



SAN FRANCISCO PLANNING DEPARTMENT

MEMO

Appeal of Planning Case No. 2011.1356E Central South of Market Area Plan

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DATE: September 10, 2018

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RE: BOS File No. 180651, Planning Department Case No. 2011.1356E –
 Appeal of the Certification of the Environmental Impact Report
 “EIR” for the Central South of Market Plan

HEARING DATE: September 11, 2018

PROJECT SPONSOR: San Francisco Planning Department and legislative sponsors
 Supervisor Kim and the Mayor’s Office

APPELLANT: Richard Drury on behalf of the Central SoMa Neighbors and SFBlu

INTRODUCTION:

This memorandum is a response (“Second Supplemental Appeal Response”) to a supplemental letter of appeal (“Supplemental Appeal Letter from Richard Drury”) dated August 31, 2018 submitted by the Appellant, Richard Drury on behalf of Central SoMa Neighbors and SFBlu, to the Board of Supervisors (the “Board”) regarding the Planning Commission’s certification of the Environmental Impact Report (“EIR”) for the Central South of Market (“Central SoMa”) Area Plan under the California Environmental Quality Act (“CEQA Determination”). Planning Department staff submitted an appeal response memorandum on July 9, 2018 (“Original Appeal Response”), addressing concerns raised in four appeal letters. A Supplemental Appeal Response addressing concerns raised in two supplemental appeal letters (one from Phillip Babich, on behalf of One Vassar LLC, filed on July 6, 2018, and one from John Elberling, on behalf of Yerba Buena Neighborhood Consortium dated July 25, 2018), were provided to the Board on August 29, 2018. The appellants’ appeal letters and the Planning Department’s (“Department’s”) Original Appeal Response and Supplemental Appeal Response are available in BOS file No. 180651.¹ This Second

¹ [San Francisco Board of Supervisors File No. 180651.](#)

**RECEIVED AFTER THE EIGHT-DAY DEADLINE,
BY NOON, PURSUANT TO ADMIN. CODE,
SECTION 31.16(b)(5)**
(Note: Pursuant to California Government Code, Section
85008(b)(2), information received at, or prior to, the public
hearing will be included as part of the official file.)

Supplemental Appeal Response addresses issues raised in the Supplemental Appeal Letter from Richard Drury dated August 31, 2018. The Department has prepared an EIR for the Central SoMa Plan in accordance with CEQA, as established under the Public Resources Code Section 21000 *et seq.*, the *CEQA Guidelines* (California Code of Regulations, Title 14, Section 15000 *et seq.*), and local CEQA procedures under Chapter 31 of the *San Francisco Administrative Code*. The purpose of the EIR is to disclose any potential impacts on the physical environment resulting from implementation of the proposed project, and allow time for public review and comment, before decision makers decide to approve or deny the project.

The decision before the Board is whether to uphold the Commission's certification that the EIR complies with the requirements of CEQA, the CEQA Guidelines, and Chapter 31 of the *San Francisco Administrative Code*.

PROJECT DESCRIPTION:

Please refer to the Department's Original Appeal Response, dated July 9, 2018, for a description of the Project.

APPELLANT'S ISSUES:

The Appellant expresses concern over the increased cancer risk that could result from implementation of the Central SoMa Plan and claims that the Central SoMa Plan EIR failed to require all feasible mitigation measures to reduce the Plan's air pollutant impact. The Appellant includes a letter from SWAPE that recommends modifications to various mitigation measures and new mitigation measures be incorporated into the EIR. Both letters are responded to below.

PLANNING DEPARTMENT RESPONSE:

This Second Supplemental Appeal Response addresses specific concerns identified in the Supplemental Appeal Letter from Richard Drury dated August 31, 2018.

Second Supplemental Response 1: The Central SoMa Plan EIR adequately evaluated the increased cancer resulting from the Plan in accordance with recommendations from the Bay Area Air Quality Management District.

CEQA Requirement

With regards to health risk, specifically increased cancer risk from exposure to air pollution, Appendix G of the CEQA Guidelines (Initial Study checklist) requires identification of whether a project would expose sensitive receptors to substantial pollutant concentrations².

Central SoMa Plan EIR Air Quality Analysis

The Central SoMa Plan's health risk analysis³ estimated increased cancer risk that would result from the Plan on a 20 meter by 20 meter receptor grid covering the entire plan area and one kilometer surrounding

² The Department fully addressed other CEQA concerns related to this issue in the Original Appeal Response for the Central SoMa Plan (dated July 9, 2018).

the Plan Area. The analysis includes estimated cancer risk for over 31,000⁴ receptor points, identifying the net change in cancer risks from Central SoMa Plan-generated traffic and street network changes based on the San Francisco Transportation Authority's San Francisco Chained Activity Modeling Process. The results of this analysis are incorporated into a geodatabase that includes existing cancer risk information from the City's Community Risk Reduction Plan health risk analysis.⁵ The Community Risk Reduction Plan health risk analysis was developed by the City (Planning and Public Health Departments) with technical assistance from the Bay Area Air Quality Management District ("air district"). The results of this analysis were reported in the EIR for the Central SoMa Plan. This analysis determined that the Plan, under existing plus plan conditions, would result in an increased cancer risk of 226 per one million persons exposed at the *maximally exposed individual sensitive receptor*.⁶ The maximally exposed individual sensitive receptor is the location where the Plan would result in the greatest impact. The impact at the remaining receptor points analyzed would be lower than reported for the maximally exposed individual sensitive receptor.

