak Street study, except that the One Oak Street wind study also included test points in the crosswalks of the street." Thus, the test points in the EIR's analysis are like those under a hypothetical analysis under the Lawson Criteria. However, the Lawson Criteria is much less stringent than the City's Section 148 criteria. While the City finds a significant impact at 26 mph, the Lawson Criteria does not find a significant impact until the wind speeds are 33.5 mph, a full 7.5 mph faster. Consequently, the City's wind standard is far more protective of the public (including bicyclists) than the wind criterion employed elsewhere internationally.

As the EIR concludes on Page 4.66:

In absence of standalone criteria for wind hazards specific to bicyclists, the Lawson Criteria could serve as a useful reference point of comparison for

Board President London Breed and  
Members of the Board of Supervisors  
August 25, 2017  
Page 10

considering the impact of wind on bicyclists. By comparison, San Francisco's Section 148 hazard criterion for impacts on the general population (26 miles per hour averaged over one hour) is lower, and therefore more protective, than the Lawson threshold applicable to bicyclists.

Accordingly, the Appellants disagreement over the methodology used in the EIR to assess wind impacts is without merit. As discussed above, CEQA provides agencies discretion to determine the appropriate threshold of significance used to evaluate the severity of a particular impact, including wind impacts. This is clarified in RTC at Page 4.66:

As discussed in Response WI-I, RTC p. 4.57, a lead agency has discretion in determining the appropriate threshold of significance used to evaluate the severity of a particular impact and does not violate CEQA when it chooses to apply a significance threshold that is founded on substantial evidence. This EIR's use of a significance threshold consistent with established City standards is founded on substantial evidence. Accordingly, no further study is required.

Furthermore, we note that the wind thresholds of significance utilized by the City are not included in Appendix G of the CEQA Guidelines. The City adopted these thresholds in addition to the suggested thresholds of significance included in Appendix G of the CEQA Guidelines, pursuant to the City's adopted Initial Study Checklist (Appendix B). The FEIR's use of a significance threshold consistent with established City standards is founded on substantial evidence, as discussed in RTC Response WI-2, and the Appellant has not presented substantial evidence to the contrary. Accordingly, further study of the wind impacts on cyclists is not required under CEQA.

#### **4. Appellant's Objections to the Cumulative Impacts Analysis Are Without Merit.**

The Appellant contends that the FEIR's cumulative impact analysis was flawed because it did not include the cumulative impacts of the proposed 10 South Van Ness Project. This contention is incorrect.

As discussed in both the Draft EIR and the RTC, the 10 South Van Ness Project was included in the cumulative list of projects analyzed in the FEIR. As noted by the Appellant in his letter of appeal, the Notice of Preparation ("NOP") for the 10 South Van Ness Project issued on July 12, 2017 updated the project description that was included in the project's Environmental Evaluation Application. These updates included an increase in residential units. Because the NOP was issued

Board President London Breed and  
Members of the Board of Supervisors  
August 25, 2017  
Page 11

after the certification of the FEIR for the One Oak Street Project, these project updates were not reflected for the purposes of the One Oak Street Project cumulative analysis. However, even with the potential project refinements reflected in the latest NOP for the 10 South Van Ness Project, the project remains substantially similar to the one modeled and studied in the cumulative analysis included in the FEIR. Accordingly, in accordance with CEQA Guideline Section 15162, the project refinements reflected in the 10 South Van Ness NOP do not give rise to any new impacts or result in a substantial increase in the severity of previously identified significant effects that would require further study.

In addition, regarding cumulative wind impacts, the design of the 10 South Van Ness Project will likely continue to be refined and be required to comply with the City's Section 148 wind standards, which prohibits a project from creating a net new number of locations with wind speeds that exceed its hazard criterion. This point is reflected in the RTC at Page 4.60, which correctly concludes that:

At the time that each future project is seeking approval, a model of its then-current design would be submitted for wind analysis and it would be modeled in the context of the then-existing baseline setting of buildings, including newer buildings that have already complied with Section 148. By contrast, the City's cumulative wind methodology does not model reasonably foreseeable buildings that each meet the Section 148 performance standard. As such, this cumulative impact analysis represents a conservative disclosure of cumulative impacts (i.e., one that may overstate, rather than understate, the magnitude of cumulative wind impacts) as it is presumed that all future buildings in the C-3 District, the specific designs for which are unknowable at this time, would each have to comply with Section 148.

### **The Project Sponsor Has Withdrawn its General Plan and Legislative Amendments**

As discussed above and as set forth in the EIR, the Project applied for a General Plan and Zoning Map amendment to shift the existing Height and Bulk District 120/400-R-2 designation at the eastern end of the Project site (a portion of Assessor Block 0836/001) to the western portion of the project site (a portion of Assessor Block 0836/005). The proposed modest height swap of the two 668 square foot areas did not result in any increased development potential. The Planning Commission recommended the Project's General Plan and Zoning Map Amendments for approval, and the Amendments were heard at the July 24, 2017 Land Use and Transportation Committee hearing. At the Land Use and Transportation Committee hearing, certain members

Board President London Breed and  
Members of the Board of Supervisors  
August 25, 2017  
Page 12

of the public raised objections regarding these amendments. In response, the Project Sponsor revisited the Project's design and concluded that a minor modification of the location of the proposed tower could fit the tower within the boundaries of the existing height and bulk districts. The Planning Department reviewed the design modification and confirmed that it does not represent a substantial change to plans approved by the Planning Commission. We understand that the Planning Department will address this in greater detail in its written submittal to this Board.

However, because the General Plan Amendment and Zoning Map Amendment are no longer necessary, the Project Sponsor withdrew the Project's General Plan and Zoning Map Amendment applications via an email to the Planning Department dated August 24, 2017. The withdrawal of the applications renders the items on your calendar moot. However, we understand that because the Land Use and Transportation Committee forwarded the General Plan and Zoning Map Amendments to the full Board that the appropriate course of action to reflect the mootness would be for this Board to disapprove the General Plan and Zoning Map Amendments. We therefore respectfully request that the Board disapprove of these items as they are moot.

### Conclusion

In summary, the record demonstrates that the EIR is a very thorough and complete analysis of the One Oak Street Project and clearly fulfills CEQA's goal of providing decision makers information enabling them to make a decision that intelligently takes account of environmental consequences (CEQA Guidelines Section 15151). We therefore respectfully request that this Board affirm the certification of the EIR by the Planning Commission and deny this appeal.

Very truly yours,



Mary G. Murphy

Exhibit A

February 23, 2017 Planning Department Memorandum

[See attached.]



# SAN FRANCISCO PLANNING DEPARTMENT

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## Memorandum

*Date:* February 23, 2017  
*To:* Planning Commission  
*From:* Wade Wietgreffe, Senior Planner, (415) 575-9050  
*RE:* **California Environmental Quality Act: Vehicle Miles Traveled, Parking, For-Hire Vehicles, and Alternatives**

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### INTRODUCTION

During recent Planning Commission hearings, members of the public have sought clarification regarding the Planning Department's (Department) transportation impact analysis in California Environmental Quality Act (CEQA) documents as it relates to parking,<sup>1</sup> for-hire vehicles,<sup>2</sup> and vehicle miles traveled (VMT). This memorandum responds to those inquiries by providing an overview of a) parking and CEQA; b) VMT and CEQA; c) CEQA alternatives; d) planning policies and policy decisions regarding parking, including the Planning Commission's role in approving the amount of parking for development; and e) potential future approaches to transportation impact analysis. An expanded discussion of the history of, methodology, and data available for parking and VMT analysis is provided in Attachment A.

### BACKGROUND

The Department's transportation impact analysis in CEQA documents has progressed over the last 15 years. The Department is at the forefront of an ever-evolving field of transportation by comprehensively working to address such impacts from new development, as demonstrated by the recent legislative success of all three components of the Transportation Sustainability Program.<sup>3</sup> One component of the Transportation Sustainability Program is Align. This component became effective in March 2016, when the Planning Commission unanimously adopted a resolution that directed the Department to remove automobile delay as a factor in determining significant impacts pursuant to CEQA and replace it with VMT criteria. In doing so, San Francisco became the first county in California to adopt such criteria and, for the first time, it aligned the Department's transportation analysis in CEQA documents with adopted plans, policies, and ordinances related to transportation.

The Department's methodology in assessing VMT impacts in CEQA documents uses a state-of-art, activity-based model that estimates current and predicts future travel patterns for the City. As noted though, the transportation field is not static and the Department's analysis will continue to evolve. Therefore, the Department is involved in several efforts with partner agencies that may update the approach for analyzing transportation impacts over time, including the effects of parking supply and for-hire vehicles on VMT.

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<sup>1</sup> "Parking" can mean a variety of things: on-street, off-street, public, private, bicycle, car-share, vehicle, etc. For the purposes of this memo, "parking" refers to private, off-street vehicular parking.

<sup>2</sup> For the purposes of this memo, "for-hire vehicles" refers to taxis and transportation network companies.

<sup>3</sup> Refer to <http://sf-planning.org/transportation-sustainability-program> for more details.

Through the Department's inclusion of a robust transportation impact analysis within CEQA documents, the Planning Commission has wide latitude for decisions related to transportation components within a development, including the amount of parking that should be approved. Therefore, in most circumstances, the Planning Commission would be able to adopt a development that includes reduced or no parking, even if the CEQA document analysis did not describe a variant to the project with no parking or include a labeled "no parking" alternative.

## PARKING AND CEQA

This section briefly summarizes the Department's current approach to parking analysis.

### Approach to Parking Analysis

The Department's Transportation Impact Analysis Guidelines for Environmental Review (Transportation Impact Analysis Guidelines), October 2002, identify the general conditions for when a transportation study is required for projects subject to CEQA and the methodology for the transportation analysis. The Department has updated the general conditions for when a transportation study is required for projects subject to CEQA, including for parking. The current parking condition states a transportation study may be required if "the project would potentially add...greater than 50 parking spaces/is over the amount of parking allowed in the code." Elements of the parking analysis, some for informational purposes, are described below.

#### *Parking Demand*

The parking demand estimated for a development reflects a free, unconstrained supply of parking at the development. From a CEQA perspective, the approach conservatively estimates the parking demand from the development to inform decision-makers of the potential adverse effects from the development. Therefore, the CEQA analysis covers the upper bound of the potential demand for parking and the associated secondary effects of people searching in their vehicles for available parking spaces to meet that demand. For informational purposes, on a case-by-case basis, these parking demand estimates continue to be provided in CEQA documents.

#### *Parking Code Requirements*

For informational purposes, on a case-by-case basis, the amount of parking provided for a development in comparison to code allowances or requirements is provided in CEQA documents.

#### *Parking Supply and Significance Criterion*

A development's parking supply is compared to the estimated parking demand. This discussion is provided in CEQA documents for informational purposes. If the estimated parking demand from the development exceeds the off-street parking supply, a discussion regarding publicly available on-street and off-street spaces in the project vicinity is provided. The environmental analysis then accounts for the secondary effects (e.g., air quality, noise) of people searching in their vehicles for those available or unavailable parking spaces.<sup>4</sup> The secondary effect is also the basis for the criteria used to determine if a project would have a significant transportation-related impact as it relates to parking:

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<sup>4</sup> A quantified secondary effect analysis is typically conducted only for very large development projects where a substantial parking deficit may occur (e.g., 50 First Street). In these instances, all vehicle trips are distributed to the site and then those vehicle trips that cannot be accommodated by the development's off-street parking supply may be distributed to available parking spaces in the study area.

The project would have a significant effect on the environment if it would result in a substantial parking deficit that could create hazardous conditions or significant delays affecting transit, bicycles or pedestrians and where particular characteristics of the project or its site demonstrably render use of other modes infeasible.

This parking supply vs demand information and secondary effect analysis is sometimes completed for both the development's proposed parking supply and if the development were to include no parking. The no parking analysis is conducted in case the Planning Commission adjusts the amount of parking included in the development, including at the entitlement hearing.

#### *Other Parking-Related Topics*

The current parking condition directly addresses the relationship between the amount of parking provided at the site and the potential for site circulation conflicts. Whenever parking is proposed for a development, analysis is conducted regarding the potential for vehicle movement conflicts with transit operations and people, particularly vulnerable users (e.g., people walking or bicycling) along streets with documented safety concerns (e.g., High-Injury network). Common components of this conflict analysis include a discussion of the location and width of proposed curb cuts in relation to other transportation facilities, the anticipated number of vehicles entering and exiting the parking facility, and the design of the parking facility as it relates its ability to accommodate queues.

## **VMT AND CEQA**

This section briefly summarizes the Planning Department's current approach in assessing the impacts of VMT, including the current approach for assessing the effects parking supply and for-hire vehicles have on a development's VMT estimates. This section also briefly discusses how for-hire vehicles affect other transportation analysis topics.

### **Approach to VMT Analysis**

The Department's approach to VMT analysis under CEQA is based on a screening analysis which compares development-estimated VMT to the regional average, as recommended by the California Office of Planning and Research in a technical advisory that accompanied its January 2016 draft CEQA guidelines implementing Senate Bill 743.<sup>5</sup> The Department uses maps illustrating areas that exhibit low levels of existing and future year VMT<sup>6</sup> to screen out developments that may not require a detailed VMT analysis. The thresholds used to determine low levels of VMT are set at 15 percent below regional averages of VMT.

The Department relies on San Francisco Chained Activity Model Process (SF-CHAMP) runs prepared by the San Francisco County Transportation Authority (Transportation Authority) to estimate VMT within different geographic locations throughout San Francisco. Travel behavior in SF-CHAMP is calibrated by Transportation Authority staff based on observed behavior from the California Household Travel Survey 2010-2012, Census data regarding automobile ownership rates and county-to-county worker flows, and observed vehicle counts and transit boardings. SF-CHAMP uses a synthetic population, which is a set of

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<sup>5</sup> This document is available online at: [https://www.opr.ca.gov/docs/Revised\\_VMT\\_CEQA\\_Guidelines\\_Proposal\\_January\\_20\\_2016.pdf](https://www.opr.ca.gov/docs/Revised_VMT_CEQA_Guidelines_Proposal_January_20_2016.pdf).

<sup>6</sup> The VMT estimates in CEQA documents report a per population metric; it is not an absolute amount of VMT. Therefore, a development could have a lot of parking, but also a substantial amount of people. Therefore, a development that is located in San Francisco will likely have lower VMT per capita low relative to the region.

individual actors that represents the Bay Area's actual population, who make simulated travel decisions for a complete day. The role parking supply and for-hire vehicles have on these VMT estimates are described below.

#### *Parking Supply*

One rationale for using the SF-CHAMP maps to screen out projects, instead of a project-by-project detailed VMT analysis, is because most developments are not of a large enough scale and/or contain unique land uses to substantially alter the VMT estimates from SF-CHAMP. SF-CHAMP is not sensitive to site-level characteristics for a development (e.g., the amount of parking provided for a development). The amount of parking provided for a development, as well as other transportation demand management (TDM) measures, could result in VMT that differs from SF-CHAMP estimation.

As part of the "Shift" component of the Transportation Sustainability Program, the City adopted a citywide TDM Program (effective March 2017). For the TDM Program, staff prepared the TDM Technical Justification document.<sup>7</sup> The document provides the technical basis for the selection of and assignment of points to individual TDM measures in the TDM Program. As summarized in the TDM Technical Justification document, a sufficient amount of research indicates that more parking is linked to more driving and that people without dedicated parking are less likely to drive. However, at this time, there is not sufficient data to quantify the specific relationship between parking supply and VMT for a development in San Francisco. CEQA discourages public agencies to engage in speculation. Therefore, the quantified VMT estimates in CEQA documents for a development currently do not directly account for the effect of development's parking supply on VMT.

#### *For-Hire Vehicles*

SF-CHAMP estimates VMT from private automobiles and taxis, the latter of which is a type of for-hire vehicle. The observed data within SF-CHAMP is from the years with the latest data available, 2010-2012. Since that time, the prevalence of for-hire vehicles has increased in San Francisco and elsewhere. This growth is primarily a result in the growth of transportation network companies. Transportation network companies are similar to taxis in that drivers take passengers to and from destinations typically using a distance-based fare system. SF-CHAMP estimates the probability of driving based on auto ownership, household income, and other variables. To the extent that people previously would have traveled in another for-hire vehicle (i.e., taxi), now travel using a transportation network company service, this would be accounted for in previous household travel surveys.

To date, there is limited information as to how the introduction/adoption of transportation network companies affects travel behavior (e.g., whether people using these services are making trips they would not otherwise make, or substituting a transportation network company ride for a trip they would make by another mode). The Census Bureau and other government sources do not currently include transportation network company vehicles as a separate travel mode category when conducting survey/data collection (e.g., American Community Survey, Decennial Census, etc.). Thus, little can be determined from these standard transportation industry travel behavior data sources. Further, the transportation network companies are private businesses and generally choose not to disclose specifics regarding the number of vehicles/drivers in their service fleet, miles driven with or without passengers, passengers transported, etc. Thus, based on the information currently available it is currently difficult, if

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<sup>7</sup> San Francisco Planning Department, "Transportation Demand Management Technical Justification," June 2015. Available online at: [http://default.sfplanning.org/plans-and-programs/emerging\\_issues/tsp/TDM\\_Technical\\_Justification.pdf](http://default.sfplanning.org/plans-and-programs/emerging_issues/tsp/TDM_Technical_Justification.pdf).

not impossible, to document how transportation network company operations quantitatively influence overall travel conditions in San Francisco or elsewhere.

For the above reasons, the effects of for-hire vehicles as it relates to transportation network companies on VMT is not currently estimated in CEQA documents, except to the extent those trips are captured in taxi vehicle trip estimates for a development.

Other For-Hire Vehicle Topics. During the current transportation review process for development, curbside management is an important aspect of that review and the Department coordinates with the San Francisco Municipal Transportation Agency (SFMTA) regarding the necessity for and location of passenger loading zones to accommodate future long-term demands for curbside space due to for-hire vehicles. In addition, as part of the transportation review process for developments, the Department is also currently considering requiring a for-hire vehicle classification as part of existing conditions data collection counts to help with analysis related to this topic.

## CEQA ALTERNATIVES

This section briefly summarizes the requirements under CEQA for an alternatives analysis and the rationale for sometimes including other alternatives in CEQA documents, even though they may not be required under the statute under specific circumstances.

### CEQA Required Alternatives

The CEQA Guidelines require an environmental impact report (EIR) to analyze a reasonable range of potentially feasible alternatives to the proposed project or to the location of the project, which would meet both of the following two criteria 1) feasibly attain most of the basic objectives of the project; and 2) avoid or substantially lessen any of the significant effects of the project. The range of alternatives required in an EIR is governed by a “rule of reason” that requires the EIR to set forth only those alternatives necessary to permit informed public participation and an informed and reasoned choice by the decision-making body.

These requirements are the basis that the Department uses in selecting a reasonable range of potentially feasible alternatives for a development. This range will necessarily depend on the specific circumstances of each development. Commonly labeled alternatives in EIRs published by the Department that meet these two criteria are partial preservation alternatives, full preservation alternatives, reduced height alternatives, and reduced density alternatives. The CEQA Guidelines also require that a no project alternative be evaluated; the analysis of the no project alternative assumes that the proposed project would not be approved. In addition, an environmentally superior alternative must be identified among the alternatives considered. The environmentally superior alternative is generally defined as the alternative that would result in the least adverse environmental impacts to the project sites and affected environment.

### Other Alternatives

The CEQA Guidelines requires an EIR to identify and briefly discuss any alternatives that were considered by the Lead Agency but were rejected because they did not meet the two criteria for CEQA required alternatives or were determined infeasible. The CEQA Guidelines generally defines “feasible” to mean the ability to be accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, technological, and legal factors.

On a case-by-case basis, the Department may carry forward other alternatives in the analysis. These other alternatives may have substantially different project characteristics than those common types of alternatives described above while still meeting most of the basic objectives of the project. These other alternatives typically have similar environmental impact conclusions as the project or other required

alternatives. Commonly labeled other alternatives include code compliant alternatives and alternatives proposed by neighborhood groups.