As described in the EIR, the vast majority of the Central SoMa Plan Area is located within San Francisco's previously identified air pollutant exposure zone, an area where air pollutant levels exceed health protective standards. Implementation of the Plan under existing 2014 conditions would result in expansion of the air pollutant exposure zone as explained on Draft EIR p. IV.F-47 and shown on Draft EIR Figure IV.F-2 (Draft EIR p. IV.F-47):

The results of the assessment indicate that Plan traffic would incrementally expand the geographic extent of the APEZ [air pollutant exposure zone], adding to the APEZ all of the approximately 40 parcels north of the I-80 freeway that are currently outside the zone (these parcels are largely concentrated near Second and Folsom Streets and along Shipley Street between Fifth and Sixth Streets), and also adding to the APEZ a large number of parcels south of the freeway, including South Park.

The EIR identified the Plan level and cumulative cancer risk impacts as significant impacts of the Plan and identified a total of seven mitigation measures that would reduce the severity of the cancer risk impact. The EIR determined that even with inclusion of these seven mitigation measures, the Plan level and cumulative cancer risk impact of the Plan would be significant and unavoidable because the Plan

³ Environ International, Air Quality Technical Report, Central SoMa Plan, October 2014. This document and all other documents cited in the appeal response, unless otherwise noted, are available for public review as part of Planning Department Case No. 2011.1356E.

⁴ The analysis includes estimates of excess cancer risk for over 38,000 receptor points, but approximately 7,000 of those receptor points are located in the San Francisco Bay and not on land. Consequently, these receptor points were excluded from the analysis in this Second Supplemental Appeal Response.

⁵ Bay Area Air Quality Management District, San Francisco Department of Public Health, and San Francisco Planning Department, *The San Francisco Community Risk Reduction Plan: Technical Support Documentation*, December 2012.

⁶ It is noted that the existing plus plan health risk analysis assumes all traffic would be added to the transportation network in year 2014, consistent with standard practice so as to ensure that impacts of a project are not under reported. However, the Plan is anticipated to be built out over 25 years and a substantial amount of growth enabled by the Plan could occur in the near-term following Plan approval.

would exceed the City's significance thresholds of an increased cancer risk 7 per one million persons exposed.⁷

The Central SoMa Plan health risk analysis geodatabase of over 31,000 receptor points was further analyzed to provide more specific detail regarding the nature and extent of the Plan's impact with respect to increased cancer risk. Under existing plus plan conditions, a total of seven receptor points would experience an increased cancer risk greater than 200 per one million persons exposed as a result of the Plan. These receptor points are all located outside the Plan Area and along the Interstate 80 ("I-80") on-ramp from The Embarcadero to Folsom Street. About 550 receptor points analyzed would experience an increased cancer risk resulting from the Plan of 100 per one million persons exposed or greater. These receptor points are all located along an approximately 100 meter swath along the I-80 freeway. The average change in increased cancer risk among all receptor points analyzed (within the Plan Area and one kilometer surrounding the Plan Area) is a decrease of 10 cancer cases (-10.8). Within the Plan Area only, the average increase in cancer risk is 32 per one million persons exposed. Figure 1 shows only the locations of receptor points that would experience an increase in cancer risk under existing plus plan conditions at or above the significance threshold of 7 per one million persons exposed (that is, receptor points where cancer risk would increase by less than 7 in one million and at points where the cancer risk would decrease are not shown).

⁷ It should be noted that the City's cancer risk thresholds (increased cancer risk of 7 per million) within an air pollutant exposure zone are more conservative (i.e., more restrictive) than the air district's recommended significance thresholds. The air district's recommended thresholds for cancer risk from a project are an increased cancer risk of 10 per one million persons exposed. See Bay Area Air Quality Management District. *California Environmental Quality Act Air Quality Guidelines*, May 2017, p. 2-5. Available at: <http://www.baaqmd.gov/plans-and-climate/california-environmental-quality-act-ceqa/updated-ceqa-guidelines>. Accessed September 7, 2018.