## PLANNING POLICIES AND POLICY DECISIONS REGARDING PARKING

This section briefly summarizes General Plan and Planning Code policy regarding parking; the Planning Commission's role as it relates to parking policy decisions; and how CEQA documents cover the range of decisions before the Planning Commission regarding the amount of parking approved for development.

### General Plan and Planning Code Parking Policies

The General Plan and Planning Code include policies that acknowledge or at least imply a relationship between parking supply and driving. These policies, include, but are not limited to:

- The San Francisco General Plan, Transportation Element acknowledges the need to limit the city's parking capacity to control the impact of automobiles on the city by: establishing parking caps for residential and commercial uses to lead to a sustainable mode split (Policy 14.8); limiting parking demand through limiting the absolute amount of spaces (Policy 16.5); and limiting parking in downtown to help ensure the number of auto trips to and from downtown is not detrimental (Objective 32).
- Parking Maximums (Planning Code Section 151.1)
- Curb Cut Restrictions
- Transportation Brokerage Services (Planning Code Section 163)
- Unbundle Parking (Planning Code Section 167)
- TDM Program (Planning Code Section 169)

### Policy Decisions

The Planning Commission has wide latitude for decisions regarding the amount of parking that should be approved for a development. For developments located in use districts with parking maximums, those maximums set the limit on the amount of parking; beyond these limits, conditions can be imposed on a development that further limit the amount of parking within a development based upon policy reasons. For developments located in use districts with parking minimums, exceptions have been added over the years that allow for developments to park below those minimums (e.g., bicycle or car-share replacement parking; if a curb cut to a parking facility would conflict with a pedestrian, bicycle, or transit facility; compliance with a TDM Plan).

### Policy Decisions and CEQA

In most circumstances, the range of alternatives analyzed in the EIR or the analysis conducted in other CEQA documents by the Department covers the variations of a project proposal that may be considered for approval by the Planning Commission. For example, the Eastern Neighborhoods EIR analyzed three alternatives to the plan and rezoning plus a no project alternative. The Planning Commission adopted alternative for the Eastern Neighborhoods Plan and Rezoning represented a combination of two alternatives; the combination of which was fully covered in the EIR analysis. As another example, the Planning Commission adopted a height for 706 Mission Street lower than that described in the EIR, but which was fully covered in the EIR analysis. In the rare case that the Planning Commission is considering a variation to the project proposal that was not analyzed in the EIR (e.g., substantial increases in development intensity or height), additional analysis may be required prior to certifying the EIR and approving a development.

With respect to parking, a "no parking" alternative would typically have similar environmental impact conclusions as the project or other EIR alternatives selected by the Department. As stated in the "Parking

and CEQA” section above, a secondary effect analysis is sometimes completed both for the development’s proposed parking supply and if the development were to include no parking. Therefore, in most circumstances, including a “no parking” alternative would not better inform public participation or promote a more informed and reasoned choice by the decision-making body. In most circumstances, the Planning Commission would be able to adopt a development that includes reduced or no parking, even if the EIR did not include a labeled “no parking” alternative. However, in the circumstances where the project may result in a significant parking impact by creating some hazardous conditions, for example, location and width of a curb cut to access a parking facility and the anticipated number of vehicles entering and exiting the parking facility, it may be appropriate to analyze a “no parking” alternative, just as it may be appropriate to explore feasible alternatives for any significant impacts identified through the EIR process. This alternative could also be considered in combination with other selected alternatives (e.g., a “Reduced Density Alternative” that includes no parking).

## POTENTIAL FUTURE APPROACHES TO TRANSPORTATION IMPACT ANALYSIS

This section briefly summarizes some data collection efforts and policy development currently underway or planned as part of the Transportation Impact Analysis Guidelines Update, Connect SF, and the TDM Program and how the results of those efforts may affect the VMT estimates in CEQA documents in the future. Each of these efforts will require inter-agency collaboration, particularly with the SFMTA and Transportation Authority.

### Transportation Impact Analysis Guidelines

The last update to the Transportation Impact Analysis Guidelines was in 2002. Since that time, the Department has instituted various updates to the conditions, data, and methodology within that document. These updates are recorded in various memos, resolutions, and emails. The Department intends to update the guidelines comprehensively. For this effort, substantial data collection and analysis is currently underway, primarily at newer development sites, which will result in the creation of new trip generation rates, mode split, and loading demand rates. With this data, the Department hopes to quantify the effects of for-hire vehicles and the amount of parking and VMT and update the effects delivery companies and for-hire vehicles have on a development’s commercial and passenger loading demand.

### Connect SF

Connect SF is a process to develop a unifying long-range vision that will guide plans and investments for the City and its transportation system. Connect SF will coordinate several transportation plans and projects. To inform the vision and transportation plans and projects, the agencies are coordinating on the development of white papers, including one related to technology enabled transportation. While the scope and the eventual contents of the transportation plans and white papers are being developed, the results could be useful for CEQA documents. Depending on the availability of data, the technology enabled transportation white paper may include an analysis of the relationship between for-hire vehicles and VMT that could be used in the near term. In addition, some of the transportation plans may develop citywide and potentially neighborhood-specific VMT goals. If the goals are allocated to different sources of VMT (e.g., existing vs. new developments’ role), then these goals could be considered as future thresholds of significance for developments under CEQA or as part of the TDM Program.

### TDM Program

The TDM Program is a living program due to its implementation strategy. Potential updates to the TDM menu may occur to reflect new findings on the efficacy of the measures in the TDM menu or for measures not previously included in the TDM menu. TDM measures will be revisited in light of research findings and the results of local data collection efforts, including at sites subject to the TDM Program. The menu may be updated to reflect a deeper understanding regarding relative TDM measure effectiveness determinations, including the efficacies of individual (e.g., Parking Supply) or multiple TDM measures

(e.g., Bicycle Parking and Car-Share Parking) within varying San Francisco contexts (e.g., geographies or land use types). The menu and points may also be updated to reflect citywide and regional Vehicle Miles Traveled targets outlined in ongoing planning efforts, such as that described in Connect SF. These data collection efforts and results may also be used for VMT estimates in CEQA documents.

## **CONCLUSION**

While policies demonstrate a relationship between parking and VMT, the Department's current approach used in CEQA documents to qualitatively assess this relationship agrees with those policies. The Department is involved in several efforts that may update the approach for analyzing transportation impacts, including quantifying the VMT effects of parking supply and for-hire vehicles. However, the Department is currently using the best available information to assess the transportation effects from a development in CEQA documents.

The purpose of CEQA is primarily to inform decision makers and the public and, where possible, reduce a project's environmental effects through mitigation measures and alternatives. While CEQA can be quite effective in accomplishing these outcomes, its purpose is not to resolve all policy decisions before a decision-making body. In addition, regardless of whether a development results in a significant VMT impact under CEQA, it does not negate the City from needing to do more to reduce VMT from new development or provide more and safer options for people to move around. Keeping people moving as our city grows is the goal of the TDM Program, and this applies to most new development, regardless of whether the project has a significant VMT impact or not.

Lastly, the Planning Commission can rely on other policy analysis outside the confines of CEQA to inform their decisions. The Planning Commission also has other tools available its toolbox, besides CEQA mitigation measures and alternatives, to reduce a development's impact. As it relates to transportation, those tools include the TDM Program, the Transportation Sustainability Fee, and decisions regarding the amount of parking that should be approved for a development, which the analysis in CEQA documents covers.

## **REQUIRED COMMISSION ACTION**

None. Informational.

### **Attachment:**

Attachment A: Expanded Description of Parking and VMT Analysis

**ATTACHMENT A: EXPANDED DESCRIPTION OF PARKING AND VMT ANALYSIS****PARKING AND CEQA**

This section expands upon the “Parking and CEQA” section in the memorandum by briefly summarizing the history of parking analysis in CEQA documents and providing further details regarding the parking demand analysis.

**Brief History**

CEQA was enacted in 1970 to ensure the long-term protection of the environment and requires public agencies to analyze and disclose the physical effects of their actions on the environment. The California legislature writes the statute into law. The California Office of Planning and Research develops the CEQA Guidelines to interpret CEQA statute and published court decisions. The CEQA Guidelines include several appendices that contain useful forms and guidance for lead agencies when performing environmental review. One of the appendices, Appendix G, includes a checklist of sample questions for lead agencies to consider addressing in CEQA documents. Appendix G is a guidance document; lead agencies are not required to use it in their environmental review, unless they have adopted policies that adopt Appendix G as their own.<sup>8</sup> Appendix G has been amended several times since 1970. Parking has been a topic analyzed in the earliest CEQA documents found in the Department’s library (mid-1970s). This appears to indicate that parking was included in the original or early Appendix G checklist questions/thresholds. As late as 2009, an Appendix G checklist question asked whether a project would result in “inadequate parking capacity.”

While Appendix G included inadequate parking capacity, the Department for many years found that, in the transit-rich urban context of San Francisco, parking loss or deficit in and of itself does not result in direct physical changes to the environment. In other words, the social inconvenience of a person searching in their vehicle for an available parking space is not an environmental impact under the purview of CEQA; instead, the secondary effect of this search in relation to other topics (e.g., air quality, noise) is an environmental impact. This approach was affirmed in a published court decision, *San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal.App.4<sup>th</sup> 656.<sup>9</sup>

In response in part to the *San Franciscans* published court decision, as part of amendments in 2009, the California Office of Planning and Research removed inadequate parking capacity from the Appendix G checklist questions in the CEQA Guidelines. However, some jurisdictions continued to analyze parking capacity impacts for a variety of reasons. In 2013, Governor Brown signed California Senate Bill 743,

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<sup>8</sup> For Initial Studies, Chapter 31 of the San Francisco Administrative Code requires the Department to use as its base the environmental checklist form set forth in Appendix G of the CEQA Guidelines.

<sup>9</sup> In another published court decision, *Taxpayers for Accountable School Bond Spending v. San Diego Unified School District* (2013) 215 Cal.App.4<sup>th</sup> 1013, the court distinguished *San Franciscans*, holding that the circumstances within that case were special, given its urban context and adopted city policies, and may not apply elsewhere. Furthermore, the court found that in the San Diego case, the lack of parking could potentially lead to environmental impacts, given the specific circumstances of that case, in which narrow, curvy streets in the vicinity of a school sports facility created potentially hazardous conditions. The *Taxpayers’* case findings also reflected the circumstances of the case: a “fair argument” test was applied given a mitigated negative declaration had been prepared for the project in question as opposed to the “substantial evidence” test for environmental impact reports; which the latter is more deferential to the lead agency.

which affected parking analysis through legislation. Specifically, the senate bill stated that, effective January 1, 2014, parking (and aesthetics) shall not be considered significant impacts on the environment for residential, mixed-used residential, or employment center projects on an infill site within a transit priority area. Most development projects in San Francisco meet these criteria. For those projects that do not meet these criteria, upon full implementation of the Senate Bill 743 provisions (refer to “VMT and CEQA” section below for more information about implementation), the adequacy of parking shall also not be considered a significant impact on the environment. The amendments in the CEQA Guidelines in 2009 and the Senate Bill 743 provisions do not affect the continued need to analyze the secondary effects of the search for parking on other environmental topics, as described above. Therefore, the 2009 CEQA Guidelines amendments and Senate Bill 743 confirmed, rather than substantially altered, the Department’s approach for parking analysis in CEQA documents.

### Approach to Parking Analysis

This section expands upon the Parking Demand section in the memorandum by providing further details regarding the methodology.

#### *Parking Demand*

Parking demand generated by the people within the development’s proposed uses is estimated. Appendix G of the Transportation Impact Analysis Guidelines identifies the methodology for estimating parking demand. Short-term parking demand for commercial uses is estimated based upon the daily vehicle trips associated with the commercial use and an assumption regarding the daily turnover rate of the parking space. Long-term parking demand for commercial uses is based upon the number of daily vehicle trips from employees associated with the commercial use.<sup>10</sup>

Vehicle trips for commercial uses are estimated based upon the general geographical locations of the site within San Francisco, using data collected and analyzed in a citywide travel behavior study and from other sources. This vehicle trip estimate does not account for variables such as the price or parking supply proposed for the development or the parking supply that already exists in the surrounding neighborhood.<sup>11</sup> Given vehicle trip estimates are the input for estimating parking demand for commercial uses, parking demand estimates for commercial uses also do not account for these variables.

Residential parking demand is estimated based upon assumptions regarding the unit size and whether the development is market-rate, affordable housing, or a senior housing project. The parking demand estimates for residential uses also do not account for variables such as the price or parking supply proposed for the development or the parking supply that already exists in the surrounding neighborhood.<sup>12</sup>

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<sup>10</sup> A separate methodology is described for hotel/motel parking demand in Appendix G and not provided here for the sake of brevity.

<sup>11</sup> An exception is the extent those variables influenced employees’ travel behavior at the time they were surveyed.

<sup>12</sup> Ibid, except for residents instead of employees.

## VMT AND CEQA<sup>13</sup>

This section expands upon the “VMT and CEQA” section in the memorandum by briefly summarizing the history of VMT analysis in CEQA documents and providing further details regarding the VMT analysis, while repeating some information from the memorandum for the sake of clarity.

### Brief History

VMT measures the amount and distance that a project might cause people to drive, including the number of passengers within a vehicle. VMT is comprised of three inputs: automobile modal split (percentage of trips made by automobile), vehicle occupancy (number of people in a vehicle), and vehicle trip length (distance of the vehicle trip). The Department has long required an estimate of a development’s VMT as an input for those developments that require quantification of regional air quality impacts.

As stated above, in 2013, Governor Brown signed California Senate Bill 743. Senate Bill 743 also included provisions that eventually resulted in expanding the use of VMT in environmental analysis. The senate bill directed the California Office of Planning and Research to prepare, develop, and transmit to the California Natural Resources Agency for certification and adoption proposed revisions to the CEQA Guidelines to establish criteria for determining the significance of transportation impacts that “promote the reduction of greenhouse gas emissions, the development of multimodal transportation networks, and a diversity of land uses.” The senate bill recommended that VMT may be an appropriate metric to establish that criteria. Senate Bill 743 also stated that upon certification of the CEQA Guidelines by the California Natural Resources Agency, “automobile delay, as described solely by level-of-service or similar measures of vehicular capacity or traffic congestion, shall not be considered a significant impact on the environment” pursuant to CEQA. Similar to parking, this legislative change reflects that automobile delay in and of itself does not result in direct physical changes to the environment. In other words, the social inconvenience of a person waiting in their vehicle is not an environmental impact under the purview of CEQA; however, any secondary effect of this delay related to other topics (e.g., air quality, noise) is an environmental impact.

Since that time, the California Office of Planning and Research has published three documents to implement Senate Bill 743. The third document was published for public review and comment in January 2016. VMT was identified as the metric to establish criteria for determining the significance of transportation impacts in that third document.

On March 3, 2016, the Planning Commission, by Resolution No. 19579, removed automobile delay, as described solely by level of service or similar measures of vehicular capacity or traffic congestion, as a significant impact on the environment pursuant to CEQA and replaced it with VMT criteria which meet the criteria of Senate Bill 743.

Department staff has been in communication with the California Office of Planning Research since March 2016, but it remains unclear on when the California Office of Planning and Research will transmit the next draft of the CEQA Guidelines to the California Natural Resources Agency for certification and adoption. Upon adoption of amendments to the CEQA Guidelines by the California Natural Resources Agency, Department staff will inform the Planning Commission if any significant amendments have been made since the January 2016 proposal and recommend if any actions should be taken by the Planning Commission in response to those significant amendments.

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<sup>13</sup> For an even more robust discussion regarding the history of and approach for VMT analysis in CEQA documents, refer to the Executive Summary for the March 3, 2016 Planning Commission hearing regarding the Align Component of the Transportation Sustainability Program. Available online at: <http://sf-planning.org/meeting/planning-commission-march-3-2016-agenda>.

### Approach to VMT Analysis

The maps and thresholds that the Department uses for VMT analysis meet the criteria of Senate Bill 743: they demonstrate whether a development is in a transportation-efficient location within the region, with safe and adequate access to a multi-modal transportation system and key destinations, and whether the development will help the city, region, and state reach their greenhouse reduction targets. The thresholds are also set at a level acknowledging that a development site cannot feasibly result in zero VMT without substantial changes in variables that are largely outside the control of a development sponsor (e.g., large-scale transportation infrastructure changes, social and economic movements, etc.).

An expanded discussion regarding the role parking supply and for-hire vehicles have on the VMT estimates the Department uses are described below.

#### *Parking Supply*

As part of the “Shift” component of the Transportation Sustainability Program, the City adopted a citywide TDM Program (effective March 2017). The purpose of the TDM Program is to reduce the VMT that otherwise would be forecast to occur from new development (in SF-CHAMP or other transportation modeling software) based upon the new development’s geographic location. To achieve this VMT reduction, the San Francisco TDM Program requires that property owners select from a menu of 26 TDM measures, defined as measures that reduce VMT by residents, tenants, employees, and visitors and are under the control of the property owner. A reduction in VMT may result from shifting vehicle trips to sustainable travel modes or reducing vehicle trips, increasing vehicle occupancy, or reducing the average vehicle trip length.

Each development subject to the TDM Program is required to meet a points target that is aimed at reducing a development’s VMT. The points target is based upon the land use(s) associated with the development and the number of parking spaces proposed for the land use. The more parking proposed for a land use, the higher the points target for the development to achieve. The rationale for tying the points target to parking is based on the linkage between parking and driving. Therefore, more incentives and tools to support non-auto modes and more disincentives to using personal vehicles are needed at a site with a greater amount of parking spaces than a site with fewer parking spaces to encourage sustainable travel and reduce VMT. These incentives, disincentives, and tools that affect that choice are the TDM measures in the menu.

The TDM Technical Justification document<sup>14</sup> provides the technical basis for the selection of and assignment of points to individual TDM measures in the TDM Program. For the TDM Program, San Francisco hired transportation consultants Fehr and Peers to develop a spreadsheet that estimates the VMT reduction from individual measures proposed for a development, based upon a literature review and local data collection. Based upon that research, substantial documentation exists to quantify the relationship between nine TDM measures in the menu and VMT reduction for a development in San Francisco. For the other 17 TDM measures, enough research exists to substantiate that these measures reduce VMT, but not to the extent of quantifying the relationship between them and VMT reduction for a development in San Francisco.

One TDM measure in the menu not quantified in the spreadsheet currently is “Parking Supply”. As summarized in the TDM Technical Justification document, a sufficient amount of research indicates that more parking is linked to more driving and that people without dedicated parking are less likely to drive.

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<sup>14</sup> San Francisco Planning Department, “Transportation Demand Management Technical Justification,” June 2015. Available online at: [http://default.sfplanning.org/plans-and-programs/emerging\\_issues/tsp/TDM\\_Technical\\_Justification.pdf](http://default.sfplanning.org/plans-and-programs/emerging_issues/tsp/TDM_Technical_Justification.pdf).

However, at this time, there is not sufficient data to quantify the specific relationship between parking supply and VMT for a development in San Francisco.<sup>15</sup> Instead, the various data collection and literature review resources were used to assign a high potential point value that a development could receive for the Parking Supply measure in comparison to other TDM measures in the menu. The point assignment was not intended to translate to a quantified amount of VMT as it relates the effects of a development's parking supply in CEQA documents. CEQA discourages public agencies to engage in speculation. Therefore, the quantified VMT estimates in CEQA documents for a development currently do not directly account for the effect of development's parking supply on VMT.

SF-CHAMP does indirectly account for parking supply in its VMT estimates to the extent the parking supply affects the travel behavior of people within different geographic locations throughout San Francisco. To address this indirect relationship, the Department on a case-by-case basis may conduct a qualitative analysis in CEQA documents of the effects of parking supply on VMT (e.g., refer to Pier 70 Draft EIR). This qualitative analysis is based upon whether the project's parking supply is greater or less than the neighborhood parking rate. The neighborhood parking rate is the estimated number of existing off-street parking spaces provided per dwelling unit or per 1,000 square feet of non-residential uses for different geographic locations within San Francisco. A development may not reduce VMT as it relates to parking supply if the new development is not parked at or below the neighborhood parking rate.

#### *For-Hire Vehicles*

Based upon anecdotal evidence and a limited number of travel decision surveys conducted by the San Francisco Municipal Transportation Agency (SFMTA) as well as other studies, as described below, it is clear that more people are using for-hire vehicles today than just a few years ago. It is difficult to predict whether this usage will continue to grow, decline, or stabilize. Numerous legal, consumer, technological, funding, and regulatory questions regarding this topic remain to be answered.

SFMTA Travel Decisions Surveys. In San Francisco, the results of SFMTA Travel Decisions Surveys<sup>16</sup> indicate that between 2012 and 2015 transportation network company usage has grown year over year and that transportation network company trips exceed those of taxis, while taxi use has declined. The SFMTA Travel Decisions Survey 2015 results also indicate that 53 percent of respondents in San Francisco have never tried a transportation network company. Of those respondents who indicate that they use transportation network companies in the SFMTA Travel Decisions Survey 2015, younger people (ages 18-34) use the services more than people who are older and people with higher incomes (>\$75,000 annually) use the services more than those with lower incomes.

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<sup>15</sup> Some studies and models attempt to quantify the effects of parking supply on travel behavior. However, these studies are often conducted in geographic contexts different than San Francisco and the quantified results are often in comparison to Institute of Transportation Engineers parking demand or vehicle trip generation rates (e.g., California Air Pollution Control Officer's Association, "Quantifying Greenhouse Gas Reduction Measures," August 2010). These rates are primarily established based upon studies in suburban settings. As stated above, SF-CHAMP uses locally calibrated data for San Francisco VMT estimates and thus, at this time, quantified vehicle trip should not typically be applied directly for developments in San Francisco.

<sup>16</sup> SFMTA, Travel Decisions Survey 2012. Available online at: [https://www.sfmta.com/sites/default/files/reports/2015/Travel%20Decision%20Survey%202012%20Summary%20Report\\_0.pdf](https://www.sfmta.com/sites/default/files/reports/2015/Travel%20Decision%20Survey%202012%20Summary%20Report_0.pdf). SFMTA, Travel Decisions Survey 2015. Available online at: <https://www.sfmta.com/sites/default/files/reports/2016/Travel%20Decision%20Survey%202015%202016-01-08.pdf>.

University of California Study. During the Spring 2014, University of California academics conducted an intercept survey in the Mission, Marina, and North Beach neighborhoods in San Francisco during evening hours to collect data on transportation network companies' users and trips.<sup>17</sup> The University of California results had similarities and differences to the SFMTA survey results, while also including additional information. The University of California results indicate that younger people (ages 25 and 34) use the services more than other age groups, similar to the SFMTA survey results. While the University of California results indicate that people with higher incomes (>\$71,000 annually) use the services more than those with lower incomes, consistent with the SFMTA survey results, those respondents (i.e., those who used the services) with incomes between \$30,000 and \$70,000 were representative of San Francisco's population at this income bracket (~22%). Those respondents with incomes below \$30,000 were underrepresented compared to San Francisco's at this income bracket (~9% respondents vs. ~26% population in San Francisco).

Of most relevance as it relates to in-use VMT (i.e., trips that include a passenger) were University of California results related to mode split, induced travel, and vehicle occupancy. The results indicated that 92% respondents would have still made the trip had transportation network companies' services were not available. Of those, 39% would have used a taxi, 33% would have used bus or rail, 8% would have walked, and 6% would have drove their own car. This suggests that transportation network companies have an induced travel effect, given 8% of respondents said they would not have taken the trip if the transportation network companies' services were not available, and that some of these trips replaced traditional for-hire vehicles (i.e., taxis) and personal driving, while others replace public transportation and walking options. These results would indicate an increase in VMT because of transportation network companies. However, other results within the survey indicate in a decrease in VMT due to increased vehicle occupancy in transportation network company services vehicles compared to traditional taxis. The University of California study concludes that the impacts on overall VMT from these services are uncertain.

Other research. Other research regarding transportation network companies' usage and effects include an American Public Transportation Association research analysis,<sup>18</sup> a Pew Research Center study,<sup>19</sup> and a National Association of City Transportation Officials Policy paper.<sup>20</sup> The last paper indicates that the effects these services have on VMT are unclear. Clearly, more study is needed to better understand and quantify the effects of TNCs on travel behavior in aggregate or in San Francisco or elsewhere.

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<sup>17</sup> University of California Transportation Center, "App-Based, On-Demand Ride Services: Comparing Taxi and Ridesourcing Trips and User Characteristics in San Francisco", August 2014. Available online at: <http://uctc.berkeley.edu/research/papers/UCTC-FR-2014-08.pdf>.

<sup>18</sup> American Public Transportation Association, "Shared Mobility and the Transformation of Public Transit," March 2016. Available online at: <https://www.apta.com/resources/reportsandpublications/Documents/APTA-Shared-Mobility.pdf>.

<sup>19</sup> Pew Research Center, "Shared, Collaborative and On Demand: The New Digital Economy," May 2016. Available online at: <http://www.pewinternet.org/2016/05/19/the-new-digital-economy/>.

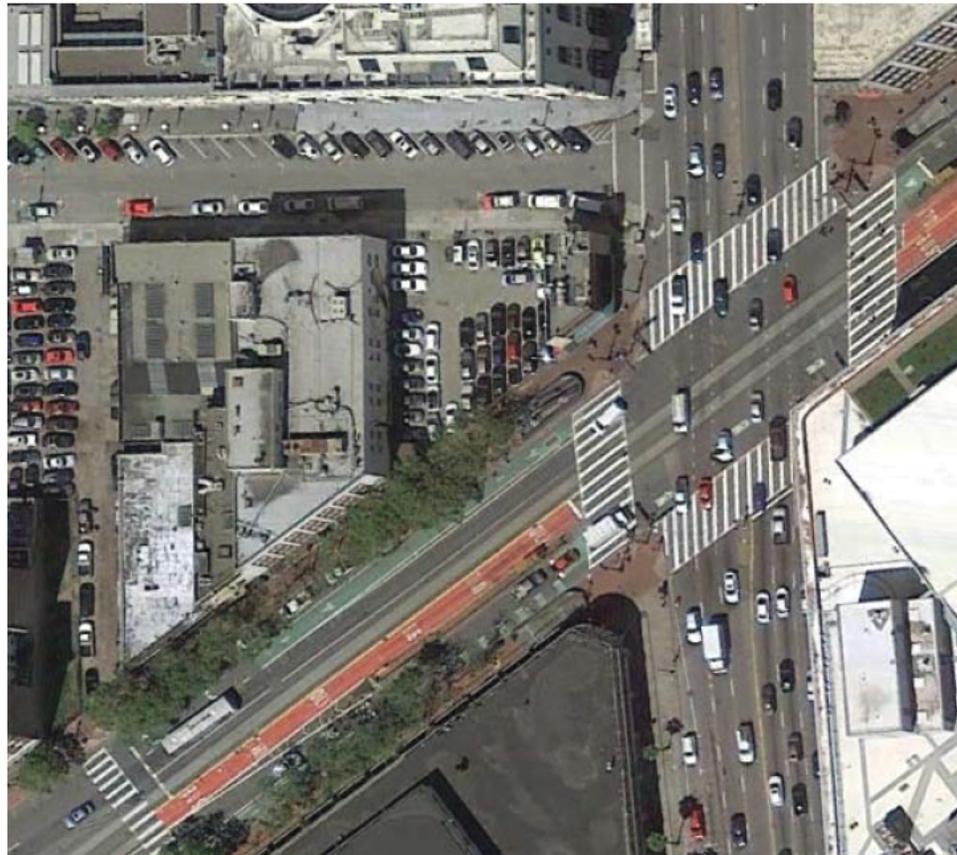
<sup>20</sup> National Association of City Transportation Officials, "Ride-Hailing Services: Opportunities & Challenges for Cities, 2016. Available online at: <http://nacto.org/policy-2016/ride-hailing-services-opportunities-and-challenges/>.

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# ONE OAK STREET PROJECT

(1500-1540 MARKET STREET)



CITY AND COUNTY OF SAN FRANCISCO  
PLANNING DEPARTMENT: CASE NO. 2009.0159E

STATE CLEARINGHOUSE NO. 2012102025

DRAFT EIR PUBLICATION DATE: NOVEMBER 16, 2016

DRAFT EIR PUBLIC HEARING DATE: JANUARY 5, 2017

DRAFT EIR PUBLIC COMMENT PERIOD: NOVEMBER 16, 2016 -  
JANUARY 10, 2017

*Written comments should be sent to:*

Lisa Gibson  
Acting Environmental Review Officer  
San Francisco Planning Department  
1650 Mission Street, Suite 400  
San Francisco, CA 94103  
[lisa.gibson@sfgov.org](mailto:lisa.gibson@sfgov.org)



**SAN FRANCISCO**  
**PLANNING**  
DEPARTMENT

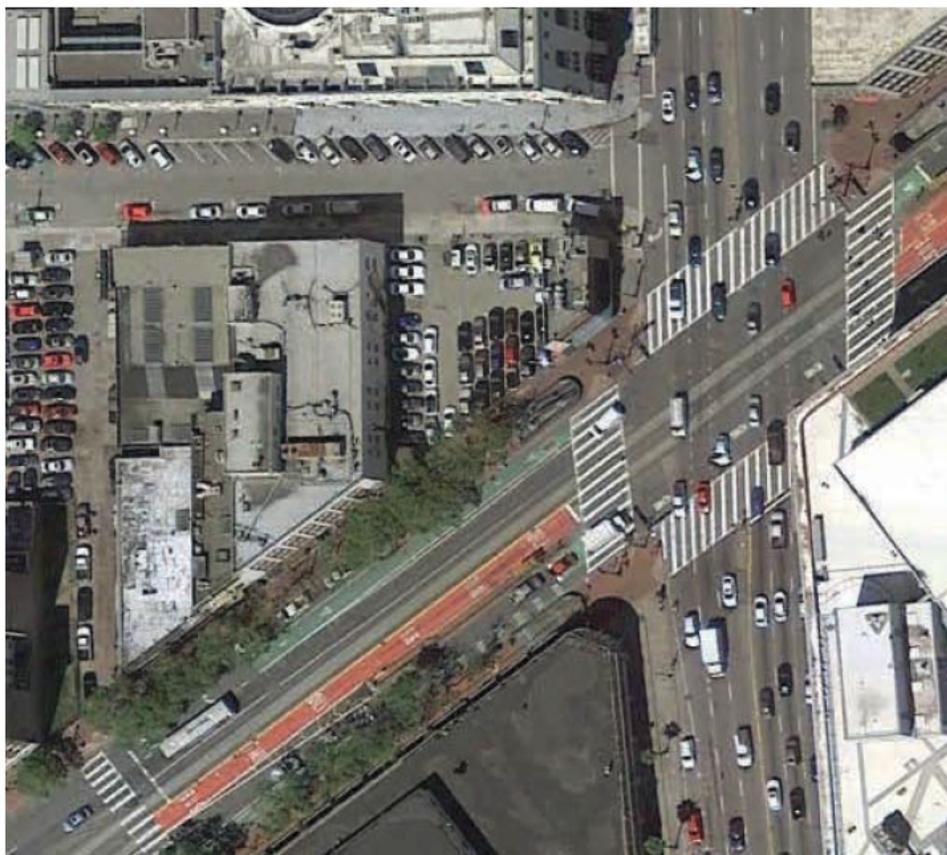
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JANUARY 10, 2017**

**FINAL EIR CERTIFICATION HEARING: JUNE 15, 2017**



**SAN FRANCISCO  
PLANNING  
DEPARTMENT**

**From:** [Board of Supervisors, \(BOS\)](#)  
**To:** [BOS-Supervisors: Jalipa, Brent \(BOS\); Lew, Lisa \(BOS\)](#)  
**Subject:** FW: One Oak appeal 9/5/17 meeting  
**Date:** Tuesday, September 05, 2017 1:31:01 PM

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**From:** lgpetty@juno.com [mailto:lgpetty@juno.com]  
**Sent:** Monday, September 04, 2017 6:01 PM  
**To:** Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>  
**Subject:** One Oak appeal 9/5/17 meeting

Dear San Francisco Supervisors

Re: ONE OAK Items 20-23 Sept. 5, 2017 meeting

I'm writing in support of **appealing** the final EIR report certification for this project.

As a resident who takes the 47 bus and the 49 bus north and south every day, I have experienced the complicated dynamics of this intersection in its current state first hand. To an already traffic-clogged and extremely windy intersection, the further **addition** of One Oak and the Honda property, and other nearby proposals, plus the design of the future MUNI Transit Platforms, and you have the recipe for traffic, pedestrian and bicyclist catastrophe.

As a member of Senior and Disability Action, I'm particularly focused on the daily effects of hundreds more cars and trucks and what we know will be a huge increased wind tunnel effect, added to an already difficult-to-cross intersection. If you can imagine these crossing difficulties, please add to the picture the MTA's Van Ness BRT Transit Platforms. These will be located not on sidewalks, but in the **center of the wide open boulevard**.

Bus riders, particularly seniors and people with disabilities, already to be adversely affected in all weathers by the Platforms, will also be forced to endure more dangerous and extremely unhealthy conditions with traffic and wind effects of two added skyscrapers.

Please keep in mind that this One Oak complex is not going to be built alone in the wilderness like some living room Leggo toy project with no people, vehicles, weather, or surrounding buildings.

One Oak will be built in a very real overcrowded San Francisco. Not enough concern and adjustment for all these elements has been given. This project must not be allowed to continue until a more thorough and complete EIR is done

Thank you,  
Lorraine Petty, senior resident & voter of District 5,  
member, Senior and Disability Action

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**From:** [Jeremy Pollock](#)  
**To:** [Board of Supervisors, \(BOS\)](#)  
**Cc:** [Jalipa, Brent \(BOS\)](#); [Lew, Lisa \(BOS\)](#)  
**Subject:** Concerns about One Oak EIR: TNCs, VMT, wind, and parking  
**Date:** Tuesday, September 05, 2017 12:31:01 PM

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Supervisors,

I support the construction of the One Oak tower and the broader vision of "the Hub" to make it a dense, residential neighborhood. The Hub represents an exciting opportunity for the City to add housing supply in a central location with excellent access to transit.

But we need to take extra precautions to successfully integrate 9,000 new households into this area without crippling our transportation network. **I am concerned that the Planning department's EIR does a disservice to the One Oak proposal.**

As a long-time member of the San Francisco Bicycle Coalition, and current member of the coalition's board of directors, I am very concerned about the safety of bike riders on Market Street. Please note that the coalition does not have a position on One Oak, and my comments reflect only my opinion. But [the most common concern we've heard from members about our new Strategic Plan](#) is that TNCs are having a negative impact on urban cycling.

I have four main concerns about the One Oak EIR:

- **TNCs:** Planning's failure to measure the impact of TNCs is simply unacceptable. The [SFCTA's recent study](#) show they have significantly changed the way our streets are used. The cumulative impacts of TNCs on all of the planned developments in the Hub must be studied.
- **VMT methodology:** Planning's adoption of a regional threshold of significance for Vehicle Miles Traveled (VMT) has made this important new tool essentially meaningless for analysis of developments in transit-rich areas. Using the same VMT threshold as Walnut Creek and San Jose may meet the legal requirements of SB 743, but it doesn't serve the goals of our transit first city.
- **Wind:** Similarly, Planning may have complied with the City's methodology for analyzing wind impacts, but that methodology needs to be updated to consider impacts on bicyclists. Market Street is the backbone of our bike network, and the wind is already daunting—if not dangerous—on summer afternoon commutes. If we are going to simultaneously grow our city and our bicycle mode share, we need to better understand how wind will impact bicyclists.
- **Parking:** While it is admirable that One Oak proposes a 0.45 parking ratio, we need to do better. The cumulative impact of allowing all of the proposed projects in the Hub to exceed 0.25 parking ratios would contribute to gridlock in this area.

I am concerned that the deficiencies in the EIR—particularly the failure to measure TNCs—put One Oak at legal risk. **I urge you to work with the appellant, project sponsor, and Planning department to negotiate a resolution to this appeal that avoids the potential for legal action while minimizing the impacts of future projects in the Hub to our transportation network.**

**From:** [Andrew J Oliphant](#)  
**To:** [Lew, Lisa \(BOS\)](#)  
**Subject:** RE: letter of support OneOak development appeal  
**Date:** Thursday, August 31, 2017 5:00:32 PM  
**Attachments:** [AppealOneOak\\_SupportLetterOliphant.pdf](#)

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Sorry attached this time

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**From:** Andrew J Oliphant  
**Sent:** Thursday, August 31, 2017 5:00 PM  
**To:** 'lisa.lew@sfgov.org' <lisa.lew@sfgov.org>  
**Subject:** RE: letter of support OneOak development appeal

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**From:** Andrew J Oliphant  
**Sent:** Thursday, August 31, 2017 4:59 PM  
**To:** 'mailto:lisa.lew@sfgov.org' <<mailto:lisa.lew@sfgov.org>>  
**Subject:** letter of support OneOak development appeal

Dear Ms. Liu,

Please find attached a letter of support for the appeal of the One Oak development EIR.

Yours sincerely, Andrew Oliphant

August 31, 2017

Board President London Breed and Members of the Board of Supervisors  
c/o Clerk of the Board of Supervisors  
#1 Dr. Carlton B. Goodlett Place City Hall, Room #244 San Francisco, CA 94102-4689

**Re: Board of Supervisors September 5, 2017 Meeting Agenda Item: Appeal of California Environmental Quality Act (CEQA) Certification of Final Environmental Impact Report – One Oak Street**

Dear President Breed and Members of the Board,

I am writing in support of the above mentioned appeal. I teach and conduct research in urban micrometeorology at San Francisco State University, have lived in San Francisco for 15 years, and make 90% of trips in the city by bicycle. I am writing because I am concerned by the wind impact analysis and the potential impacts of wind on cycling by the proposed development.

The report discusses the possibility of downwash events from exposed building sidewalls and the resulting turbulence from vertical shear, which is accurate. However, it neglects to mention horizontal shear and acceleration around building sides from flow splitting. Downwash is more likely to impact the windward northwestern side of the building. Given the shape and orientation of the building relative to prevailing winds, this horizontal shear is more likely to be the key driver of the wind exceedances found at points 12, 13 and 72. In this case it is likely that acceleration in this area will also occur to the areas immediately adjacent (N and S), especially on the road side to the south away from the frictional effect of the building. This is a busy bike lane with riders typically riding into the wind, yet no mention is made of the obvious implications for the exceedances found next to the bike lane.

Adding wind barriers to prevent down-washing air from impacting pedestrians will not absorb the wind energy but rather transfer it. Although this was not assessed in the wind tunnel study either, theoretically the wind would be deflected into the street immediately adjacent to the wind barriers. This would create additional acceleration and shear-driven turbulence in the street near the curb, precisely where bicyclists ride.

The report states,

“Bicycles – A project would have a significant effect on the environment if it would create potentially hazardous conditions for bicyclists or otherwise substantially interfere with bicycle accessibility to the site and adjoining areas.”

and

“Bicycle conditions were assessed qualitatively as they relate to the project site, including bicycle routes, safety and right-of-way issues, and conflicts with traffic.”

Yet the wind studies suggest the building could create potentially hazardous conditions for bicyclists and wind impacts on cyclists could easily have been quantitatively explored, explicitly through reconfigured test points. I believe this shows bicycle impacts were incompletely studied, despite showing wind exceedances at three points adjacent to a busy bike lane, which suggests that wind impacts from the development could be significant for bicycling.

Yours sincerely,

A handwritten signature in black ink, appearing to read "A. Oliphant", with a long horizontal stroke extending to the right.

Andrew Oliphant  
1767 Grove Street  
San Francisco, CA 94117

**From:** [Jiro](#)  
**To:** [Lew, Lisa \(BOS\)](#); [Jiro](#)  
**Subject:** One Oak  
**Date:** Thursday, August 31, 2017 4:51:43 PM

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3739 17<sup>th</sup> St

San Francisco

94117

August 31, 2017

Dear Folks,

I am writing to urge the studying of the impact of 1 Oak on the Market street corridor. Currently every day more than 5000 people on bicycles traverse Market street from Van Ness east. Most of those people on bicycles will have to stop at a traffic light and start again between Van Ness and Ninth Street.