Figure 1. Receptor Points with Increased Cancer Risk at or above the City's Significance Threshold resulting from the Plan

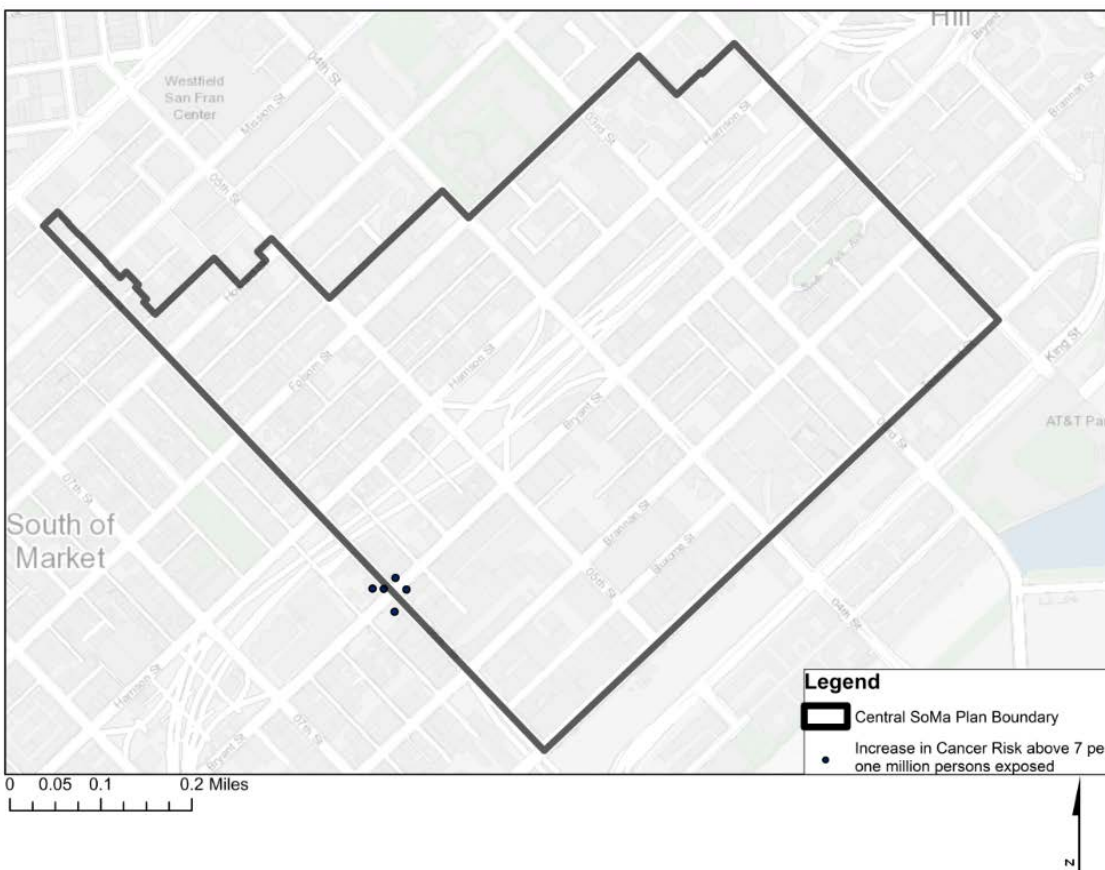


The EIR also evaluated 2040 cumulative cancer risk conditions, which takes into account other project development in addition to the proposed Central SoMa Plan. The extent of the 2040 air pollution exposure zone both with implementation of the Plan and without implementation of the Plan is portrayed in Draft EIR Figure IV.F-3 (Draft EIR p. IV.F-56). Similarly, the EIR health risk analysis also quantified the cancer risk under 2040 conditions with implementation of the Plan and without implementation of the Plan. Under cumulative 2040 conditions, the analysis determined that the Plan would result in an increase in excess cancer risk greater than 7 per one million persons exposed (specifically an increased cancer risk of 8.1)⁸ at the maximally exposed individual sensitive receptor. Approximately five receptor points would experience a net increase in cancer risk above the significance threshold as a result of the Plan under 2040 cumulative conditions. These five receptor points are located at the intersection of Bryant and Sixth Street, as shown in Figure 2, below. As described on RTC p. IV.F-55, the Plan's 2040 cumulative cancer risk impact in the health risk analysis study area is less than the existing plus plan cancer risk because of the anticipated decrease in emissions expected to occur with improved vehicle efficiency and emissions controls; therefore, the anticipated air

⁸ Environ Internal, Air Quality Technical Report, Central SoMa Plan, October 2014; Draft EIR IV.F-55.

pollution exposure zone in 2040 would be a smaller geographic area than the air pollution exposure zone modeled for existing plus plan conditions. Under 2040 cumulative conditions, the average change in cancer risk is a net increase of 0.2, which is less than one increased cancer risk per one million persons exposed. Within the Plan Area only, the average increase in cancer risk is 1 per one million persons exposed.

Figure 2. Receptor Points with Increased Cancer Risk at or above Significance Thresholds Resulting from the Plan under Cumulative Conditions



The Central SoMa Plan EIR reported results consistent with standard practice to disclose the greatest impact of the Plan and consistent with guidance issued by the air district. Specifically, the air district’s *Recommended Methods for Screening and Modeling Local Risks and Hazards* specifies that the “maximum risk, hazard, PM_{2.5} concentration affecting a receptor should be identified.”⁹ The Appellant does not dispute the conclusions reached regarding the health risk analysis. Analysis of the Central SoMa Plan health risk geodatabase confirms that the excess cancer risk were accurately reported in the EIR

⁹ Bay Area Air Quality Management District. *Recommended Methods for Screening and Modeling Local Risks and Hazards*. P. 13. <http://www.baaqmd.gov/~media/Files/Planning%20and%20Research/CEQA/BAAQMD%20Modeling%20Approach.ashx>. Accessed 8/30/2018.

consistent with standard practice and recommended guidance from the air district. This analysis also confirms that not all receptor points would experience an increased cancer risk as a result of the Plan and that the average cancer risk among all receptor points analyzed would be much lower than that reported for the maximally exposed individual sensitive receptor.