Bicycles are highly unstable at slow speeds. At slow speeds people on bicycles are much less stable than people walking. The gusting winds documented by the study of wind impact on pedestrians will affect the people on bikes much more severely.

The winds will cause folks to veer uncontrollably or fall from their bicycles. Given the proximity of many other people on bikes, automobile traffic, curbs, streetcar tracks and potholes, it is extremely likely that there will be injuries and perhaps deaths resulting from these wind blasts at the street level.

It is the established goal of the City and County of San Francisco to promote walking and bicycling as means of everyday transportation. Allowing 1 Oak to affect Market Street in such a detrimental way will reduce the number of people walking and bicycling. Wind blast is very unpleasant. Let's not allow it to be dangerous.

Thank you,

Jiro Yamamoto

**From:** [Board of Supervisors, \(BOS\)](#)  
**To:** [BOS-Supervisors: Jalipa, Brent \(BOS\); Lew, Lisa \(BOS\)](#)  
**Subject:** FW: One Oak appeal 9/5/17 meeting  
**Date:** Tuesday, September 05, 2017 1:31:01 PM

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**From:** lgpetty@juno.com [mailto:lgpetty@juno.com]  
**Sent:** Monday, September 04, 2017 6:01 PM  
**To:** Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>  
**Subject:** One Oak appeal 9/5/17 meeting

Dear San Francisco Supervisors

Re: ONE OAK Items 20-23 Sept. 5, 2017 meeting

I'm writing in support of **appealing** the final EIR report certification for this project.

As a resident who takes the 47 bus and the 49 bus north and south every day, I have experienced the complicated dynamics of this intersection in its current state first hand. To an already traffic-clogged and extremely windy intersection, the further **addition** of One Oak and the Honda property, and other nearby proposals, plus the design of the future MUNI Transit Platforms, and you have the recipe for traffic, pedestrian and bicyclist catastrophe.

As a member of Senior and Disability Action, I'm particularly focused on the daily effects of hundreds more cars and trucks and what we know will be a huge increased wind tunnel effect, added to an already difficult-to-cross intersection. If you can imagine these crossing difficulties, please add to the picture the MTA's Van Ness BRT Transit Platforms. These will be located not on sidewalks, but in the **center of the wide open boulevard.**

Bus riders, particularly seniors and people with disabilities, already to be adversely affected in all weathers by the Platforms, will also be forced to endure more dangerous and extremely unhealthy conditions with traffic and wind effects of two added skyscrapers.

Please keep in mind that this One Oak complex is not going to be built alone in the wilderness like some living room Leggo toy project with no people, vehicles, weather, or surrounding buildings.

One Oak will be built in a very real overcrowded San Francisco. Not enough concern and adjustment for all these elements has been given. This project must not be allowed to continue until a more thorough and complete EIR is done

Thank you,  
Lorraine Petty, senior resident & voter of District 5,  
member, Senior and Disability Action

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**From:** [Jeremy Pollock](#)  
**To:** [Board of Supervisors, \(BOS\)](#)  
**Cc:** [Jalipa, Brent \(BOS\)](#); [Lew, Lisa \(BOS\)](#)  
**Subject:** Concerns about One Oak EIR: TNCs, VMT, wind, and parking  
**Date:** Tuesday, September 05, 2017 12:31:02 PM

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Supervisors,

I support the construction of the One Oak tower and the broader vision of "the Hub" to make it a dense, residential neighborhood. The Hub represents an exciting opportunity for the City to add housing supply in a central location with excellent access to transit.

But we need to take extra precautions to successfully integrate 9,000 new households into this area without crippling our transportation network. **I am concerned that the Planning department's EIR does a disservice to the One Oak proposal.**

As a long-time member of the San Francisco Bicycle Coalition, and current member of the coalition's board of directors, I am very concerned about the safety of bike riders on Market Street. Please note that the coalition does not have a position on One Oak, and my comments reflect only my opinion. But [the most common concern we've heard from members about our new Strategic Plan](#) is that TNCs are having a negative impact on urban cycling.

I have four main concerns about the One Oak EIR:

- **TNCs:** Planning's failure to measure the impact of TNCs is simply unacceptable. The [SFCTA's recent study](#) show they have significantly changed the way our streets are used. The cumulative impacts of TNCs on all of the planned developments in the Hub must be studied.
- **VMT methodology:** Planning's adoption of a regional threshold of significance for Vehicle Miles Traveled (VMT) has made this important new tool essentially meaningless for analysis of developments in transit-rich areas. Using the same VMT threshold as Walnut Creek and San Jose may meet the legal requirements of SB 743, but it doesn't serve the goals of our transit first city.
- **Wind:** Similarly, Planning may have complied with the City's methodology for analyzing wind impacts, but that methodology needs to be updated to consider impacts on bicyclists. Market Street is the backbone of our bike network, and the wind is already daunting—if not dangerous—on summer afternoon commutes. If we are going to simultaneously grow our city and our bicycle mode share, we need to better understand how wind will impact bicyclists.
- **Parking:** While it is admirable that One Oak proposes a 0.45 parking ratio, we need to do better. The cumulative impact of allowing all of the proposed projects in the Hub to exceed 0.25 parking ratios would contribute to gridlock in this area.

I am concerned that the deficiencies in the EIR—particularly the failure to measure TNCs—put One Oak at legal risk. **I urge you to work with the appellant, project sponsor, and Planning department to negotiate a resolution to this appeal that avoids the potential for legal action while minimizing the impacts of future projects in the Hub to our transportation network.**

Sincerely,

Jeremy Pollock

**From:** [Steve Kuklin](#)  
**To:** [Jalipa, Brent \(BOS\)](#)  
**Subject:** Support Letter for One Oak (Case No. 2009.0159 - 1500-1540 Market Street)  
**Date:** Tuesday, September 05, 2017 11:17:05 AM  
**Attachments:** [20170905 One Oak Support Letters.pdf](#)

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Hi Brent,

Please find the attached additional Support Letters for the One Oak Project for Tuesday's hearing on the CEQA Appeal September 5, 2017.

Thank you.

Best regards,

Steve

**Steven Kuklin** :: Senior Development Manager

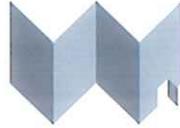
**BUILD:**

415 551 7627 O

650 534 4355 M

[bldsf.com](http://bldsf.com)

315 Linden Street, San Francisco, CA 94102



**WIEGEL LAW GROUP**  
*Superior Strategies*

September 1, 2017

San Francisco Board of Supervisors  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

**RE: One Oak Project — 1500-1540 Market Street (Case No. 2009.0159)**

Dear Supervisors,

I am an attorney with the Wiegel Law Group, PLC. Our firm is real estate litigation boutique based in the heart of Hayes Valley. I am also a member of the board of directors of the Ivy Living Alley Project, a non profit organization comprised of local business leaders and property owners in the Hayes Valley neighborhood. In addition, I have also worked as a research attorney with the Honorable Ernest H. Goldsmith on notable CEQA decisions, such as the Bay View Hunter's Point Redevelopment Project.

I write to express my strong support for the One Oak project and related Oak Plaza improvements and urge the Board to affirm the certification of the One Oak FEIR and deny the pending appeal filed by Jason Henderson.

The people with BUILD are extremely talented. Overall, BUILD's projects tend to reflect and enhance the local character and vitality of each location. With respect to the One Oak project, few projects provide such a grand vision for positive transformation.

Specifically, the One Oak project implements the General Plan and the City's Vision Zero policy, creating a generous 16,000 sq. ft. public pedestrian plaza that will dramatically transform this important civic intersection and enhance public safety with slow-street improvements, widened sidewalks, generous public seating, new landscaping, abundant bike parking, and flexible performance space, along with improved access to the new Van Ness BRT and the existing MUNI Metro Station.

One Oak has earned the first Platinum GreenTrips Certification from Transform, only the 3<sup>rd</sup> project of 34 applicants to meet the requirements, and the only condominium project to do so. In addition, BUILD has voluntarily doubled the required Transportation Demand Management measures for the Project.

One Oak will pay nearly \$41 million in City Impact Fees (\$135,000 per unit), possibly the highest per unit contribution of any San Francisco project to date, including over \$26 million for affordable housing that will fund the creation of 72 to 102 BMR units at Octavia Parcels R, S & U, including 16 residences for homeless youth.

In addition, BUILD will create a Community Facilities District that would fund \$300,000 per year, from One Oak residents for maintenance, security and repairs of the Plaza for 100 years – a \$30 million gift to this long-neglected intersection.

With regard to the present appeal filed by Mr. Jason Henderson, the contentions stated therein are baseless and purport to impose evaluation standards that are not reasonably feasible. The Planning Department's response to the concerns raised in Mr. Henderson's appeal set forth in detail where these concerns have been addressed in the FEIR as well as point out the flaws in the evaluation methodologies promoted by Mr. Henderson in his appeal.

In sum, BUILD's vision for this site represents a long overdue reinvestment at this crucial San Francisco intersection. We hope that the City moves expeditiously to affirm the certification of the FEIR and deny the appeal filed by Mr. Henderson.

Sincerely,



G. Ryan Patrick

cc: Lou Vasquez, BUILD Inc.

August 5, 2017

San Francisco Board of Supervisors  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

**RE: One Oak Project — 1500-1540 Market Street (Case No. 2009.0159)**

Dear Supervisors,

I am a resident of Hayes Valley on Hayes Street writing to express my strong support for the One Oak project and related Oak Plaza improvements. I am extremely proud to endorse such a thoughtful, well-designed and civic-minded project. Few projects provide such a grand vision for positive transformation.

The Project implements the General Plan and the City's Vision Zero policy, creating a generous 16,000 sq. ft. public pedestrian plaza that will dramatically transform this important civic intersection and enhance public safety with slow-street improvements, widened sidewalks, generous public seating, new landscaping, abundant bike parking, and flexible performance space, along with improved access to the new Van Ness BRT and the existing MUNI Metro Station.

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In addition, BUILD will create a Community Facilities District that would fund \$300,000 per year, from One Oak residents, for maintenance, security and repairs of the Plaza for 100 years – a \$30 million gift to this long-neglected intersection.

In sum, BUILD's vision for this site represents a long overdue reinvestment at this crucial San Francisco intersection. We hope that the City moves expeditiously to uphold the Project approvals.

Sincerely,



Matthew Stewart  
340 Hayes St #208

cc: Lou Vasquez, BUILD Inc.

August 31, 2017

San Francisco Board of Supervisors  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

**RE: One Oak Project — 1500-1540 Market Street (Case No. 2009.0159)**

Dear Supervisors,

We are Residents of 100 Van Ness directly across from Hayes Valley writing to express our strong support for the One Oak project and related Oak Plaza improvements. We are extremely proud to endorse such a thoughtful, well-designed and civic-minded project. Few projects provide such a grand vision for positive transformation.

The Project implements the General Plan and the City's Vision Zero policy, creating a generous 16,000 sq. ft. public pedestrian plaza that will dramatically transform this important civic intersection and enhance public safety with slow-street improvements, widened sidewalks, generous public seating, new landscaping, abundant bike parking, and flexible performance space, along with improved access to the new Van Ness BRT and the existing MUNI Metro Station.

One Oak has earned the first Platinum GreenTrips Certification from Transform, only the 3<sup>rd</sup> project of 34 applicants to meet the requirements, and the only condominium project to do so. In addition, BUILD has voluntarily doubled the required Transportation Demand Management measures for the Project.

One Oak will pay nearly \$41 million in City Impact Fees (\$135,000 per unit), possibly the highest per unit contribution of any San Francisco project to date, including over \$26 million for affordable housing that will fund the creation of 72 to 102 BMR units at Octavia Parcels R, S & U, including 16 residences for homeless youth.

In addition, BUILD will create a Community Facilities District that would fund \$300,000 per year, from One Oak residents for maintenance, security and repairs of the Plaza for 100 years – a \$30 million gift to this long-neglected intersection.

In sum, BUILD's vision for this site represents a long overdue reinvestment at this crucial San Francisco intersection. We hope that the City moves expeditiously to uphold the Project approvals.

Sincerely,



Ariel Anaya & Jerica Lee

cc: Lou Vasquez, BUILD Inc.

August 30, 2017

San Francisco Board of Supervisors  
1 dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

**RE: One Oak Project – 1500-1540 Market Street (Case No. 2009.0159)**

Dear President Breed and Supervisors,

I am the owner of Bo's Flowers, a local florist shop that has been operating out of a kiosk on the One Oak site since 1984. You may recall that the Board approved Bo's Flowers as a Legacy Business in November 2016. Thank you so much for that honor.

I want to express my support of BUILD's One Oak Project. I have been in this neighborhood for over 30 years, and know firsthand how much the Market-Van Ness area needs to be improved. The One Oak project represents a long overdue investment in one of San Francisco's most prominent intersections, and I am excited by the prospect of being a part of its transformation.

I cannot tell you whether the appellant's claims that the City's data and methodologies are out of date are true, but I believe that the One Oak project will improve this corner in every possible way. It seems to me that the best way to reduce Uber & Lyft demand and swarming at One Oak would be to allow more parking, rather than reducing parking further.

I want to thank the One Oak project team for reaching out to me and thinking creatively and proactively about how to keep my business in the neighborhood by relocating to one of the Oak Plaza kiosks. I have many longstanding, regular customers and the prospect of being able to continue to operate my flower shop near my current location is very important to me. I am thrilled that I will be able to continue to operate my business with minimal interruption, and in much safer and comfortable surroundings. Having operated a successful business in a small-scale retail kiosk in this neighborhood for over three decades, I am confident that my business will continue to thrive in this location, where my current customers will be able to find me.

I strongly encourage the Board of Supervisors to uphold the One Oak project approvals, and allow the project to move forward without further delay. Please deny the unwarranted appeal.

Sincerely,



Bozena Idzkowski  
Bo's Flowers

cc: Steve Kuklin, BUILD Inc.  
Jared Press, Build Public

# LITTLE GEM

August 30, 2017

San Francisco Board of Supervisors  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

**RE: One Oak Project — 1500-1540 Market Street (Case No. 2009.0159)**

Dear Supervisors,

I am the owner of Little Gem restaurant in Hayes Valley, writing to express my support for the One Oak project and related Oak Plaza improvements. I am proud to endorse such a thoughtful, well-designed and civic-minded project.

The Project implements the General Plan and the City's Vision Zero policy, creating a generous 16,000 sq. ft. public pedestrian plaza that will, in my view, transform this important civic intersection and enhance public safety with slow-street improvements, widened sidewalks, generous public seating, new landscaping, abundant bike parking, and flexible performance space, along with improved access to the new Van Ness BRT and the existing MUNI Metro Station.

To my knowledge, One Oak has earned the first Platinum GreenTrips Certification from Transform, only the 3<sup>rd</sup> project of 34 applicants to meet the requirements, and the only condominium project to do so. In addition, BUILD has voluntarily doubled the required Transportation Demand Management measures for the Project.

I'm also told that BUILD will create a Community Facilities District that would fund \$300,000 per year, from One Oak residents, for maintenance, security and repairs of the Plaza for 100 years – a \$30 million gift to this long-neglected intersection.

In sum, BUILD's vision for this site represents a long overdue reinvestment at this crucial San Francisco intersection. We hope that the City moves expeditiously to uphold the Project approvals.

Sincerely,



Eric Lilavois  
Little Gem

cc: Lou Vasquez, BUILD Inc.

400 Grove  
San Francisco, CA 94102



August 1, 2017

San Francisco Board of Supervisors  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

RE: One Oak Project — 1500-1540 Market Street (Case No. 2009.0159)

Dear Supervisors,

I am the manager of the Blue Bottle Coffee in Hayes Valley writing to express my strong support for the One Oak project and related Oak Plaza improvements. I am extremely proud to endorse such a thoughtful, well-designed and civic-minded project. Few projects provide such a grand vision for positive transformation and could add so much to the Hayes Valley neighborhood.

The Project implements the General Plan and the City's Vision Zero policy, creating a generous 16,000 sq. ft. public pedestrian plaza that will dramatically transform this important civic intersection and enhance public safety with slow-street improvements, widened sidewalks, generous public seating, new landscaping, abundant bike parking, and flexible performance space, along with improved access to the new Van Ness BRT and the existing MUNI Metro Station.

One Oak has earned the first Platinum GreenTrips Certification from Transform, only the 3<sup>rd</sup> project of 34 applicants to meet the requirements, and the only condominium project to do so. In addition, BUILD has voluntarily doubled the required Transportation Demand Management measures for the Project.

One Oak will pay nearly \$41 million in City Impact Fees (\$135,000 per unit), possibly the highest per unit contribution of any San Francisco project to date, including over \$26 million for affordable housing that will fund the creation of 72 to 102 BMR units at Octavia Parcels R, S & U, including 16 residences for homeless youth.

In addition, BUILD will create a Community Facilities District that would fund \$300,000 per year, from One Oak residents, for maintenance, security and repairs of the Plaza for 100 years – a \$30 million gift to this long-neglected intersection.

In sum, BUILD's vision for this site represents a long overdue reinvestment at this crucial San Francisco intersection. We hope that the City moves expeditiously to uphold the Project approvals.

Sincerely,

Vanessa Mowell  
Blue Bottle Coffee

August 22, 2017

San Francisco Board of Supervisors  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

**RE: One Oak Project — 1500-1540 Market Street (Case No. 2009.0159)**

Dear Planning Commissioners,

I am a Business Owner of MMclay in Hayes Valley, writing to express my strong support for the One Oak project and related Oak Plaza improvements. I am extremely proud to endorse such a thoughtful, well-designed and civic-minded project. Few projects provide such a grand vision for positive transformation.

The Project implements the General Plan and the City's Vision Zero policy, creating a generous 16,000 sq. ft. public pedestrian plaza that will dramatically transform this important civic intersection and enhance public safety with slow-street improvements, widened sidewalks, generous public seating, new landscaping, abundant bike parking, and flexible performance space, along with improved access to the new Van Ness BRT and the existing MUNI Metro Station.

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In addition, BUILD will create a Community Facilities District that would fund \$300,000 per year, from One Oak residents, for maintenance, security and repairs of the Plaza for 100 years – a \$30 million gift to this long-neglected intersection.

In sum, BUILD's vision for this site represents a long overdue reinvestment at this crucial San Francisco intersection. We hope that the City moves expeditiously to uphold the Project approvals.

Sincerely,

Mary Mar Keenan  
Owner/Designer  
MMclay

cc: Lou Vasquez, BUILD Inc.

**George McNabb  
1400 Van Ness Avenue  
San Francisco, CA 94109**

August 7, 2017

San Francisco Board of Supervisors  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

**RE: One Oak Project — 1500-1540 Market Street (Case No. 2009.0159)**

Dear Planning Commissioners,

I am a Business Owner in Hayes Valley/Market Street area and a member of the Hayes Valley Neighborhood Association (HVNA). I am writing to express my strong support for the One Oak project and related Oak Plaza improvements. I am extremely proud to endorse such a thoughtful, well-designed and civic-minded project. Few projects provide such a grand vision for positive transformation.

The Project implements the General Plan and the City's Vision Zero policy, creating a generous 16,000 sq. ft. public pedestrian plaza that will dramatically transform this important civic intersection and enhance public safety with slow-street improvements, widened sidewalks, generous public seating, new landscaping, abundant bike parking, and flexible performance space, along with improved access to the new Van Ness BRT and the existing MUNI Metro Station.

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In addition, BUILD will create a Community Facilities District that would fund \$300,000 per year, from One Oak residents, for maintenance, security and repairs of the Plaza for 100 years – a \$30 million gift to this long-neglected intersection.

In sum, BUILD's vision for this site represents a long overdue reinvestment at this crucial San Francisco intersection. We hope that the City moves expeditiously to uphold the Project approvals.

Sincerely,

  
George McNabb

cc: Lou Vasquez, BUILD Inc.

August 01, 2017

San Francisco Board of Supervisors  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

**RE: One Oak Project — 1500-1540 Market Street (Case No. 2009.0159)**

Dear Supervisors,

I am a 30-year resident of San Francisco and a business owner in the City as well. My architecture firm, which focuses on housing -- both market rate and affordable -- is located in Hayes Valley; just a few blocks away from the proposed One Oak Project.