Second Supplemental Response 2: The EIR included all feasible mitigation measures to reduce the Plan's air quality impact. Mitigation measures suggested by the Appellant are: 1) substantially the same as those required in the EIR, 2) already required by existing laws, or 3) infeasible. The Appellant has not suggested any other feasible mitigation measures that the Department did not add to the EIR.

CEQA Requirement

CEQA Guidelines section 15126.4 governs the consideration and discussion of mitigation measures. This section states the following:

- An EIR shall describe feasible measures which could minimize significant adverse impacts;
- Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments;
- Mitigation measures are not required for effects which are not found to be significant; and
- Mitigation measures must be consistent with all applicable constitutional requirements, including: (1) there must be an essential nexus (i.e., connection) between the mitigation measure and a legitimate governmental interest, and (2) the mitigation measure must be "roughly proportional" to the impacts of the project.

Section 15364 of the CEQA Guidelines defines "feasible" as capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.

Air Quality Mitigation Measures Suggested by the Appellant

The Supplemental Appeal Letter from Richard Drury dated August 31, 2018 includes suggested amendments to mitigation measures identified in the Central SoMa Plan EIR and identifies additional mitigation measures that the Appellant contends should be included in the EIR. A discussion of each of these mitigation measures is grouped below by: 1) mitigation measures included in the EIR, 2) mitigation measures already required by law, and 3) mitigation measures that are infeasible.

Mitigation Measures Already Included in the EIR

The Appellant recommends that Mitigation Measure M-AQ-4b be more broadly applied to subsequent projects within the Plan Area, recommends various revisions to Mitigation Measure M-AQ-4b, and recommends the EIR include mitigation measures to require the retrofit of existing residential and commercial buildings with high efficiency air filtration devices. All of these suggestions and mitigation measures are already included in the EIR to the extent feasible, as discussed below.

Mitigation Measure M-AQ-4a of the Central SoMa Plan EIR applies to projects that would exceed the screening levels for criteria air pollutants¹⁰ (a separate analysis from whether a project causes a health risk impact due to emissions of toxic air contaminants) and requires an analysis be conducted to determine whether construction related criteria air pollutant significance thresholds would be exceeded. Such projects are required to implement Mitigation Measure M-AQ-4b, which includes measures to reduce construction period criteria air pollutants. The Appellant contends that M-AQ-4b should be required of all projects, regardless of whether a project exceeds the criteria air pollutant thresholds. But the Appellant is mistaken in suggesting that this mitigation measure only applies to projects that would exceed the criteria air pollutant significance thresholds. Impact AQ-6 (Draft EIR pp. IV.F-51 to IV.F-52) evaluates the construction health risk impact of new development enabled under the Plan and identifies this as a significant impact. Mitigation Measure M-AQ-6a requires all projects in the air pollutant exposure zone and all projects located in areas that would meet the air pollutant exposure zone criteria as a result of the Plan to implement Mitigation Measure M-AQ-4b. Mitigation Measure M-AQ-6a effectively requires nearly all projects (except those in the southeast corner of the Plan Area that do not meet the air pollutant exposure zone criteria- see Draft EIR Figure IV.F-2 on p. IV.F-47) to implement Mitigation Measure M-AQ-4b.

The Appellant also contends that Mitigation Measure M-AQ-4b should be revised to require Tier 4 construction equipment. Mitigation Measure M-AQ-4b requires all projects using equipment 25 horsepower or greater to meet emissions standards equivalent to a Tier 2 engine, be equipped with a Level 3 verified diesel emissions control strategy (“VDECS”), and be fueled with renewable diesel. As explained on Draft EIR p. IV.F-52, “Emissions reductions from the combination of Tier 2 equipment with Level 3 VDECS is almost equivalent to requiring only equipment with Tier 4 final engines. Furthermore, renewable diesel R100 has the potential to reduce particulate matter by about 30 percent and NOx emissions by 10 percent.” EIR Mitigation Measure M-AQ-4b also specifies that Tier 4 equipment automatically meets the Tier 2 plus Level 3 VDECS requirement.¹¹ The requirement for Tier 2 or cleaner engines in addition to a VDECS allows for flexibility in the construction equipment that may be used while substantially reducing a project’s construction emissions. Project sponsors may choose to meet this requirement by using all Tier 4 construction equipment, through a mix of Tier 4 equipment, Tier 2 equipment that is equipped with Level 3 VDECS, or electrically powered equipment.