I am writing to express my very strong support for the One Oak project and its related Oak Plaza improvements. This is an extremely well designed, civic-minded project. Few development initiatives provide such a grand vision for positive transformation. I won't go into the extensive list of benefits this project provides and the numerous innovations of its design, as I'm confident this is well covered by others.

I commute by walking to work -- 3 miles from my apartment in the Richmond District -- and I am generally very sympathetic to Mr. Henderson's and Ms. Hestor's desire to see less -- even zero -- parking in new housing developments.

However, high-rise condominium developments are very unique typologies and it is extremely difficult, nigh impossible, for banks to loan on such projects with radically reduced parking. The good news is that we've seen increasing ability to find competitive financing on projects with reduced (or even no) parking for lower-rise projects, but it's still a step-by-step process of continual incremental/patient improvement in this regard.

It is in this context that we need to appreciate the fact that One Oak does, in fact, represent a significant advancement in "parking reduction" for high-rise residential development. As opposed to the nearby NEMA residential high-rise, which has a total 550 underground parking spaces at a ratio 0.76:1, One Oak has only 136 spaces at a greatly reduced ratio of 0.45:1. To date, this is the lowest parking ratio of any high-rise condo proposal in SF.

This site has sat fallow for far too many years; with developers struggling to make it work and, finally, after years and years of hard effort, BUILD appears to have pulled it all together. BUILD has done so much very right with this project and it would be a shame to cripple or scuttle it on this one issue alone. That would be a tragic example of an impatient "perfect" being the inflexible enemy of the "good" -- and the One Oak project is a good project -- a very good project. We shouldn't let this "parking issue" derail it or even delay it a moment further.

In sum, BUILD's vision for this site represents a long overdue reinvestment at this crucial San Francisco intersection. I hope that you will move expeditiously to uphold One Oak's Project Approvals -- intact.

Sincerely,



Mark Macy  
Principal  
Macy Architecture

cc: Lou Vasquez, BUILD Inc.

**M A C Y  
A R C H  
I T E C  
T U R E**



HOWARD PROPERTIES  
355 HAYES STREET  
SAN FRANCISCO  
CALIFORNIA 94102  
T: 415.546.0696

July 31 , 2017

San Francisco Board of Supervisors  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

**RE: One Oak Project — 1500-1540 Market Street (Case No. 2009.0159)**

Dear Planning Commissioners,

I am a Principal at Howard Properties in Hayes Valley writing to express my strong support for the One Oak project and related Oak Plaza improvements. I am extremely proud to endorse such a thoughtful, well-designed and civic-minded project. Few projects provide such a grand vision for positive transformation.

The Project implements the General Plan and the City's Vision Zero policy, creating a generous 16,000 sq. ft. public pedestrian plaza that will dramatically transform this important civic intersection and enhance public safety with slow-street improvements, widened sidewalks, generous public seating, new landscaping, abundant bike parking, and flexible performance space, along with improved access to the new Van Ness BRT and the existing MUNI Metro Station.

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In sum, BUILD's vision for this site represents a long overdue reinvestment at this crucial San Francisco intersection. We hope that the City moves expeditiously to uphold the Project approvals.

Sincerely,



Benjamin Friend  
Howard Properties

cc: Lou Vasquez, BUILD Inc.



July 14, 2017

**VIA E-MAIL AND FEDEX**

Supervisor London Breed  
President, San Francisco Board of Supervisors  
City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102-4689

Re: One Oak Street Project (Case No. 2009.0159E)

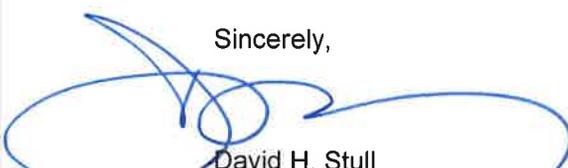
Dear Supervisor Breed:

On behalf of the San Francisco Conservatory of Music, I am writing join many of the other neighborhood cultural organizations and community groups in support of the One Oak Street project. Our main campus at 50 Oak Street is located across the street from the project site and will benefit from its development, including the activation of Oak Plaza as a first class public space. The project is beautifully designed and Oak Plaza will soon become an essential community space and hub of the neighborhood.

SFCM appreciates the steps that Build has taken to work with the cultural organizations in the Civic Center neighborhood. Build has designed a project that integrates with and supports a key site in this great area of the City. We look forward to continuing this productive relationship with Build.

We urge the Board of Supervisors to approve the amendments to the General Plan and Zoning Map proposed by Build to allow for the efficient and productive development of the One Oak Street project.

Sincerely,



David H. Stull  
President, San Francisco Conservatory of Music

cc: Sandra Lee Fewer, Board of Supervisors  
Mark Farrell, Board of Supervisors  
Aaron Peskin, Board of Supervisors  
Kathy Tang, Board of Supervisors  
Jane Kim, Board of Supervisors  
Norman Yee, Board of Supervisors  
Jeff Sheehy, Board of Supervisors  
Hillary Ronen, Board of Supervisors  
Malia Cohen, Board of Supervisors  
Ahsha Safai, Board of Supervisors  
Pamela Duffy, Coblenz Patch Duffy & Bass LLP  
John Clawson, Equity Community Builders  
Michael Yarne, Build, Inc.

June 13, 2017

Tina Chang & Lily Langlois  
San Francisco Planning Department  
1650 Mission Street, Suite 400  
San Francisco, CA 94103

**RE: Support for One Oak Tower, Oak Plaza & Adequate Parking**

Dear Ms. Chang & Ms. Langlois,

On behalf of SFJAZZ, I want to express our strong support for BUILD's proposed One Oak residential tower and the associated In-Kind Fee Waiver Agreement to develop Oak Plaza. We are located just a block and a half away and our staff, musicians, and patrons will benefit from the creation of a new public open space that will celebrate and promote the neighborhood as a cultural arts district.

Oak Plaza will promote the numerous performing arts institutions in the neighborhood, including SFJAZZ. Our staff are enthusiastic about the potential of using the plaza for performances, particularly our SFJAZZ High School All-Star Ensembles. The new arts plaza, micro-retail kiosks, and ground floor café/restaurant at One Oak will dramatically enhance public life and safety at one of the most important but, currently, least inviting public intersections in our City.

Equally important, we urge the Planning Commission to support the maximum amount of underground parking permitted at One Oak, which we understand is one space for every two dwelling units, or 150 parking spaces. As local surface lots disappear, parking supply has grown scarce and is a challenge for us and other cultural institutions that depend on regional visitors, many from Marin and the Peninsula where transit connections are poor.

Again, we support BUILD's vision to transform one of San Francisco's most prominent intersections with a beautifully designed project that will benefit the neighborhood, as well as the city at large. We encourage the Planning Commission to approve BUILD's project and the associated In-Kind Fee Waiver Agreement.

Sincerely,

Randall Kline  
Founder and Executive Artistic Director

cc: Steve Kuklin, Sr. Development Manager, Build Inc.  
Jared Press, Program Manager, Build Public



United Brotherhood of Carpenters  
and Joiners of America  
LOCAL UNION NO. 22

June 6, 2017

President Rich Hillis and Members of the  
San Francisco Planning Commission  
1660 Mission Street. Ground Floor  
San Francisco, CA 94103

**RE: One Oak Project — 1500-1540 Market Street, Case #2009.0159**

Dear President Hillis and Members of the San Francisco Planning Commission,

I am writing on behalf of the over 3300 members of Carpenters Local Union No. 22 to express our strong support for the One Oak Project and related Oak Plaza In-Kind Agreement. We are proud to be partners in such a well-designed and thoughtful project.

BUILD is a San Francisco based development company that has committed to using a union signatory general contractor and to employ Carpenters Union members in the construction of this project. This commitment will ensure the creation of hundreds of union construction jobs with livable wages and full benefits. It will also create a viable career path for local workers to enter into the Carpenters Union Apprenticeship Program.

Oak Plaza will dramatically enhance public safety and access to the new Van Ness BRT and the existing MUNI Metro Station. To make this vision a reality, we support BUILD's In-Kind Fee Waiver request.

We also support the Project's Conditional Use request for a 0.45 parking ratio which would be the lowest parking ratio ever proposed for a high-rise residential condo tower. In addition, BUILD has offered to double the project's TDM requirements as part of their CU request and limit the ratio to 0.25 if they end up building the project as a rental. Equally important, the project is removing 66 existing surface parking spaces, which means the project is only adding a total of 70 net new (underground) parking spaces to the neighborhood, for a net new ratio of 0.23. For these reasons along with the Project Sponsor's willingness to compromise, we urge the Planning Commission to support this project

In sum, BUILD's vision for this site represents a long overdue reinvestment at this crucial San Francisco intersection. We hope that the City moves expeditiously to approve the project.

Sincerely,

Todd Williams  
Senior Field Representative

cc: cc: John Rahaim, Director of Planning

**From:** [Andrew J Oliphant](#)  
**To:** [Lew, Lisa \(BOS\)](#)  
**Subject:** RE: letter of support OneOak development appeal  
**Date:** Thursday, August 31, 2017 5:00:32 PM  
**Attachments:** [AppealOneOak\\_SupportLetterOliphant.pdf](#)

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Sorry attached this time

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**From:** Andrew J Oliphant  
**Sent:** Thursday, August 31, 2017 5:00 PM  
**To:** 'lisa.lew@sfgov.org' <lisa.lew@sfgov.org>  
**Subject:** RE: letter of support OneOak development appeal

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**From:** Andrew J Oliphant  
**Sent:** Thursday, August 31, 2017 4:59 PM  
**To:** 'mailto:lisa.lew@sfgov.org' <<mailto:lisa.lew@sfgov.org>>  
**Subject:** letter of support OneOak development appeal

Dear Ms. Liu,

Please find attached a letter of support for the appeal of the One Oak development EIR.

Yours sincerely, Andrew Oliphant

August 31, 2017

Board President London Breed and Members of the Board of Supervisors  
c/o Clerk of the Board of Supervisors  
#1 Dr. Carlton B. Goodlett Place City Hall, Room #244 San Francisco, CA 94102-4689

**Re: Board of Supervisors September 5, 2017 Meeting Agenda Item: Appeal of California Environmental Quality Act (CEQA) Certification of Final Environmental Impact Report – One Oak Street**

Dear President Breed and Members of the Board,

I am writing in support of the above mentioned appeal. I teach and conduct research in urban micrometeorology at San Francisco State University, have lived in San Francisco for 15 years, and make 90% of trips in the city by bicycle. I am writing because I am concerned by the wind impact analysis and the potential impacts of wind on cycling by the proposed development.

The report discusses the possibility of downwash events from exposed building sidewalls and the resulting turbulence from vertical shear, which is accurate. However, it neglects to mention horizontal shear and acceleration around building sides from flow splitting. Downwash is more likely to impact the windward northwestern side of the building. Given the shape and orientation of the building relative to prevailing winds, this horizontal shear is more likely to be the key driver of the wind exceedances found at points 12, 13 and 72. In this case it is likely that acceleration in this area will also occur to the areas immediately adjacent (N and S), especially on the road side to the south away from the frictional effect of the building. This is a busy bike lane with riders typically riding into the wind, yet no mention is made of the obvious implications for the exceedances found next to the bike lane.

Adding wind barriers to prevent down-washing air from impacting pedestrians will not absorb the wind energy but rather transfer it. Although this was not assessed in the wind tunnel study either, theoretically the wind would be deflected into the street immediately adjacent to the wind barriers. This would create additional acceleration and shear-driven turbulence in the street near the curb, precisely where bicyclists ride.

The report states,

“Bicycles – A project would have a significant effect on the environment if it would create potentially hazardous conditions for bicyclists or otherwise substantially interfere with bicycle accessibility to the site and adjoining areas.”

and

“Bicycle conditions were assessed qualitatively as they relate to the project site, including bicycle routes, safety and right-of-way issues, and conflicts with traffic.”

Yet the wind studies suggest the building could create potentially hazardous conditions for bicyclists and wind impacts on cyclists could easily have been quantitatively explored, explicitly through reconfigured test points. I believe this shows bicycle impacts were incompletely studied, despite showing wind exceedances at three points adjacent to a busy bike lane, which suggests that wind impacts from the development could be significant for bicycling.

Yours sincerely,

A handwritten signature in black ink, appearing to read "A. Oliphant". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Andrew Oliphant  
1767 Grove Street  
San Francisco, CA 94117

**From:** [Jiro](#)  
**To:** [Lew, Lisa \(BOS\)](#); [Jiro](#)  
**Subject:** One Oak  
**Date:** Thursday, August 31, 2017 4:51:43 PM

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3739 17<sup>th</sup> St  
San Francisco  
94117  
August 31, 2017

Dear Folks,

I am writing to urge the studying of the impact of 1 Oak on the Market street corridor. Currently every day more than 5000 people on bicycles traverse Market street from Van Ness east. Most of those people on bicycles will have to stop at a traffic light and start again between Van Ness and Ninth Street.

Bicycles are highly unstable at slow speeds. At slow speeds people on bicycles are much less stable than people walking. The gusting winds documented by the study of wind impact on pedestrians will affect the people on bikes much more severely.

The winds will cause folks to veer uncontrollably or fall from their bicycles. Given the proximity of many other people on bikes, automobile traffic, curbs, streetcar tracks and potholes, it is extremely likely that there will be injuries and perhaps deaths resulting from these wind blasts at the street level.

It is the established goal of the City and County of San Francisco to promote walking and bicycling as means of everyday transportation. Allowing 1 Oak to affect Market Street in such a detrimental way will reduce the number of people walking and bicycling. Wind blast is very unpleasant. Let's not allow it to be dangerous.

Thank you,

Jiro Yamamoto

**From:** [Board of Supervisors, \(BOS\)](#)  
**To:** [BOS-Supervisors: Jalipa, Brent \(BOS\); Lew, Lisa \(BOS\)](#)  
**Subject:** FW: Appeal of the Certification of the Final Environmental Impact Report for One Oak Street (1500–1540 Market Street), Motion 19938, Case No. 2009.0159E  
**Date:** Thursday, August 31, 2017 11:37:38 AM  
**Attachments:** [One Oak EIR appeal.pdf](#)

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**From:** tesw@aol.com [mailto:tesw@aol.com]  
**Sent:** Thursday, August 31, 2017 11:10 AM  
**To:** Breed, London (BOS) <london.breed@sfgov.org>; Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>  
**Subject:** Appeal of the Certification of the Final Environmental Impact Report for One Oak Street (1500–1540 Market Street), Motion 19938, Case No. 2009.0159E

See attached letter, pasted in below.

# D5 Action

August 30, 2017

To: London Breed, President, and Members of the San Francisco Board of Supervisors

Cc: Angela Calvillo, Clerk of the Board of Supervisors

From: Tes Welborn, D5 Action Coordinator

Re: Appeal of the Certification of the Final Environmental Impact Report for One Oak Street (1500–1540 Market Street), Motion 19938, Case No. 2009.0159E

Dear President Breed and Supervisors,

D5 Action urges you to uphold Jason Henderson's appeal against the certification by the Planning Commission of the Environmental Impact Report for the proposed One Oak Street Project.

The EIR fails to adequately analyze a number of areas that will have major impacts on San Francisco residents and visitors on this major intersection of Market Street and Van Ness Avenue. The EIR would also set precedent not only for the HUB area and its projected up to 10,000 new residents, but for all of San Francisco.

## INADEQUATE ANALYSIS OF WIND IMPACTS

The analysis of wind impacts in the DEIR entirely ignores the effects of the project and any proposed mitigation measures on key groups such as seniors, people with disabilities and cyclists. Indeed, the wind effects are projected to be so severe as to endanger small adults and children.

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Response WI-2 in the Final EIR discounts any need to specifically analyze the specific effect on seniors, people with disabilities or cyclists, and asserts that the original analysis was sufficient. This omission means that we have no real understanding of the actual hazard that the project will cause for cyclists using the city's busiest bike-commuting route, which runs along Market Street right next to the development, and is used by 2,500+ commuters daily, many of them residents of the Haight Ashbury.

The City has a policy of encouraging bicycle ridership: witness the vast number of Ford Bike Share installations and new and proposed dedicated bike lanes. I have personally observed many tourists using bicycles around the city. These visitors, along with residents, would be put at risk without a proper wind analysis – which this EIR lacks.

We are disturbed to see that the summarized wind study results on page 4.D.18 indicate that the project will create wind exceeding the hazard criteria for even able-bodied people at test point 57 (in the western crosswalk across Market Street at Van Ness Avenue. This is a heavily-used pedestrian crosswalk near multiple transit stops across the city's major artery. Where a project causes a wind speed rated as a hazard, this is deemed a significant impact under CEQA. The San Francisco Planning Code Section 148 stipulates that "No exception

shall be granted and no building or addition shall be permitted that causes equivalent wind speeds to reach or exceed the hazard level of 26 miles per hour for a single hour of the year.” The project clearly causes winds to reach hazard level at test point 57 where they do not do so currently. The EIR also creates a bogus interpretation of San Francisco Planning Code, “no net increase,” that must be corrected.

For these reasons, the EIR inadequately analyses the additional hazard created by the development and must be rejected by the Board of Supervisors.

### INADEQUATE ANALYSIS OF VMT

The EIR’s approach to analysis of per capita vehicle miles traveled (VMT) relies on several mistaken assumptions.

The development analyzed in the EIR provides 0.50 parking spaces per unit, rather than the 0.25 spaces per unit specified by the Market and Octavia Plan. The developers have clearly stated that they need a ratio of 0.44–0.50 spaces per unit in order to achieve their desired profitability. San Francisco’s Planning Department should be looking at the needs of San Francisco first, not that of developers. And over 200% of goals for market-rate, or luxury housing, has been met for years to come. San Francisco’s goal for low and moderate income housing stands about 20%. The Planning Department should be advocating for the production of low and moderate income housing by all means possible, including city financing.

The buyers of these luxury condominiums, when these units are occupied, will be using private vehicles and TNC vehicles, based on the experience of other luxury developments.

Despite this, the VMT analysis makes excessive assumptions about future residents’ likely use of public transit. In reality, given the Planning Commission’s perverse decision to grant conditional use authorization for 0.50 parking spaces per unit, the VMT assumptions in the EIR cannot be justified and the analysis must be reworked.

More broadly, the San Francisco Planning Department’s approach to VMT analysis under CEQA is fundamentally flawed because it relies on comparing development-estimated VMT to the regional average for the nine Bay Area counties. The existing density of San Francisco and availability of transit imply that almost any new development in San Francisco can be shown to have lower VMT than the average for an area that includes counties such as Solano, Sonoma and Santa Clara. As implemented by the Planning Department it is virtually impossible for a development in San Francisco to be rated as causing a significant transportation impact based on VMT. This interpretation sets a major precedent.

The Planning Department’s decision on how to adopt statewide guidance from the California Office of Planning and Research is entirely arbitrary and does not reflect the principles of CEQA. It is hard to imagine how any project in San Francisco could be found to create a significant traffic-based impact when compared to a VMT per capita level based on a vast region of California. This would set a terrible precedent in a city already overwhelmed by automobile traffic. Incorrectly, the EIR assumes that this unusual interpretation holds true and for this reason the EIR is not adequate.

The EIR Traffic Analysis should have assessed the project’s impact based on San Francisco VMT figures and not purely regional VMT.

- The EIR Traffic Analysis should be reworked to assess the net impact of the project on VMT within the study area.
- The analysis should account for the reasonably foreseeable high rate of commuting trips by private vehicle from the project site to and from the Peninsula and South Bay.
- The analysis should include a more comprehensive examination of traffic flow and the impact of

vehicle trips to and from the project site on nearby transit, bike, car, and pedestrian traffic. This is compatible with the state's revised traffic analysis guidelines, as any disruption to the many busy commuter routes is likely to cause significant environmental impact.

#### INADEQUATE ANALYSIS OF TRAFFIC AND SAFETY IMPACTS DUE TO TNCS AND DELIVERIES

The EIR's traffic analysis is based on the *2002 Transportation Impact Analysis Guidelines for Environmental Review*, which are essentially a minor revision of the original 1991 guidelines, **based on 1990 data**. It makes no substantive attempt to account for the changes since 1990 in the type and level of traffic flow along the city's two primary arteries that would be generated by the residents of a 310-unit luxury condominium building.

Any reasonable person would recognize substantial differences between traffic flows between 1990 and 2017 caused by factors such as:

- The massive boom in transportation network companies (TNCs) such as Uber and Lyft. Their impact on traffic has been ignored in this EIR.
- The huge growth in online commerce and related rise in package deliveries. Many of these deliveries would be performed by a wide range of delivery companies. Based on current practices, many if not most residential deliveries are attempted between 3pm and 7pm, which is the peak of evening commuter traffic. Despite the loading zone on Oak Street, these deliveries will cause a significant impact on traffic along Market Street and Van Ness Avenue. However, the EIR fails to analyze this.
- Double-parking caused by the many deliveries, and by visitors. It is to be expected that the 600+ residents of a 310-unit luxury building are likely to place an above-average number of deliveries of food, goods, and services. These deliveries will regularly result in drivers parking illegally and double parking along Market and Van Ness, thereby blocking bikes, transit and other private vehicles, and creating hazards for pedestrians. Despite the potential of illegally parked delivery vehicles to imperil pedestrians and cyclists and to create frequent gridlock, none of this is analyzed in the EIR.

D5 Action seeks correction and proper mitigation for One Oak's EIR. We do favor the analyzed alternate of 100% rental housing. We ask the Board of Supervisors to uphold this appeal, invalidate the Planning Commission's certification, and direct them to revise the EIR to address these serious issues.

Cordially,



Teresa M. Welborn

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Cordially,

Teresa M. Welborn

**From:** [Smokey Bear](#)  
**To:** [Lew, Lisa \(BOS\)](#)  
**Subject:** One Oak Appeal support  
**Date:** Thursday, August 31, 2017 10:53:27 AM

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Dear Ms. Lew,

I am writing to express support for the appeal of the One Oak project. I live at Opera Plaza (Van Ness and Golden Gate) and One Oak will have a direct impact on me. I think that the EIR was certified without really evaluating the traffic impacts. I expect a large development at One Oak, and I am NOT AT ALL opposed to developing the site. Van Ness and Market is one of the best intersections in the City to develop with large buildings - because it's served by transit.

My opposition to One Oak is this: I've been waiting my entire life to ride fast, reliable transit in San Francisco. I don't drive. I have never owned a car. I can vouch that living at Van Ness and Market without driving is not just possible, it's the only sane option. And I am very concerned that so much induced automobile traffic at One Oak will ruin the Van Ness BRT, which I am excited to see happening, and render it useless. And then, after a LIFETIME, 5 decades, of waiting for better MUNI, better MUNI will turn out to be a pipe dream - again. How awful.

Anna Sojourner  
601 Van Ness Ave., Apt 852  
SF 94102

**From:** [gushernandez1](#)  
**To:** [Lew, Lisa \(BOS\)](#)  
**Subject:** Support for Appeal of One Oak  
**Date:** Thursday, August 31, 2017 8:01:09 AM

---

Dear San Francisco Board of Supervisors,

Affordable Divis supports the appeal of One Oak and supports the request to require the project to meet the parking requirements of the Market Octavia Better Neighborhoods Plan.

The Market Octavia Plan is the result of years of community input and was created with a neighborhood-centric approach to planning, like Affordable Divis' own Divisadero Community Plan. The Market Octavia Plan sets low parking ratios to encourage use of existing Muni stations and bus lines.

Instead of following the Better Neighborhoods Plan, this project is proposing to add to congestion and pollution by encouraging automobile use and ownership. This will not create a better neighborhood.

Please support the appeal to reduce the environmental impact of this project:

- Set the parking ratio of One Oak to 0.25:1 as required by Planning Code, Market and Octavia Better Neighborhoods Plan.
- Restrict parking valet operation on weekdays to discourage driving to work.
- Direct Planning to analyze current transportation demand.
- Require an independent study to analyze the relationship between providing parking, housing affordability, and the feasibility of new housing.

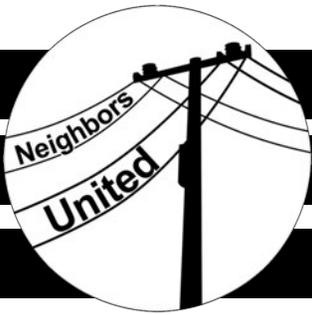
Thank you,

Gus Hernandez  
Chair  
Affordable Divis

**From:** [Neighbors United](#)  
**To:** [Jalipa, Brent \(BOS\)](#)  
**Subject:** Support of the appeal of One Oak  
**Date:** Thursday, August 31, 2017 12:01:49 AM  
**Attachments:** [Neighbors United Letter in Support One Oak Appeal.pdf](#)

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Hi Brent,  
Please submit the attached letter from Neighbors United for consideration for Tuesday's hearing on the appeal of the project at One Oak.  
Thank you so much,  
Jennifer Snyder  
Coordinator, Neighbors United



**August 31, 2017**

**Via Email: Brent Jalipa, Legislative Clerk,  
brent.jalipa@sfgov.org**

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

Dear President Breed and Supervisors:

I write on behalf of Neighbors United to express our support for Jason Henderson's appeal of the proposed development project at One Oak. We appreciate Mr. Henderson's leadership on the important issues raised in his appeal.

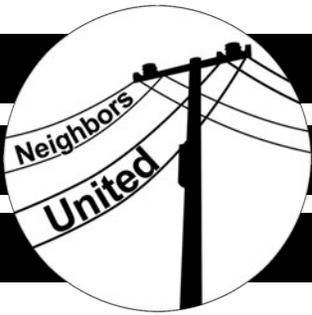
Neighbors United is a progressive organizing group with roots in District 5. We work to build solidarity among neighbors, stop the corporate takeover of our neighborhoods, address crucial housing and transportation needs, and hold political leaders accountable to their constituents.

We are deeply disturbed by the City's ongoing tendency to give away development rights without regard to the impact on our communities or the needs, particularly the affordable housing needs, of residents. In this letter, we highlight the specific reasons that this CEQA appeal should be granted.

Build Inc. proposes to build a 40-story tower with 304 market-rate condominiums and 136 underground valet parking spaces at the intersection of Van Ness, Market, and Oak Streets. The Market and Octavia Better Neighborhoods Plan permits 73 parking spaces at the site. Planning approved a near-doubling of parking to 136 spaces. Planning did not adequately study the transit impacts of this project (explained further below) and the impacts will ripple through District 5 and beyond.

This project tests whether the city will be a rubber stamp for massive developments or engage in a full analysis of the impacts of this kind of development, particularly on public transit, pedestrians, and cyclists.

We will not repeat many of the detailed and cogent arguments raised in the appellant's brief. We believe the appeal should be upheld for the following three reasons:



1- The commission doubled the parking<sup>1</sup> despite community objections. "Transit-oriented developments" such as One Oak have been granted greater density because of their central location, so it makes no sense to add more cars there. Yet the city refused to do a detailed study of traffic and parking impacts on Muni. We are particularly concerned that nine bus lines -- including the 6 and 7 -- pass this already congested intersection. These lines will likely grind to a halt, a possibility that is at least worthy of study, and CEQA requires nothing less.

2- The project will create wind tunnels that endanger thousands of cyclists who commute on Market. City officials refused to examine the hazard to cyclists. Ignoring a problem doesn't solve it. This is particularly problematic along Market & Van Ness which is increasingly becoming a wind tunnel already -- an issue that will be exacerbated by this project.

3- The city fails to analyze how TNCs (Uber/Lyft) and e-commerce deliveries will add to existing traffic gridlock in the area. The project won't mitigate these impacts, even as traffic congestion in the heart of the city continues to worsen. We are stunned by the use of outdated information and the disregard of the serious congestion and MUNI interference that will result from this project, and the failure to study and mitigate these impacts. Planning even admits that "it is difficult if not impossible to know the TNC impacts." Challenging though it may be, it cannot simply be ignored, especially as tens of thousands of these vehicles are on the streets and interfering with MUNI and other forms of transportation.

SF residents are tired of developers dropping giant, luxury buildings into our neighborhoods without concern for the people who live here. Developers who will earn millions on such projects can surely afford to meet the needs of our communities with regards to affordability, transit, and the environment.

We are pleased to join with the Hayes Valley Neighborhood Association, the Haight Ashbury Neighborhood Council, Affordable Divis, the Sierra Club, and the San Francisco Tenants Union to urge you to support this appeal.

Thank you for your consideration of these comments.

Sincerely,

Jen Snyder, Coordinator, Neighbors United

and Neighbors United Steering Committee in Full.

<sup>1</sup> The affordability of the project is already woefully inadequate. Not only does the project include zero units of affordable housing onsite, but by doubling the parking, the project will be even less affordable. The developer admits that if they include less parking, it would cause them to eliminate high-end amenities and offer rental housing instead of condos.

**From:** [Jennifer Fieber](#)  
**To:** [Jalipa, Brent \(BOS\)](#)  
**Subject:** One Oak Appeal - Letter of support for public packet  
**Date:** Wednesday, August 30, 2017 12:48:01 PM  
**Attachments:** [One Oak Letter.doc](#)

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Dear Legislative Clerk,

Please include our support of the One Oak project and pass to be passed on to the BOS.

Thanks,

Jennifer Fieber

S A N • F R A N C I S C O  
T E N A N T S • U N I O N

558 Capp Street • San Francisco CA • 94110 • (415)282-6543 • [www.sftu.org](http://www.sftu.org)

Aug 21, 2017

RE: Support of One Oak Appeal

Dear Members of the Board of Supervisors:

I write in support of the appeal of One Oak Development and want to echo the concerns against allowing increased parking as a luxury amenity as well the lack of real study on public transit and bicycling.

One Oak lies in one of the most transit rich corners. As a current resident of Bernal Heights, where my only public bus option is a 10 minute walk and scheduled every 20 minutes (and as a former resident of transit-utopia New York City), I am quite jealous of the transit options that One Oak residents will have. I would never own a car if I was fortunate enough to live there.

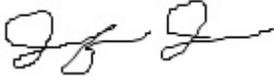
Luxury parking makes housing within more expensive. One Oak's sales prices will put this housing way out of reach for most current residents. One Oak's developer admit that without additional parking allowances they would choose to create more rental housing which we desperately need. This means more **on-site housing** rather than tenants waiting for in-lieu of fees to maybe one-day turn into rental stock.

San Francisco should be a model of smart, transit-oriented planning for a global warming-concerned future. The latest One Oak plans instead sends the message that we allow for the convenience of a wealthy few, rather than the benefit of the many with planning sensitive to ecological transit goals. One condo owner's Lexus parking spot is apparently more important than their contribution to gridlock for everyone else as that owner circles complicated one-way blocks to get into the parking garage.

The city also refused to study the wind effects of this building for bicyclists before approving. As a bicyclist myself, I often experience the terrifying cyclone at the intersection of Polk and Hayes when I am tossed around like a rag doll trying to remain in the bike lane. To ignore the effects of wind and bicyclist safety on a street with speeding cars rushing through arterial streets, is frankly irresponsible. Again, the city needs to do more to protect current residents than appease developers of luxury condos and their wealthy clientele.

Existing at sea level, let's make San Francisco a bellwether of sensitive, equitable planning.  
Ignoring problems or study doesn't make the problems go away.

I thank you for your time,

A handwritten signature in black ink, appearing to read 'J. Fieber', with a long horizontal flourish extending to the right.

Jennifer Fieber  
Political Campaign Director

**From:** [Rupert Clayton](#)  
**To:** [Jalipa, Brent \(BOS\)](#); [Calvillo, Angela \(BOS\)](#)  
**Subject:** HANC submission in support of appeal of One Oak EIR (Case No. 2009.0159E, for hearing September 5, 2017)  
**Date:** Tuesday, August 29, 2017 3:27:42 PM  
**Attachments:** [HANC One Oak appeal letter 2017.08.29.pdf](#)

---

Dear Angela Calvillo and Brent Jalipa,

Please find attached a letter from the Haight Ashbury Neighborhood Council in support of the appeal against certification of the EIR for the One Oak Street development (Case No. 2009.0159E) that will be heard by the board on September 5, 2017. Please include this letter in the briefing packet for the supervisors and all parties, and as part of the public record in this case.

I would be grateful if you would confirm receipt of this letter via email.

Kind regards,

Rupert Clayton  
Land Use Chair, Haight Ashbury Neighborhood Council  
[415.786.9941](tel:415.786.9941)

# HAIGHT ASHBURY NEIGHBORHOOD COUNCIL

August 29, 2017

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To: London Breed, President, and  
Members of the San Francisco Board of Supervisors  
1 Dr. Carlton B. Goodlett Place  
City Hall, Room 244  
San Francisco, CA 94102-4689

Cc: Angela Calvillo, Clerk of the Board of Supervisors

From: Rupert Clayton  
Housing and Land Use Chair  
Haight Ashbury Neighborhood Council  
landuse@hanc-sf.org

Re: Appeal of the Certification of the Final Environmental Impact Report for  
One Oak Street (1500–1540 Market Street), Motion 19938, Case No.  
2009.0159E

Dear President Breed and Supervisors,

The Haight Ashbury Neighborhood Council urges you to uphold Jason Henderson's appeal against the certification by the Planning Commission of the Environmental Impact Report for the proposed One Oak Street Project.

The EIR fails to adequately analyze several areas that will have a significant impact on San Francisco residents and the environment we share, and its certification must therefore be reversed in order that these deficiencies can be addressed. **We lay out the primary CEQA deficiencies below, but would also like to make clear that revising the EIR provides a great opportunity for the developer to amend the current luxury housing project to better address San Francisco's need for moderate-income housing.**

## INADEQUATE ANALYSIS OF WIND IMPACTS

As HANC noted in our January 9, 2017 comments on the draft EIR (DEIR) "the analysis of wind impacts in the DEIR entirely ignores the effects of the project and any proposed mitigation measures on key groups such as seniors, people with disabilities and cyclists. For this reason, the DEIR is inadequate in its current form."

Response WI-2 in the Final EIR discounts any need to specifically analyze the specific effect on seniors, people with disabilities or cyclists, and asserts that the original analysis was sufficient. **This omission means that we have no understanding of the actual hazard that the project will cause for cyclists using the city's busiest bike-commuting route**, which runs along Market Street right next to the development, and is used by 2,500+ commuters daily, many of them residents of the Haight Ashbury.

The site's location at Market and Van Ness means that the effect of increased wind on cyclists is particularly important to study. However, **neither Section 4.C nor Section 4.D of the EIR provides any analysis of the effect of wind on cyclists**, such as the increased risk of cyclists being blown into vehicle traffic, or the potential reduction in bike usage due to people avoiding increasingly frequent street-level winds.

Neither do we have any analysis of the actual hazard to elderly or disabled pedestrians crossing Market Street or Van Ness Avenue, despite the fact that the project's own wind analysis shows that it increases the frequency of hazardous wind in these locations. The project is located these two major transit arteries, is within three blocks of City Hall and is close to many city offices and arts venues. For these reasons, the surrounding sidewalks and streets are used regularly by many people with limited mobility. Again, this group includes many Haight Ashbury residents. Despite this setting, **Section 4.D of the EIR contains no analysis of the effect of increased wind on seniors and disabled people.**

HANC was particularly alarmed to see that the summarized wind study results on page 4.D.18 indicate that the project will create wind exceeding the hazard criteria for even able-bodied people at test point 57 (in the western crosswalk across Market Street at Van Ness Avenue. This is a heavily used pedestrian crosswalk near multiple transit stops across the city's major artery. Where a project causes a wind speed rated as a hazard this is deemed a significant impact under CEQA, and the San Francisco Planning Code Section 148 stipulates that "No exception shall be granted and no building or addition shall be permitted that causes equivalent wind speeds to reach or exceed the hazard level of 26 miles per hour for a single hour of the year." The project clearly causes winds to reach hazard level at test point 57 where they do not do so currently. **For this reason, the EIR inadequately analyses the additional hazard created by the development and must be amended to find the wind impact to be significant.**

The EIR states that the project results in "no net increases in the number of test points that would exceed the hazard criteria" [4.D.17] and uses this "no net increase" criterion to conclude that "the proposed project would not alter wind in a manner that substantially affects public areas." By inventing this "net increase" standard, the EIR wrongly interprets SF Planning Code Section 148 as exempting projects that create hazard-level winds in some places and reduce them in others. This interpretation would allow any developer to create new wind hazards and offset them by choosing sufficient testing points in areas where wind is reduced. This is plainly not the intent of either CEQA or the San Francisco Planning Code.

**The current wind analysis is therefore deficient in many respects and it is the duty of the Board of Supervisors to reject certification of the EIR.**

#### INADEQUATE ANALYSIS OF VMT

The EIR's approach to analysis of per capita vehicle miles traveled (VMT) relies on several mistaken assumptions.

The development analyzed in the EIR provides 0.50 parking spaces per unit, rather than the 0.25 spaces per unit specified by the Market and Octavia Plan, and the developers have clearly stated that they seek a ratio of 0.44–0.50 spaces per unit in order to command sufficiently high sale prices to achieve their desired profitability. Essentially, we are looking at a development of largely luxury apartments where around half of the 310 units will have access to private vehicles and a great deal of residents' remaining travel will be via TNC vehicles (essentially another single-occupancy auto transport mode in most cases).

Despite this, the VMT analysis makes excessive assumptions about future residents' likely use of public transit. Were the development to be restricted to 0.25 parking spaces per unit or less, and were it to include a significant portion of on-site inclusionary units, then it would be reasonable to forecast significant transit use at such a well-

served intersection. In reality, given the Planning Commission's perverse decision to grant conditional use authorization for 0.50 parking spaces per unit, **the VMT assumptions in the EIR cannot be justified and the analysis must be reworked.**

More broadly, the San Francisco Planning Department's approach to VMT analysis under CEQA is fundamentally flawed because it relies on comparing development-estimated VMT to the regional average for the nine Bay Area counties. The existing density of San Francisco and availability of transit imply that almost any new development in San Francisco can be shown to have lower VMT than the average for an area that includes counties such as Solano, Sonoma and Santa Clara. As implemented by the Planning Department it is virtually impossible for a development in San Francisco to be rated as causing a significant transportation impact based on VMT, even if future occupants are projected to have significantly worse per-capita VMT scores than the city average, and even if the congestion and transit delays caused by the development significantly increase greenhouse gas emissions overall.

The Planning Department's decision on how to adopt statewide guidance from the California Office of Planning and Research is entirely arbitrary and does not reflect the principles of CEQA. The OPR guidelines were amended at a late stage so that "a project that generates greater than 85 percent of regional per capita VMT, but less than 85 percent of city-wide per capita VMT, would still be considered to have a less than significant transportation impact". [OPR Revised Proposal for Implementing SB 743, page III:23] The intent is clear that this change is to avoid penalizing projects that incrementally improve VMT outside of metropolitan centers.

There is no indication that OPR intended to favor the converse interpretation: that a project has a less than significant transportation impact if it exceeds 85 percent of city-wide per capita VMT so long as it generates less than 85 percent of regional per capita VMT. Indeed, if this converse interpretation were to be adopted (in which per capita VMT for San Francisco becomes irrelevant), it is hard to imagine how any project in San Francisco could be found to create a significant traffic-based impact when compared to a VMT per capita level based on a region that stretches from Cloverdale and Vacaville to Gilroy. **Incorrectly, the EIR assumes that this converse interpretation holds true and for this reason the EIR is not adequate.** [EIR page 4.C.35 note 23]

The EIR Traffic Analysis should have assessed the project's impact based on San Francisco VMT figures and not purely regional VMT. It is important that new projects contribute to San Francisco's positive effect on regional VMT, rather than promote a regression to the mean. To this end:

- The EIR Traffic Analysis should be reworked to assess the net impact of the project on VMT within the study area.
- The analysis should account for the reasonably foreseeable high rate of commuting trips by private vehicle from the project site to and from the Peninsula and South Bay.
- The analysis should include a more comprehensive examination of traffic flow and the impact of vehicle trips to and from the project site on nearby transit, bike and car traffic. This is compatible with the state's revised traffic analysis guidelines, as any disruption to the many busy commuter routes is likely to cause significant environmental impact.