The Appellant also contends that the EIR should require construction equipment to be powered by alternative fuels and suggests the use of electric or natural gas equipment. Mitigation Measure M-AQ-4b does require construction equipment to be fueled with renewable diesel, which is an alternative fuel. As discussed above, renewable diesel substantially reduces particulate matter emissions, which is the

¹⁰ Criteria air pollutants include ozone, carbon monoxide, particulate matter (PM₁₀ and PM_{2.5}), nitrogen dioxide, sulfur dioxide, and lead. Impacts are evaluated based on the total volume of a pollutant emitted. In contrast, health risk impacts are evaluated by modeling the airborne concentration of pollutants, such as diesel particulate matter, that generate cancer risk, as well as the concentration of fine particulate matter (PM_{2.5}).

¹¹ Tier 4 construction equipment have a diesel particulate filter built into the engine. Therefore, it is not necessary for Tier 4 engines to be equipped with a Level 3 VDECS.

dominant pollutant evaluated when quantifying increased cancer risk. This mitigation measure also prohibits the use of portable diesel engines where alternative sources of power are available. Furthermore, use of electric equipment is not prohibited by Mitigation Measure M-AQ-4b. Therefore, the EIR's mitigation measures include the Appellant's suggestion that construction equipment be powered by alternative fuels.

The Appellant also suggests that subsequent projects provide a detailed plan that discusses a construction vehicle inventory tracking system to ensure compliance with construction mitigation measures. Mitigation Measure M-AQ-4b requires the project sponsor to develop such a plan, track equipment use on a quarterly basis, and within six months of completion of construction activities, provide a report summarizing the use of each piece of equipment. Specifically, Mitigation Measure M-AQ-4b states that such a plan may include, but is not limited to the following information: equipment type, equipment manufacturer, equipment identification number, engine model year, engine certification (Tier rating), horsepower, engine serial number, expected fuel usage and hours of operation. The Department has prepared a template construction emissions minimization plan that is available for all project sponsors to use for compliance with Mitigation Measure M-AQ-4b and similar measures required through the CEQA review process. This template is included as Attachment A.

With regards to retrofitting existing residential and commercial buildings with high efficiency air filtration devices, this is a similar comment to that submitted by the Appellant on the Draft EIR and is addressed in the Response to Comments ("RTC") document. The Appellant states that the City should require existing residential and commercial buildings to be retrofitted with air filtration units, with a Minimum Efficiency Reporting Value (MERV) of 16 or HEPA filters, the City should collect a fee from developers of new residential units to pay for the maintenance costs associated with the air filtration unit and should require home owners associations to inform homeowners of the increased risk of exposure to toxic air contaminants when windows are open.

Regarding retrofitting of existing buildings with high efficiency air filtration devices¹², Response AQ-2, starting on RTC p. RTC-212 states the following:

Two commenters suggested a mitigation measure to retrofit existing buildings with enhanced filtration and ventilation systems. However, there are many challenges to retrofitting existing buildings: some buildings would require substantial upgrades to their heating and ventilation systems; buildings may need to be appropriately weatherized to ensure that outdoor air intrusion is limited; and existing buildings may face other environmental conditions that need to be abated,

¹² Commercial buildings, unless they contain a sensitive land use, such as a school or childcare facility, are not considered sensitive land uses pursuant to the air district's own definition. As stated on Draft EIR p. IV.F-14, "BAAQMD [Bay Area Air Quality Management District] defines sensitive receptors as facilities or land uses that include members of the population that are particularly sensitive to the effects of air pollutants, such as children, the elderly, and people with illnesses. Examples include schools, hospitals and residential areas...Residential areas are considered more sensitive to air quality conditions compared to commercial and industrial areas because people generally spend longer periods of time at their residences, with associated greater exposure to ambient air quality conditions." Therefore, commercial uses are not considered sensitive receptors. However, the EIR acknowledges that residential uses, as well as other land uses that may be used by members of the population who are sensitive to the effects of air quality, are sensitive receptors.

such as mold or lead paint removal.⁷⁰ As of the publication of this RTC document, there have been no occupied residential buildings in San Francisco that have been fully retrofitted to comply with Article 38 requirements.⁷¹ Substantial evidence does not demonstrate that it would be feasible to retrofit an occupied residential building for compliance with Article 38.

In response to the comments received on the Draft EIR, the San Francisco Planning Department conducted further research to determine whether there are additional feasible measures to reduce health risk impacts to sensitive receptors. One such measure is identified. The Planning Department has added a new mitigation measure M-AQ-5e, Central SoMa Air Quality Improvement Strategy, to reduce health risk impacts as a result of Plan implementation (deleted text is shown as ~~striketrough~~; new text is double underlined):

Mitigation Measure M-AQ-5e, Central SoMa Air Quality Improvement Strategy. The Central SoMa Plan is expected to generate \$22 million in revenue dedicated to greening and air quality improvements. A portion of these monies shall be dedicated to identifying and exploring the feasibility and effectiveness of additional measures that would reduce the generation of, and/or exposure of such emissions to persons whose primary residence is within the Plan Area and whose residence does not provide enhanced ventilation that complies with San Francisco Health Code Article 38. Objective 6.5 of the Plan calls for improvements to air quality, with specific strategies to support reduced vehicle miles traveled, increased greening around the freeway to improve air quality and use of building materials and technologies that improve indoor and outdoor air quality. The Planning Department, in cooperation with other interested agencies or organizations, shall consider additional actions for the Central SoMa Plan Area with the goal of reducing Plan-generated emissions and population exposure including, but not limited to:

- Collection of air quality monitoring data that could provide decision makers with information to identify specific areas of the Plan where changes in air quality have occurred and focus air quality improvements on these areas;
- Additional measures that could be incorporated into the City's Transportation Demand Management program with the goal of further reducing vehicle trips;
- Incentives for replacement or upgrade of existing emissions sources;
- Other measures to reduce pollutant exposure, such as distribution of portable air cleaning devices; and
- Public education regarding reducing air pollutant emissions and their health effects.

The Department shall develop a strategy to explore the feasibility of additional air quality improvements within four years of plan adoption.

Vehicle emissions account for the majority of toxic air contaminants generated from implementation of the Plan and these emissions are regulated by the state. Implementation of this measure would seek to identify additional feasible strategies to reduce plan-generated emissions and the exposure of sensitive receptors to substantial pollutant concentrations as a result of the Central SoMa Plan. As shown above, the Draft EIR includes now seven measures to reduce the

health risk impact on sensitive receptors. However, it is unknown whether all of these measures together would sufficiently reduce the health risk impact to less-than-significant levels. Therefore, the significant and unavoidable impact would remain significant and unavoidable even with the implementation of M-AQ-5e.

Footnotes:

⁷⁰ Jonathan Piakis, "Re: Central SoMa AQ Mitigation Measures," Email message to Elizabeth White (SF Planning Department), October 20, 2017.

⁷¹ Timothy Nagata, "Central SoMa – Another request for DBI assistance from Planning Dept," Email message to Elizabeth White (SF Planning Department), November 9, 2017.

As explained in the RTC, there are many potential issues with upgrading existing buildings with high efficiency filtration units that are required for new construction pursuant to Health Code article 38.¹³ The RTC determined that it was infeasible to require retrofitting of existing buildings with high efficiency filtration units. However, the EIR did include a new mitigation measure in response to the Appellant's comment on the Draft EIR, which requires the City to explore additional measures that would feasibly reduce air pollutant emissions or exposure to air pollutants. This measure includes exploring the feasibility of providing portable air filtration units as well as a public outreach campaign regarding the adverse health effects from exposure to air pollution. Therefore, as a result of the Appellant's comment on the Draft EIR, the EIR was revised to include additional mitigation measures requested by the Appellant to the degree such measures are feasible.

Mitigation Measures Already Required by Law

The Appellant recommends that the EIR include a number of mitigation measures which are already required by law and therefore need not be included in the EIR as additional mitigation measures. These measures are discussed further below and include: high efficiency filtration units for new construction, measures recommended by the air district for controlling fugitive dust and various measures designed to reduce vehicle trips and their associated emissions.

The Appellant recommends that the EIR require developers of new projects to install advanced air filtration equipment, specifically MERV 16 or HEPA filters to reduce indoor air pollutant levels. The Appellant also recommends that the EIR include a mitigation measure that requires the owners and property managers of new construction be required to maintain air filters in accordance with manufacturer recommendations and inform occupants of the increased risk of exposure to air pollutants when windows are open. Pursuant to Health Code article 38, MERV 13 air filters are required for all new sensitive use buildings that would be located within the air pollutant exposure zone. MERV 13 and 16 air filters both remove small particulate matter in the range of 1.0-3.0 $\mu\text{g}/\text{m}^3$, but MERV 13 will remove about

¹³ As explained on Draft EIR p. IV.F-19, Health Code article 38 requires new construction projects that would include sensitive uses (e.g., residential uses, adult, child, and infant care centers, schools and nursing homes) within the air pollutant exposure zone to install high efficiency air filtration systems and specifies that such systems must meet an equivalent of MERV-13.

90% of that particulate matter, whereas MERV 16 filters remove about 95% of that particulate matter. MERV 13 air filters will also remove about 75% of even smaller particulates, in the range of 0.3-1.0 $\mu\text{g}/\text{m}^3$, whereas MERV 16 air filters remove about 95% of those particulates. According to the California Air Resources Board, MERV 12 filters (one grade lower than MERV 13 filters) are typically installed in superior residential buildings, whereas MERV 16 filters are typically installed in hospital and general surgery buildings. HEPA filters remove about 99.9% of all particulates and are usually installed in clean rooms,¹⁴ laboratories and orthopedic surgery buildings.¹⁵ Therefore, while MERV 16 air filters may be more efficient in removing particulates, MERV 13 air filters are already required by law and sufficiently address the Appellant's concern. Furthermore, Health Code section 3810 requires that the ventilation systems that are installed be properly maintained as specified by the manufacturer; that documentation of the installation and maintenance of the system be preserved for 5 years; and that there be a disclosure to buyers, lessees and renters that the building is located in an area with substantial concentrations of air pollutants, and that the building includes an enhanced ventilation system and information about the proper use of the installed enhanced ventilation system.