#### INADEQUATE ANALYSIS OF TRAFFIC AND SAFETY IMPACTS DUE TO TNCs AND E-COMMERCE DELIVERIES

The EIR's traffic analysis is based on the *2002 Transportation Impact Analysis Guidelines for Environmental Review*, which are essentially a minor revision of the original 1991 guidelines, based on 1990 data. It makes no substantive attempt to account for the changes since 1990 in the type and level of traffic flow along the city's two primary arteries that would be generated by the residents of a 310-unit luxury condominium building. Any reasonable person would recognize substantial differences between traffic flows between 1990 and 2017 caused by factors such as:

- The advent and massive boom in transportation network companies (TNCs) such as Uber and Lyft. **The DEIR made no mention of TNCs whatsoever, and the Final EIR simply states that TNC traffic is not analyzed.**

- The huge growth in e-commerce and concomitant rise in package deliveries to rental addresses. It would be reasonable to assume that each weekday 80%+ of these luxury units would generate at least one delivery, and that many units would have multiple deliveries. These deliveries would be performed by a wide range of shipping companies. Because One Oak would be a residential address, it is likely that most deliveries will be attempted between 3pm and 7pm, during the peak of evening commuter traffic. Even if the building has a loading zone on Oak Street, **any reasonable person would foresee these deliveries causing a significant impact on traffic along Market Street and Van Ness Avenue. However, the EIR fails to analyze this.**
- Double-parking caused by the many other deliveries. It is to be expected that the 600+ residents of a 310-unit luxury building are likely to place an above-average number of orders for every other type of deliverable item and service, from takeaway meals to dry cleaning. Each one of these deliveries will require a separate contractor to visit One Oak, and many of these will have no knowledge of whatever provision is made for delivery drop-offs on Oak Street. Consequently, these deliveries will regularly result in drivers parking illegally along Market Street and Van Ness Avenue, thereby blocking bikes, transit and other private vehicles. **Despite the potential of illegally parked delivery vehicles to imperil pedestrians and cyclists and to create frequent gridlock, none of this is analyzed in the EIR.**

**The use of 26-year-old data and methods to analyze the traffic impacts of a luxury-apartment building at the intersection of the busiest streets in the nation's second-most-densely populated city is a clear indication of the inadequacy of this EIR and why certification must be rejected by the board.**

To be clear, in pointing out these areas where the EIR fails to adequately analyze the project's environmental impacts, HANC is not seeking to prevent redevelopment of this site. We merely want to ensure that the potential impacts of the development under CEQA are properly analyzed so that the city's elected and appointed decision-makers can act in full knowledge of the consequences to our environment.

We urge the board to uphold this appeal, invalidate the Planning Commission's certification of the EIR and direct that the report be revised to address the failings we have raised.

Sincerely,



Rupert Clayton  
HANC Housing and Land Use Chair

**From:** [Jason M Henderson](#)  
**To:** [gailbaugh40@gmail.com](mailto:gailbaugh40@gmail.com); [Jalipa, Brent \(BOS\)](#)  
**Subject:** HVNA Letter on One Oak - Revised  
**Date:** Tuesday, August 29, 2017 1:24:35 PM  
**Attachments:** [2017 HVNA One Oak EIR appeal.doc](#)

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Gail

Thanks for pulling this letter together. I have made some revisions to align the language and vocabulary with the planning department. There are many more details that could be added, but you touch on the main points and this should be sufficient to show support from HVNA.

When you send to the Clerk of the Board Jalipa, Brent (BOS) <[brent.jalipa@sfgov.org](mailto:brent.jalipa@sfgov.org)> please cc me or bcc me.

thank you!

-jh

--

Jason Henderson  
San Francisco CA  
94102



The HAYES VALLEY Neighborhood Association | HVNA

August 28, 2017

London Breed, President, and San Francisco Board of Supervisors  
 1 Dr. Carlton B. Goodlett Place  
 City Hall, Room 244  
 San Francisco, CA 94102-4689

Cc: Angela Calvillo, Clerk of the Board of Supervisors

**Re: Appeal of the Certification of Final Environmental Impact Report for One Oak Street**

Dear President Breed and the Supervisors,

The Hayes Valley Neighborhood Association **supports the appeal** of the Certification of the One Oak EIR. Our board of directors met and discussed the issues documented in letters addressed to the Planning Department and Planning Commission on January 5 2017 (DEIR Public Comment) and May 26 2017 (June 15 Commission Hearing). The concerns raised in those letters were not satisfactorily addressed in the Response to comments and we reiterate them briefly here:

1. **Wind impacts on bicyclists are not studied.** The EIR does not inform the public about potential wind hazards to cyclists and potential mitigations. The Response to Comments are dismissive and cavalier about cycling and wind hazards. With thousands of new cyclists encouraged to use Market Street, the city is not doing due diligence.
2. **Traffic flow to Oak from Van Ness is not adequately understood in the EIR.** Unregulated for-hire car service is adding to congestion throughout the city but especially in the Northeast section, and even more so in the Van Ness Corridor. The EIR does not consider the volume of TNC's and taxis that may inundate Oak Street from Van Ness. It may also contribute to congestion on Van Ness. The City needs adequate data to understand these impacts and to understand how to mitigate.
3. **Traffic flow management for residents' cars, in the loading/queueing curbside adjacent to the entrance to the building is unclear.** TNCs and e-commerce deliveries will be using the same space that cars queuing for the valet will use. That will lead to localized congestion and potential hazards to pedestrians using Oak Street.
4. **The VMT threshold used should fit the site.** Our city is 7 x 7 miles, yet the VMT threshold used in the EIR is 14.6 per capita daily VMT. 14.6 miles is a significant increase over the 3.5 daily per capita VMT of the One Oak area. The standards should fit the site, and the city should revise how it analysis VMT to reflect this.

5. **Cumulative impacts on Oak.** The EIR did not adequately study traffic flow, commercial deliveries, events, and keeping pedestrians safe in the Oak Plaza within Oak Street. Activity for the new high rise now under construction (1554 Market St), events at the Conservatory of Music, and further planned development coming to Oak and Franklin have not been studied for their impact on this planned Plaza at the entrance to Oak Street from Van Ness. The proposed 10 South Van Ness project and its wind, TNC, and e-commerce delivery impacts must also be part of the cumulative impacts analysis

HVNA believes that the criteria used to analyze the environmental impact for this area is outdated and does not address existing concerns not mentioned in the EIR criteria used to assess the environmental impact of this development. We support dense development within the Market/Octavia Better Neighborhood Plan. We support a mix of affordable and market rate housing at this dense location so this new community of 15,000-20,000 new residents can live and work in our city. But the impact of this dense development must recognize the impacts facing our citizens.

Sincerely,

Gail Baugh  
President, Hayes Valley Neighborhood Assn  
[Gailbaugh40@gmail.com](mailto:Gailbaugh40@gmail.com) 415-265-0546

**From:** [Theresa Flandrich](#)  
**To:** [Jalipa Brent \(BOS\)](#)  
**Subject:** Planning Case # 2009.0159E 1500-1540 Market Street  
**Date:** Tuesday, August 29, 2017 12:29:45 PM  
**Attachments:** [One Oak Street Project Letter.doc](#)

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Please find One Oak Street project appeal support letter, as an attachment here.

Thank you kindly,

--

Theresa Flandrich  
theresa@sdaction.org



1360 Mission St., Suite 400  
San Francisco, CA 94103  
415-546-1333  
www.sdaction.org

San Francisco Board of Supervisors

Re: One Oak Street Project Appeal

Dear Supervisors,

This letter is in regards to the One Oak Street Project. Senior and Disability Action advocates for seniors and people with disabilities and works to make San Francisco inclusive to all. We have issues in regard to the proposed development that we would like to bring to your attention.

The effects of wind:

With the construction of the proposed building, the winds that will hit the intersection of Market and Van Ness will kick up something fierce. Another possible development replacing the Goodwill building, and others heading for the pipeline nearby, will only add to this wind force. The project is planning to provide awnings to shield sidewalk pedestrians. But what will happen to pedestrians who are negotiating the busy streets with nothing to hold on to? For seniors and disabled people with mobility issues—many of whom negotiate this area to shop, utilize public transit, cabs, para-transit etc., the wind can spell disaster. Falls are a leading cause of fatalities and serious injuries among older Americans. Many seniors are frail and vulnerable to heavy winds. One of our organization members was recently injured due to a fall caused by heavy wind gusts. She spent 2 weeks in the hospital with an injured knee. In addition to seniors and people with disabilities, cyclists and children will also be put at risk. This issue must be part of the discussion and addressed.

Displacement issues:

The proposed development is sure to have impacts of displacement, as has been shown in other neighborhoods in the city such as the Mission and South of Market. Funds that are owed the city, since low income units will not be included in this development, should go towards very low income units nearby. This might help make available units for current area residents, as they are hit by the wave of displacement that will surely come. Please also ensure that some units should be affordable to people with disabilities and seniors who live on SSI or Social Security, at a mere \$900 or so each month.

It is our hope that you will seriously consider these issues. These are of great concern to the senior and disability communities and the greater community. Please take action to protect and serve these communities.

Sincerely,

A handwritten signature in blue ink that reads "Jessica Lehman". The signature is fluid and cursive.

Jessica Lehman  
Executive Director

**From:** [Howard Strassner](#)  
**To:** [Jalipa Brent \(BOS\)](#)  
**Subject:** One oak appeal  
**Date:** Tuesday, August 29, 2017 8:28:25 AM  
**Attachments:** [one oak appeal2.doc](#)

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This is the Sierra Club appeal support letter. I also sent the letter directly to the Clerk.

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Muni needs a lot of work to get better. The blog <http://bettermuni.wordpress.com/> offers some suggestions for some first steps.



## **SAN FRANCISCO GROUP**

2120 Clement Street, Apt 10, SF CA 94121

August 21, 2017

Angela Calvillo, Clerk of the Board  
Board of Supervisors  
City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

Re: Appeal of the Certification of the Final Environmental Impact Report for One Oak Street Motion 19938, Case No. 2009.0159E

Dear Ms. Calvillo,

The Sierra Club supports the appeal of the subject EIR based on several neglected factors. This project is proposed for one of the most transit-rich, bikeable, and walkable parts of San Francisco. However, the EIR failed to consider the impact of several aspects of the project on the operation of transit, the flow of bicycle commuters nearby, and the degradation to air quality and contribution to greenhouse gas emissions of the vehicle miles traveled (VMT) that the project will generate in combination with nearby projects and others citywide and regionally.

One, the EIR did not evaluate the potential for the project to generate increased VMT from transportation network company (TNC) vehicles and the impact of those vehicles to congestion, degraded air quality, and the operation of nearby Muni lines. An increase in VMT would be counter to San Francisco's own Transit-First Policy and to the City's efforts to comply with SB 375 and AB 32.

Two, the EIR did not consider the transformation in shopping at brick and mortar stores to shopping online and the probability that the completed project will generate additional VMT from delivery vehicles.

Three, the EIR did not consider wind impacts to bicyclists traveling on the Market Street bicycle lanes. Currently, 1,200 bicyclists ride past the One Oak site between 4 and 6 p.m. on weekdays. There is already a wind tunnel at Polk and Market Street. The proposed building is likely to extend that wind tunnel, but the EIR includes no evaluation of wind impacts to bicyclists and therefore no mitigations for wind impacts to bicyclists.

Four, the EIR inappropriately used 85% of the regional per capita level of VMT, 14.6 miles per day, as the threshold of significance for the corner of Van Ness and Market streets. Since the

VMT in this neighborhood is only 3-4 miles per day it was assumed that increasing the VMT would have no significant impact and so no further analysis was required. However, the Planning Department acknowledges that the regional VMT threshold of significance used by the department is only an advisory recommendation, and not mandated or required by state law. Therefore, the EIR for the project should have studied the large proportional impacts that the new car trips to and from this project will have on pedestrians, bicyclists, and transit in the immediate area and on the city.

Five, the EIR failed to consider the local and regional impact of allowing the project to provide double the amount of allowable parking – and the associated increase in VMT, congestion, and greenhouse gas emissions that parking will generate – in the context of other nearby projects and the VMT that they will generate, and projects throughout the city and region and the VMT and greenhouse gases that will be generated cumulatively.

Six, the EIR did not take into consideration increased VMT and congestion caused by an increase in the number of technology company shuttle buses that may service the project inhabitants. The EIR did not evaluate the probability of increased local and highway congestion and the increases to greenhouse gas emissions, especially from the practice of deadheading (driving one way without passengers during the morning and evening commutes) caused by these vehicles. The Sierra Club supports a project with affordable rental housing for individuals and families that commute and work in San Francisco as opposed to a project that feeds into the reverse commute pattern – one in which people live in San Francisco and rely on a system of private diesel buses to take them to and from work – adding to congested city and regional roads, with associated increases in greenhouse gas emissions.

San Francisco must take climate change seriously. The Sierra Club adds that this project is precedent setting and needs to be held to the absolutely highest environmental standards. This project EIR must mitigate wind impacts to bicyclists, it must embrace the City's Transit-First Policy, it must take seriously the link between affordable housing in transit rich neighborhoods and decreased VMT, and it must deal with the combination impacts of parking, TNC's and delivery vehicles resulting in more VMT and greenhouse gas emissions.

Thank you for your consideration,

Howard Strassner, Member SF Group Executive Committee  
ruthow1@gmail.com

Susan Vaughan, Vice-chair SF Group  
selizabethvaughan@gmail.com

**From:** [Marlayne Morgan](#)  
**To:** [Jalipa Brent \(BOS\)](#)  
**Subject:** Letter from VNCNC on One Oak  
**Date:** Tuesday, August 29, 2017 8:16:49 AM  
**Attachments:** [VNCNC OneOak2.docx](#)

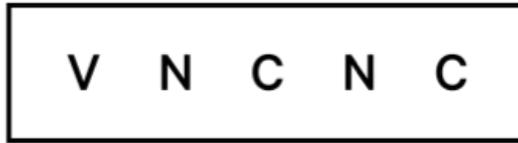
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Hi Brent-

Here is our position on the One Oak project.

Best,

Maralyne Morgan  
VanNess Corridor Neighborhoods Coalition



V A N N E S S C O R R I D O R N E I G H B O R H O O D S C O U N C I L

August 24, 2017

President London Breed

San Francisco Board of Supervisors

**Re: Proposed Tower at One Oak**

Dear President Breed:

The **Van Ness Corridor Neighborhoods Council** urges you to reverse the Planning Commission's approval of additional on-site parking for this residential housing project. Additional parking counters the reason for locating denser and more affordable housing along central transit corridors like VanNess Avenue. One Oak has already been granted greater density because of this policy, although allowing garage parking makes new housing less affordable and negatively impacts transportation in this area.

City officials studied and mitigated wind impacts on pedestrians, but refused to examine the danger to cyclists, who will experience dangerous wind tunnel impacts. At the same time, the city refused to do a detailed study of traffic impacts on MUNI, saying the project fit within regional average levels of driving. Ride-hailing services and e-commerce deliveries swarming One Oak will also add to existing traffic gridlock in the area, but again, the city refused to study the issue. Willful ignorance means the project won't mitigate these impacts, even as traffic congestion in the heart of the second densest city in the country worsens.

Allowing One Oak exceed parking limits in the densest, most transit-friendly part of San Francisco sets a precedent that will increase traffic gridlock. This project is the first in a series of "transit-oriented developments" along the Van Ness corridor, and if One Oak is allowed more parking spots, the cumulative impact of every new project adding additional parking will negate the gains anticipated by increased use of transit on this vital corridor.

Marlayne Morgan/S

Jim Warshell/S

Co-Chairs, VanNess Corridor Neighborhoods Council

**VNCNC Member Organizations**

Cathedral Hill Neighbors Association

Golden Gate Valley Neighborhood Association

Hayes Valley Neighborhood Association

Lower Polk Neighbors

Middle Polk Neighborhood Association

Pacific Avenue Neighbors

Pacific Heights Residents Association

Russian Hill Community Association

Russian Hill Neighbors

Western SoMa Voice

File No. 170812  
BOS - 11, 1 page

August 28, 2017

San Francisco Board of Supervisors  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

**RE: One Oak Project — 1500-1540 Market Street (Case No. 2009.0159)**

Dear Supervisors,

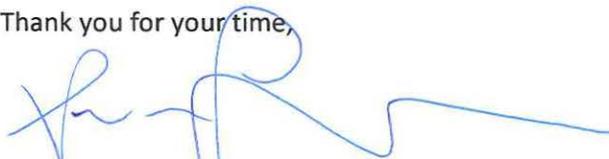
As a resident of 100 Van Ness, just across the street from the subject proposed project, I'm writing to express my strong support for the One Oak project and related Oak Plaza improvements. I am eager to see such a well-designed and civic-minded project join the neighborhood, which is obviously in a state of transformation for the better.

Personally, I am most excited by the pedestrian plaza; the area is in desperate need of a place for the burgeoning community to congregate besides Civic Center Plaza, which is often (and rightfully) the site of more purposeful gatherings for various political actions. I think the plaza at One Oak will provide a fitting venue for casual pedestrian activity off the primary nexus of our City, in an area currently only hospitable to automobiles (if it can be said to be hospitable to anything). It will be a great boon to public safety, with improved lighting & visibility, improved sidewalks, bountiful public seating, bike parking, and flexible performance space, along with improved access to the new Van Ness BRT and the existing MUNI Metro Station. I believe that the developer also intends to create a Community Facilities District that would fund \$300,000 per year, from One Oak residents, for maintenance, security and repairs of the Plaza for 100 years. That is a pretty good free-bee for this much needed public amenity.

I believe the project's contributions of some \$40 million in Impact Fees will be a great contribution to mitigating the housing crisis that has enveloped our beloved, native City. Frankly, the market-rate units themselves, even if expensive, will also do their part to help ease the housing crisis; that is, I am eager for people richer than me to have some place to go, if only to prevent them from competing with me on Craigslist. (Personally, I don't think anybody wants that.)

I hope that the City dismisses this frivolous appeal, and proves that our government is not beholden to the vulgar NIMBY passion which has done so much to create the housing crisis we all suffer. It is my view that the One Oak appeal hearing is as good a moment as any to demonstrate the proper role of a deliberative body who with true disinterest weighs the broadest needs of our citizenry, and renders judgement of how to best accommodate our growing community.

Thank you for your time,



Alex Ludlum  
Resident at: 100 Van Ness Ave #1506, SF, CA 94102

cc: Steve Kuklin, BUILD Inc.

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2017 AUG 29 AM 8:12  
BY [Signature]

**From:** [Board of Supervisors, \(BOS\)](#)  
**To:** [BOS-Supervisors](#); [Jalipa, Brent \(BOS\)](#); [Lew, Lisa \(BOS\)](#); [Major, Erica \(BOS\)](#)  
**Subject:** FW: One Oak Appeal  
**Date:** Wednesday, August 23, 2017 11:26:31 AM  
**Attachments:** [one oak appeal2.doc](#)

---

**From:** Howard Strassner [mailto:ruthow1@gmail.com]  
**Sent:** Tuesday, August 22, 2017 11:18 AM  
**To:** Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>  
**Subject:** One Oak Appeal

## Support letter from the Sierra Club

--

Muni needs a lot of work to get better. The blog <http://bettermuni.wordpress.com/> offers some suggestions for some first steps.

BDS-11  
Leg Clerk  
LUC/PLK



August 02, 2017

San Francisco Board of Supervisors  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

**RE: One Oak Project — 1500-1540 Market Street (Case No. 2009.0159)**

Dear Planning Commissioners,

I am a Bay Area native and business owner located on Fell Street in San Francisco. I am writing to express my strong support for the One Oak project and related Oak Plaza improvements. I am extremely proud to endorse such a thoughtful, well-designed and civic-minded project. Few projects provide such a grand vision for positive transformation.

The Project implements the General Plan and the City's Vision Zero policy, creating a generous 16,000 sq. ft. public pedestrian plaza that will dramatically transform this important civic intersection and enhance public safety with slow-street improvements, widened sidewalks, generous public seating, new landscaping, abundant bike parking, and flexible performance space, along with improved access to the new Van Ness BRT and the existing MUNI Metro Station.