The Appellant suggests that all construction projects implement certain measures recommended by the air district. The specific measures listed by the Appellant include suspending construction activities when wind speeds exceed 20 miles per hour, establishing wind breaks, planting ground cover as soon as possible, limiting the simultaneous occurrence of construction activities and requiring trucks and equipment to be washed off prior to leaving the site. As discussed on Draft EIR p. IV.F-39, in 2008 the San Francisco Board of Supervisors approved the Construction Dust Control Ordinance (Ordinance 176-08, effective July 30, 2008) with the intent of reducing the quantity of dust generated during site preparation, demolition and construction work in order to protect the health of the general public and of onsite workers, minimize public nuisance complaints, and avoid orders to stop work by the Department of Building Inspection ("DBI"). The Draft EIR (p. IV.F-39) goes on to discuss the following requirements of the Construction Dust Control Ordinance:

The Ordinance [Construction Dust Control Ordinance] requires that all site preparation work, demolition, or other construction activities within San Francisco that have the potential to create dust or to expose or disturb more than 10 cubic yards or 500 square feet of soil comply with specified dust control measures whether or not the activity requires a permit from DBI. The Director of DBI may waive this requirement for activities on sites less than one-half acre that are unlikely to result in any visible wind-blown dust.

For project sites over one-half acre, the Dust Control Ordinance requires that the project sponsor submit a Dust Control Plan for approval by the San Francisco Department of Public Health. DBI will not issue a building permit without written notification from the Director of Public Health

¹⁴ A clean room is an environment, typically used in manufacturing, including of pharmaceutical products or scientific research, with a low level of environmental pollutants such as dust, airborne microbes, aerosol particles, and chemical vapors.

¹⁵ California Air Resources Board. *Air Cleaning Devices for the Home, Frequently Asked Questions*. Updated July 2014. Available at: <https://www.arb.ca.gov/research/indoor/acdsumm.pdf>. Accessed September 5, 2018.

that the applicant has a site-specific Dust Control Plan, unless the Director waives the requirement.

The site-specific Dust Control Plan requires the project sponsor to submit a map to the Director of Public Health showing all sensitive receptors within 1,000 feet of the site; wet down areas of soil at least three times per day; provide an analysis of wind direction and install upwind and downwind particulate dust monitors; record particulate monitoring results; hire an independent, third-party to conduct inspections and keep a record of those inspections; establish shut-down conditions based on wind, soil migration, etc.; establish a hotline for surrounding community members who may be potentially affected by project-related dust; limit the area subject to construction activities at any one time; install dust curtains and windbreaks on the property lines, as necessary; limit the amount of soil in haul trucks to the size of the truck bed and secure with a tarpaulin; enforce a 15-mile-per-hour speed limit for vehicles entering and exiting construction areas; sweep affected streets with water sweepers at the end of the day; install and utilize wheel washers to clean truck tires; terminate construction activities when winds exceed 25 miles per hour; apply soil stabilizers to inactive areas; and sweep off adjacent streets to reduce particulate emissions. The project sponsor would be required to designate an individual to monitor compliance with these dust control requirements. Compliance with the regulations and procedures set forth in the San Francisco Dust Control Ordinance would ensure that potential dust-related construction air quality impacts would be reduced to a *less-than-significant* level.

As shown above, the measures suggested by the Appellant are effectively already required by the Construction Dust Control Ordinance.

The Appellant recommends the EIR include additional measures addressing vehicle emissions including: requiring all new buildings to provide electric vehicle parking, limit the amount of parking provided in new development by eliminating parking minimums, creating parking maximums and allowing for shared parking, unbundling the parking costs from property costs, and requiring commercial projects to provide end of trip facilities for bicycle riders such as showers, secured bicycle lockers and changing spaces. The San Francisco Planning Code and/or the Central SoMa Plan require all of the transportation demand management recommendations identified by the Appellant to address vehicle emissions as described below.

Require new buildings to provide electric vehicle parking

As described in the Central SoMa Responses to Comment (RTC) document in Response AQ-2 (page RTC-210), California Green Building Code Section 4.106.4 requires new residential buildings with 17 units or more to provide electrical capacity and wiring to accommodate installation of electric charging spaces for 3 percent for total off-street parking spaces. Effective January 2018, San Francisco increased this requirement to apply to 100 percent of off-street parking spaces in all residential buildings, including single-family dwellings, and to apply to major residential renovation as well. California Green Building Code Section 5.106.5.3 requires electric vehicle charging to be available for new construction with 10 or more off-street parking spaces. Effective January 2018, San Francisco increased this requirement to apply to 100 percent of off-street parking spaces in all new non-residential buildings and major renovations.

Limit the amount of parking in development by eliminating parking minimums, creating parking maximums and allowing for shared parking

For off-street parking, the Central SoMa Plan does not include parking minimums, and instead establishes a maximum number of off-street parking spaces based on the land use of the underlying project. For residential uses, the Plan allows up to 0.25 spaces per unit as principally permitted, and up to 0.5 spaces per unit subject to a Conditional Use Authorization. The original ordinance as introduced on February 27, 2018 allowed up to 0.5 spaces per unit as principally permitted; thus, the effect of the amendment is to further encourage parking reduction in the Plan Area. Similarly, for office uses, the Plan establishes a maximum cap on parking, allowing up to 7% of occupied floor area to be devoted to off-street parking.

Unbundle the parking costs from property costs

Pursuant to Planning Code Section 167, all off-street parking spaces accessory to residential uses in new structures of 10 dwelling units or more, or in new conversions of non-residential buildings to residential use of 10 dwelling units or more, shall be leased or sold separately from the rental or purchase fees for dwelling units for the life of the dwelling units, such that potential renters or buyers have the option of renting or buying a residential unit at a price lower than would be the case if there were a single price for both the residential unit and the parking space.

Require commercial projects to provide end of trip facilities for bicycle riders.

Pursuant to Planning Code section 155.2, 155.3, and 155.4, new and expanded buildings, new dwelling units, changes of occupancy, increases of use intensity and additions of parking capacity/area are required to provide facilities for bicycle riders (e.g., shower facilities and lockers).

Other Transportation Demand Management Requirements

In addition to the existing transportation demand management measures included in the San Francisco Planning Code, the San Francisco Board of Supervisors approved Ordinance No. 34-17, adopting a citywide Transportation Demand Management (TDM) Program in February 2017. San Francisco's TDM Program describes strategies and measures that incentivize sustainable ways of travel and requires new development and major changes to existing property to implement a TDM Program. These projects are required to incorporate various TDM measures to meet a project specific target aimed at reducing vehicle miles traveled at the project site. Measures include, but are not limited to:

- Reducing parking supply
- Pricing parking to encourage use of other transportation modes
- Providing contributions or incentives for sustainable transportation
- Providing vanpool services to employees
- Providing on-site childcare services.

As part of the Central SoMa Plan, individual projects would be subject to Mitigation Measure M-No-1a, Transportation Demand Management for New Development Projects. This mitigation measure was included in the Draft EIR because at that time, the TDM program described above was not adopted. The adopted TDM Program effectively replaces Mitigation Measure M-No-1a. Further, as discussed above, in response to the Appellant's comments on the Draft EIR, Mitigation Measure M-AQ-5e was added to the EIR and includes exploring additional measures that could be incorporated into the City's Transportation Demand Management program with the goal of further reducing vehicle trips.

Mitigation Measures that are Infeasible

The Appellant recommends that the EIR require existing buildings to be retrofitted with high efficiency air filtration devices. As explained above, the RTC fully evaluated this measure and determined it infeasible. The Appellant also recommends that the EIR include a mitigation measure requiring ride hailing services, or transportation network companies, to only use clean fueled vehicles, such as hybrid-electric, electric, hydrogen fuel or natural gas, similar to what the City requires pursuant to the Green Taxi Ordinance.

The Draft EIR (p. IV.F-48) finds that the plan would result in a significant health risk impact as a result of new vehicle trips that would occur as a consequence of new development enabled under the Plan and identifies a number of mitigation measures. The Draft EIR (p. IV.F-51) concludes that, "...because vehicle emissions are regulated at the State and federal level and local jurisdictions are preempted from imposing stricter emissions standards for vehicles, and because no other feasible mitigations are available, the impact of traffic-generated TACs [toxic air contaminants] on existing sensitive receptors would be *significant and unavoidable*."

The City similarly has no authority to regulate emissions of vehicles used for transportation network company services. The California Public Utilities Commission regulates operations of transportation network companies. In addition, under federal and state law, the City does not have authority to regulate vehicular emissions. That authority lies with the California Air Resources Board.

For informational purposes, the California Assembly and Senate recently passed Senate Bill 1014, California Clean Miles Standard and Incentive Program: zero-emissions vehicles.¹⁶ This bill, if enacted, would require the California Air Resources Board to adopt, and the California Public Utilities Commission to implement, annual targets for the reduction of greenhouse gas emissions driven by transportation network companies. It is likely that this bill, if enacted, would result in additional co-benefits of reducing other air pollutants in addition to greenhouse gas emissions through such means as establishing a minimum number of zero emissions vehicles among transportation network companies.

¹⁶ For more information see: http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB1014. Accessed September 5, 2018.

CONCLUSION:

The Department appropriately analyzed the physical environmental impacts of the Central SoMa Plan. The Appellant has not raised any new issues germane to the CEQA review for the Central SoMa Plan EIR and has not provided any substantial evidence to refute the conclusions of the Department with respect to the project's physical environmental effects under CEQA.

For the reasons stated in the Original Appeal Response, the Supplemental Appeal Response, and this Second Supplemental Appeal Response, the Commission's certification of the EIR complies with the requirements of CEQA, the CEQA Guidelines, and Chapter 31 of the *San Francisco Administrative Code*. The Department, therefore, recommends that the Board uphold the Commission's decision to certify the EIR and deny the appeal.

Attachments:

Attachment A. Template Construction Emissions Minimization Plan