One Oak has earned the first Platinum GreenTrips Certification from Transform, only the 3<sup>rd</sup> project of 34 applicants to meet the requirements, and the only condominium project to do so. In addition, BUILD has voluntarily doubled the required Transportation Demand Management measures for the Project.

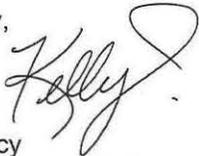
One Oak will pay nearly \$41 million in City Impact Fees (\$135,000 per unit), possibly the highest per unit contribution of any San Francisco project to date, including over \$26 million for affordable housing that will fund the creation of 72 to 102 BMR units at Octavia Parcels R, S & U, including 16 residences for homeless youth.

In addition, BUILD will create a Community Facilities District that would fund \$300,000 per year, from One Oak residents, for maintenance, security and repairs of the Plaza for 100 years – a \$30 million gift to this long-neglected intersection.

In sum, BUILD's vision for this site represents a long overdue reinvestment at this crucial San Francisco intersection. We hope that the City moves expeditiously to uphold the Project approvals.

As a developer, BUILD consistently puts the best interest of the city and community first in their plans. I urge the City to uphold the One Oak approvals and allow this beneficial development to go forward now.

Sincerely,



Kelly Macy  
Macy Office of Design

cc: Lou Vasquez, BUILD Inc.

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2017 AUG -4 PM 2:44  
BY [Signature]

BOS-11  
Leg clerk  
LC clerk



July 31, 2017

San Francisco Board of Supervisors  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

RE: One Oak Project – 1500-1540 Market Street (Case No. 2009.0159)

Dear Planning Commissioners,

I am a business owner in Hayes Valley writing to express my strong support for the One Oak project and related Oak Plaza improvements. I am extremely proud to endorse such a thoughtful, well-designed and civic-minded project. Few projects provide such a grand vision for positive transformation.

The Project implements the General Plan and the City's Vision Zero policy, creating a generous 16,000 sq. ft. public pedestrian plaza that will dramatically transform this important civic intersection and enhance public safety with slow-street improvements, widened sidewalks, generous public seating, new landscaping, abundant bike parking, and flexible performance space, along with improved access to the new Van Ness BRT and the existing MUNI Metro Station.

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BUILD's vision for this site represents a long overdue reinvestment at this crucial San Francisco intersection. We hope that the City moves expeditiously to uphold the Project approvals.

Sincerely,

Tazi, Hicham  
Principal and Creative Director  
415-299-9858 (mobile)  
Tazi Designs, Inc.  
333 Linden St. San Francisco, CA 94102  
Tel: 415-503-0013

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2017 AUG -4 PM 2:44

2017-11  
Leg Clerk  
LL Clerk



August 1, 2017

San Francisco Board of Supervisors  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

RECORDED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2017 AUG -4 PM 2:44  
SY

RE: One Oak Project – 1500-1540 Market Street (Case No. 2009.0159)

Dear Planning Commissioners,

I am the manager of the Blue Bottle Coffee in Hayes Valley writing to express my strong support for the One Oak project and related Oak Plaza improvements. I am extremely proud to endorse such a thoughtful, well-designed and civic-minded project. Few projects provide such a grand vision for positive transformation and could add so much to the Hayes Valley neighborhood.

The Project implements the General Plan and the City's Vision Zero policy, creating a generous 16,000 sq. ft. public pedestrian plaza that will dramatically transform this important civic intersection and enhance public safety with slow-street improvements, widened sidewalks, generous public seating, new landscaping, abundant bike parking, and flexible performance space, along with improved access to the new Van Ness BRT and the existing MUNI Metro Station.

One Oak has earned the first Platinum GreenTrips Certification from Transform, only the 3<sup>rd</sup> project of 34 applicants to meet the requirements, and the only condominium project to do so. In addition, BUILD has voluntarily doubled the required Transportation Demand Management measures for the Project.

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In addition, BUILD will create a Community Facilities District that would fund \$300,000 per year, from One Oak residents, for maintenance, security and repairs of the Plaza for 100 years – a \$30 million gift to this long-neglected intersection.

In sum, BUILD's vision for this site represents a long overdue reinvestment at this crucial San Francisco intersection. We hope that the City moves expeditiously to uphold the Project approvals.

Sincerely

Vanessa Mowell  
Blue Bottle Coffee

BOARD of SUPERVISORS



City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-5184  
Fax No. 554-5163  
TDD/TTY No. 554-5227

## NOTICE OF PUBLIC HEARING

### BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO

NOTICE IS HEREBY GIVEN THAT the Board of Supervisors of the City and County of San Francisco will hold a public hearing to consider the following appeal and said public hearing will be held as follows, at which time all interested parties may attend and be heard:

**Date:** Tuesday, September 5, 2017

**Time:** 3:00 p.m.

**Location:** Legislative Chamber, City Hall, Room 250  
1 Dr. Carlton B. Goodlett, Place, San Francisco, CA

**Subject:** File No. 170812. Hearing of persons interested in or objecting to the certification of a Final Environmental Impact Report for the proposed project at 1500-1540 Market Street (One Oak Street) identified in Planning Case No. 2009.0159E, certified by the Planning Commission through Motion No. 19938 dated June 15, 2017. (Appellant: Sue Hestor, on behalf of Jason Henderson) (Filed July 17, 2017)

In accordance with Administrative Code, Section 67.7-1, persons who are unable to attend the hearing on this matter may submit written comments prior to the time the hearing begins. These comments will be made as part of the official public record in this matter and shall be brought to the attention of the Board of Supervisors. Written comments should be addressed to Angela Calvillo, Clerk of the Board, City Hall, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA, 94102. Information relating to this matter is available in the Office of the Clerk of the Board and agenda information relating to this matter will be available for public review on Friday, September 1, 2017.

  
for Angela Calvillo  
Clerk of the Board

## Lew, Lisa (BOS)

---

**From:** BOS Legislation, (BOS)  
**Sent:** Tuesday, August 22, 2017 1:57 PM  
**To:** Sue Hestor (hestor@earthlink.net); Jhenders@sonic.net; steve@bldsf.com  
**Cc:** Givner, Jon (CAT); Stacy, Kate (CAT); Byrne, Marlena (CAT); Rahaim, John (CPC); Sanchez, Scott (CPC); Gibson, Lisa (CPC); Range, Jessica (CPC); Rodgers, AnMarie (CPC); Starr, Aaron (CPC); Livia, Diane (CPC); Ionin, Jonas (CPC); Perry, Andrew (CPC); BOS-Supervisors; BOS-Legislative Aides; Calvillo, Angela (BOS); Somera, Alisa (BOS); BOS Legislation, (BOS)  
**Subject:** HEARING NOTICE: Certification of a Final Environmental Impact Report Appeal - Proposed Project at 1500-1540 Market Street (One Oak Street) - Appeal Hearing on September 5, 2017  
**Categories:** 170812

Greetings,

The Office of the Clerk of the Board has scheduled an appeal hearing for Special Order before the Board of Supervisors on **September 5, 2017, at 3:00 p.m.**, to hear an appeal regarding the certification of a final environmental impact report for the proposed project at 1500-1540 Market Street (One Oak Street).

Please find the following link to the hearing notice for the matter:

[Notice of Public Hearing Notice - September 5, 2017](#)

I invite you to review the entire matter on our [Legislative Research Center](#) by following the link below:

[Board of Supervisors File No. 170812](#)

Thank you,

**Lisa Lew**  
Board of Supervisors  
San Francisco City Hall, Room 244  
San Francisco, CA 94102  
P 415-554-7718 | F 415-554-5163  
[lisa.lew@sfgov.org](mailto:lisa.lew@sfgov.org) | [www.sfbos.org](http://www.sfbos.org)



Click [here](#) to complete a Board of Supervisors Customer Service Satisfaction form

The [Legislative Research Center](#) provides 24-hour access to Board of Supervisors legislation, and archived matters since August 1998.

*Disclosures: Personal information that is provided in communications to the Board of Supervisors is subject to disclosure under the California Public Records Act and the San Francisco Sunshine Ordinance. Personal information provided will not be redacted. Members of the public are not required to provide personal identifying information when they communicate with the Board of Supervisors and its committees. All written or oral communications that members of the public submit to the Clerk's Office regarding pending legislation or hearings will be made available to all members of the public for inspection and copying. The Clerk's Office does not redact any information from these submissions. This means that personal information—including names, phone numbers, addresses and similar information that a member of the public elects to submit to the Board and its committees—may appear on the Board of Supervisors' website or in other public documents that members of the public may inspect or copy.*

## Jalipa, Brent (BOS)

---

**From:** BOS Legislation, (BOS)  
**To:** Gibson, Lisa (CPC); Calvillo, Angela (BOS)  
**Cc:** Somera, Alisa (BOS); Jason Henderson  
**Subject:** RE: One Oak Street Land Use hearing BEFORE EIR final

**From:** Sue Hestor [<mailto:hestor@earthlink.net>]  
**Sent:** Saturday, July 22, 2017 3:13 PM  
**To:** Gibson, Lisa (CPC) <[lisa.gibson@sfgov.org](mailto:lisa.gibson@sfgov.org)>; Calvillo, Angela (BOS) <[angela.calvillo@sfgov.org](mailto:angela.calvillo@sfgov.org)>  
**Cc:** Somera, Alisa (BOS) <[alisa.somera@sfgov.org](mailto:alisa.somera@sfgov.org)>; Jason Henderson <[jhenders@sonic.net](mailto:jhenderson@sonic.net)>  
**Subject:** One Oak Street Land Use hearing BEFORE EIR final

July 22, 2017

**TO:** LISA GIBSON, Environmental Review Officer  
ANGELA CALVILLO, Clerk of the Board of Supervisors

**FROM:** SUE HESTOR, Attorney

**RE:** PENDING ONE OAK STREET EIR APPEAL - EIR not final because of appeal

Monday's meeting 7/24/17 of BOS Land Use committee has 2 items listed on the One Oak Street Project -

#5 General Plan Amendments - 170750

#6 Planning Code Zoning Map Amendments - 170751

Last Monday 7/17/17 I filed an appeal of Planning Commission's certification of the One Oak EIR. It was submitted on behalf of Jason Henderson, an individual who had publicly commented at DEIR hearing, as well as submitted letters to Environmental Review and the Commission on One Oak EIR in conjunction with Hayes Valley Neighborhood Association.

The Planning Commission resolution was provided.

The written comments were provided.

Mr Henderson's appeal letter was provided setting out his actions in opposition, including giving oral testimony at the hearing. (Oral testimony is transcribed and set out in the FEIR.)

My own check for the appeal fee was provided to clerk, made out to the Planning Department.

In response to inquiries when I filed, I made it clear that appellant was not HVNA. Mr. Henderson had also testified as an individual.

Although I ran into a slight problem serving Ms. Gibson (2:37pm email submission of entire appeal came back "out of office" with referral to Jessica Range, who also had "out of office" reply, sent 3d time to Joy Navarrete - it did NOT bounce back), service was SAME DAY.

Planning Commission motions on both the General Plan Amendments and Planning Code Zoning Map Amendments, both rely on certification of the One Oak FEIR by Planning Commission.

The One Oak EIR certification has been appealed to the Board of Supervisors. It is not final at this point. When I filed appeal, I was informed that the earliest it will be heard is September 5, 2017.

The Board must follow California law, and San Francisco law implementing CEQA, and defer any hearing or action on both of the above matters until AFTER the EIR appeal is resolved.

If there is any doubt in this regard, please consult the City Attorney.

Sue Hestor

PLEASE PRINT OUT THIS EMAIL AND PLACE IN FILES OF BOTH BOARD ITEMS.

if there are any questions, please email me at [hestor@earthlink.net](mailto:hestor@earthlink.net)

BOARD of SUPERVISORS



City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-5184  
Fax No. 554-5163  
TDD/TTY No. 544-5227

**PROOF OF MAILING**

Legislative File No. 170812

Description of Items: Public Hearing Notices - Hearing - Appeal of Final Environmental Impact Report Certification - 1500-1540 Market Street (One Oak Street) - 47 Notices Mailed

I, Lisa Lew, an employee of the City and County of San Francisco, mailed the above described document(s) by depositing the sealed items with the United States Postal Service (USPS) with the postage fully prepaid as follows:

Date: August 22, 2017

Time: 12:11 p.m.

USPS Location: Repro Pick-up Box in the Clerk of the Board's Office (Rm 244)

Mailbox/Mailslot Pick-Up Times (if applicable): N/A

Signature: 

Instructions: Upon completion, original must be filed in the above referenced file.

BOARD of SUPERVISORS



City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-5184  
Fax No. 554-5163  
TDD/TTY No. 554-5227

July 27, 2017

**File Nos. 170812-170815**  
**Planning Case No. 2009.0159E**

Received from the Board of Supervisors Clerk's Office one check, in the amount of Five Hundred Seventy Eight Dollars (\$578) representing the filing fee paid by Sue Hestor, on behalf of Jason Henderson, for the appeal of the California Environmental Quality Act (CEQA) Certification of Final Environmental Impact Report for the proposed project at 1500-1540 Market Street (One Oak Street).

**Planning Department**  
**By:**

Tony  
Print Name

[Signature] 7/28/17  
Signature and Date

## Lew, Lisa (BOS)

---

**From:** BOS Legislation, (BOS)  
**Sent:** Monday, July 24, 2017 3:24 PM  
**To:** hestor@earthlink.net; Jhenders@sonic.net; steve@bldsf.com  
**Cc:** Givner, Jon (CAT); Stacy, Kate (CAT); Byrne, Marlina (CAT); Rahaim, John (CPC); Sanchez, Scott (CPC); Gibson, Lisa (CPC); Navarrete, Joy (CPC); Lynch, Laura (CPC); Starr, Aaron (CPC); Rodgers, AnMarie (CPC); Livia, Diane (CPC); Ionin, Jonas (CPC); BOS-Supervisors; BOS-Legislative Aides; Calvillo, Angela (BOS); Somera, Alisa (BOS); BOS Legislation, (BOS); Cooper, Rick (CPC)  
**Subject:** Appeal of CEQA Certification of Final Environmental Impact Report - 1500-1540 Market Street (One Oak Street) - Appeal Hearing on September 5, 2017  
**Categories:** 170812

Good afternoon,

The Office of the Clerk of the Board has scheduled a hearing for Special Order before the Board of Supervisors on **September 5, 2017, at 3:00 p.m.** Please find linked below a letter of appeal filed regarding the proposed project at 1500-1540 Market Street (One Oak Street), as well as direct links to the Planning Department's determination of timeliness for the appeal, and an informational letter from the Clerk of the Board.

[Appeal Letter - July 17, 2017](#)

[Planning Department Memo - July 24, 2017](#)

[Clerk of the Board Letter - July 24, 2017](#)

I invite you to review the entire matter on our [Legislative Research Center](#) by following the link below:

Board of Supervisors File No. [170812](#)

Thank you,

**Lisa Lew**  
Board of Supervisors  
San Francisco City Hall, Room 244  
San Francisco, CA 94102  
P 415-554-7718 | F 415-554-5163  
[lisa.lew@sfgov.org](mailto:lisa.lew@sfgov.org) | [www.sfbos.org](http://www.sfbos.org)



Click [here](#) to complete a Board of Supervisors Customer Service Satisfaction form

The [Legislative Research Center](#) provides 24-hour access to Board of Supervisors legislation, and archived matters since August 1998.

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BOARD of SUPERVISORS



City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-5184  
Fax No. 554-5163  
TDD/TTY No. 544-5227

July 24, 2017

Ms. Sue Hestor  
On behalf of Jason Henderson  
329 Highland Avenue  
San Francisco, CA 94110

**Subject: File No. 170812 - Appeal of California Environmental Quality Act (CEQA)  
Certification of Final Environmental Impact Report - 1500-1540 Market  
Street (One Oak Street)**

Dear Ms. Hestor:

The Office of the Clerk of the Board is in receipt of a memorandum dated July 24, 2017, from the Planning Department regarding their determination on the timeliness of your filing of appeal of the California Environmental Quality Act certification of the Final Environmental Impact Report for the proposed project at 1500-1540 Market Street (One Oak Street).

The Planning Department has determined that the appeal was filed in a timely manner.

The appeal filing period closed on Monday, July 17, 2017. Pursuant to Administrative Code, Section 31.16, a hearing date has been scheduled for **Tuesday, September 5, 2017, at 3:00 p.m.**, at the Board of Supervisors meeting to be held in City Hall, 1 Dr. Carlton B. Goodlett Place, Legislative Chamber, Room 250, San Francisco, CA 94102.

Please provide to the Clerk's Office by noon:

- 20 days prior to the hearing:** names and addresses of interested parties to be notified of the hearing, in spreadsheet format; and
- 11 days prior to the hearing:** any documentation which you may want available to the Board members prior to the hearing.

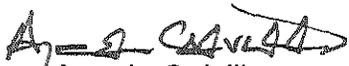
For the above, the Clerk's office requests one electronic file (sent to [bos.legislation@sfgov.org](mailto:bos.legislation@sfgov.org)) and two copies of the documentation for distribution.

Continues on next page

NOTE: If electronic versions of the documentation are not available, please submit 18 hard copies of the materials to the Clerk's Office for distribution. If you are unable to make the deadlines prescribed above, it is your responsibility to ensure that all parties receive copies of the materials.

If you have any questions, please feel free to contact Legislative Clerks Brent Jalipa at (415) 554-7712, or Lisa Lew at (415) 554-7718.

Very truly yours,

  
Angela Calvillo  
Clerk of the Board

- c: Steve Kuklin, Project Sponsor, Build Inc.
- Jon Givner, Deputy City Attorney
- Kate Stacy, Deputy City Attorney
- Marlena Byrne, Deputy City Attorney
- John Rahaim, Planning Director
- Scott Sanchez, Zoning Administrator, Planning Department
- Lisa Gibson, Environmental Review Officer, Planning Department
- Joy Navarrete, Environmental Planning, Planning Department
- Laura Lynch, Environmental Planning, Planning Department
- Aaron Starr, Manager of Legislative Affairs, Planning Department
- AnMarie Rodgers, Senior Policy Advisor, Planning Department
- Diane Livia, Staff Contact, Planning Department
- Jonas Ionin, Planning Commission Secretary, Planning Department

BOARD of SUPERVISORS



City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-5184  
Fax No. 554-5163  
TDD/TTY No. 544-5227

July 18, 2017

To: John Rahaim  
Planning Director

From:  Angela Calvillo  
Clerk of the Board of Supervisors

**Subject: Appeal of California Environmental Quality Act (CEQA) Certification of Final Environmental Impact Report - 1500-1540 Market Street (One Oak Street)**

An appeal of the CEQA Certification of a Final Environmental Impact Report for the 1500-1540 Market Street (One Oak Street) was filed with the Office of the Clerk of the Board on July 17, 2017, by Sue Hestor, on behalf of Jason Henderson.

Pursuant to Administrative Code, Chapter 31.16, I am forwarding this appeal, with attached documents, to the Planning Department to determine if the appeal has been filed in a timely manner. The Planning Department's determination should be made within three (3) working days of receipt of this request.

If you have any questions, please feel free to contact Legislative Clerks Brent Jalipa at (415) 554-7712, or Lisa Lew at (415) 554-7718.

c: Jon Givner, Deputy City Attorney  
Kate Stacy, Deputy City Attorney  
Marlena Byrne, Deputy City Attorney  
Scott Sanchez, Zoning Administrator, Planning Department  
Lisa Gibson, Environmental Review Officer, Planning Department  
Jessica Range, Acting Environmental Review Officer, Planning Department  
AnMarie Rodgers, Senior Policy Advisor, Planning Department  
Aaron Starr, Manager of Legislative Affairs, Planning Department  
Diane Livia, Staff Contact, Planning Department  
Jonas Ionin, Planning Commission Secretary, Planning Department

# Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp  
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor  inquiries"
- 5. City Attorney Request.
- 6. Call File No.  from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Question(s) submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

**Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.**

Sponsor(s):

Subject:

The text is listed:

Signature of Sponsoring Supervisor:

For Clerk's Use Only